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Max Frankel, Executive Director
SEEC Institute
Thriving Economy Project
611 Pennsylvania Ave., S.E., # 150
Washington, D.C. 20003

Dear Mr. Frankel,

Thank you for the opportunity to comment in connection with the SEEC Institute's Thriving Economy Project. Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitative practices, help financially stressed families build and retain wealth, and advance economic fairness.

We appreciate the SEEC Institute's work to develop a blueprint for policies that can address sustainability and resilience alongside prosperity across communities. Approximately one in three households in the United States struggles to afford their home energy bills. It is essential that policies developed through the Thriving Economy Project help reduce home energy use and make energy and utility service more affordable and available for all.

We focus our comments on sections 3 (3(d) and 3(i)), 8 (8(h)) and 9 (9(f)) of the RFI. The material is combined below. Essentially, strong consumer protection policies and program designs should be incorporated into emerging energy efficiency and resilience projects in order to promote affordability and access. These policies support community resilience and housing security and provide a basis for stronger energy financing solutions. They also strengthen the delivery of government programs. Robust consumer protections ensure that strong climate action aimed at economic growth is an inclusive process that does not leave low- and moderate-income households worse off. They promote transparency and accountability and prevent unsustainable products or practices from undermining progress toward a stronger energy efficiency and resiliency economy.

Renewable energy and energy efficiency technologies provide opportunities for reducing energy bills and promoting resilience, but their costs present a particular challenge for low- and

moderate- income customers.[1] More than a quarter of U.S. households struggle to meet their energy needs.[2] They frequently face the risk of utility service termination, which can put their housing at risk. Low-income families, in particular, spend a substantial portion of annual income on electricity and heating—around 14%, compared to 3% for higher-income households.[3] Because of high energy costs, low-income families often face the "heat or eat" conundrum and must sacrifice other important needs, including groceries and medicine, or reduce energy use in ways that can harm their health and safety. Low-income households and communities of color are also more likely to be located in areas where climate change is projected to cause significant increases in asthma and heat-related deaths.[4] Structural inefficiencies in housing contribute significantly to high energy burdens among low-income populations and in communities of color.[5]

We begin with an overview of programs with features that undermine consumer protection, then highlight programs that are crucial to support strong progress on energy efficiency and access. We close with specific policy recommendations. A deeper dive into the issues raised in our comment can be found in our book chapter, Ensuring Consumer Protections in the Delivery of Energy-Efficiency Financing and Renewable-Energy Programs in *What's Possible: Investing Now for Prosperous, Sustainable Neighborhoods*.

A. Financing programs that present significant consumer-protection risks undermine sustainable climate efforts.

Energy efficiency financing programs add surcharges to monthly utility or mortgage bills. Depending on program design, they can carry significant risk, especially for households with little to no discretionary income.

Tariffed on-bill (TOB) financing. Under TOB models, such as PAYS® (Pay As You Save®) or Inclusive Utility Investment, customers repay the cost of efficiency and renewable-energy upgrades through utility bills. TOB products do not require credit checks, tie the debt to the meter, not the individual, and rely on disconnecting essential[6]utility service to ensure repayment. The TOB model, however, does not guarantee projected energy savings. This poses a particular

[1] *See* Marilyn A. Brown et al., *Low-Income Energy Affordability: Conclusions from a Literature Review,* Oak Ridge National Laboratory (Mar. 2020), *available at* https://info.ornl.gov/sites/publications/Files/Pub124723.pdf. [2] *See* U.S. Energy Information Administration, *Residential Consumption Survey*, *Today in Energy* (Apr. 11, 2022), *available at* https://www.eia.gov/todayinenergy/detail.php?id=51979.

[3] *See* Erin Rose & Beth Hawkins, *Background Data and Statistics on Low Income Energy Use and Burden for the Weatherization Assistance Program: Update for Fiscal Year 2020,* Oak Ridge National Laboratory (June 2020), at 17, *available at* https://weatherization.ornl.gov/wp-content/uploads/2021/01/ORNL_TM-2020_1566.pdf. [4] *See* U.S. Environmental Protection Agency, *Climate Change and Social Vulnerability in the United States: A Focus on Six Impacts* (2021), at 9, *available at* www.epa.gov/cira/social-vulnerability-report. According to the report, Black individuals are 40% more likely than non-Black individuals to live in areas with the highest projected increases in mortality rates due to climate-driven increases in extreme temperatures and are 34% more likely to live in areas with the highest projected increases in childhood asthma diagnoses due to climate-driven increases in particulate air pollution. *Id.* at 6.

[5] *See* Ariel Drehbohl et al., American Council for an Energy Efficient Economy, *How High Are Household Energy Burdens—An Assessment of National and Metropolitan Energy Burden Across the United States* (Sept. 2020), *available at* https://www.aceee.org/sites/default/files/pdfs/u2006.pdf.

[6] Utility service is essential to staying in a home.

problem for cash-strapped customers trying to finance larger, more expensive projects while trying to afford monthly utility bills.[7] Because energy use varies by season, customer, and household size, projected savings for one tenant or homeowner don't necessarily guarantee comparable savings each month, or for the next customer (or at all, if household behavior or energy prices change). For further information on TOB financing and consumer protection issues, please see NCLC's TOB issue brief.

Rooftop solar. Rooftop solar can provide substantial energy savings for consumers, especially in states with generous net metering rules or installation subsidies and strong consumer protections. But deceptive marketing, contractor fraud, and weak consumer protections can create significant consumer risks that policy makers must address. Unethical marketing that promises but does not deliver significantly lower bills from solar panels represents a particular threat to low-income consumers. For further discussion of abuses in the rooftop solar industry and recommendations on consumer protections, please see NCLC's rooftop solar issue brief.

PACE. Residential Property Assessed Clean Energy (PACE or R-PACE) loans finance energy efficient improvements through home-improvement contractors, securing the loans through voluntary property tax liens.[8] State and local governments authorize these privately run programs but conduct little or no oversight of them. A study by the Consumer Financial Protection Bureau (CFPB) found that residential PACE loans increased mortgage delinquency by about 35 percent over two years, with the greatest impact on consumers with lower credit scores.[9] The CFPB rule bringing PACE loans within the Truth in Lending Act takes effect in March 2026.[10]

Assumed savings in government-backed green mortgages. The Federal Housing Administration (FHA), the U.S. Department of Agriculture (USDA), Fannie Mae, and Freddie Mac offer programs allowing homeowners to borrow more money than otherwise allowable through the explicit use of "stretch ratios," which accommodate higher debt-to-income ratios based on a home's efficiency, thus assuming regular savings.[11] If borrowers do not save as much as the increase in the mortgage payment, they face increased default and foreclosure risk.

[7] For example, a study of one PAYS program found that about half of participants did not save enough money from the energy-efficiency improvements to offset the tariff levied to cover the price of the improvements. Jeff Deason et. al, *Customer Outcomes in Pay-As-You-Save Programs*, Electricity Markets & Policy Energy Analysis & Environmental Impacts Division, Lawrence Berkeley National Laboratory, reprinted from 2022 ACEEE Summer Study on Energy Efficiency in Buildings proceeding (Aug. 2022), at 17*, available at* https://eta publications.lbl.gov/sites/default/files/deason_aceee_2022_preprint.pdf.

[8] Here we discuss "residential PACE," in contrast with "commercial PACE," which operates differently and does not involve contracts directly with individual homeowners.

[9] *See* Siobhan McAlister & Ryan Sandler, *Property Assessed Clean Energy (PACE) Financing and Consumer Financial Outcomes*, Consumer Financial Protection Bureau (May 2023), at 3, *available at* https://files.consumerfinance.gov/f/documents/cfpb_pace-rulemaking-report_2023-04.pdf.

[10] *See* Consumer Fin. Protection Bureau, Final Rule, Residential Property Assessed Clean Energy Financing (Regulation Z)(effective Mar. 1, 2026), *available at* https://www.consumerfinance.gov/rules-policy/final rules/residential-property-assessed-clean-energy-financing-regulation-z/.

[11] U.S. Dep't of Hous. & Urb. Dev., Handbook 4000.1, FHA Single Family Housing Policy Handbook 335 (2021); U.S. Dep't of Agric. (USDA), Handbook HB-1-3550, Direct Single Family Housing Loans & Grants Field Office Handbook 4-67 (2022); USDA, Handbook HB-1-3555, Single Family Housing Guaranteed Loan Program App. I-48

(2022); Fannie Mae, Selling Guide: Fannie Mae Single Family 732 (2023); Freddie Mac, Single Family Seller/Servicer Guide 5041-4 (2023).

B. Affordable, financially safe energy-efficiency and renewable-energy programs promote growth and efficiency while ensuring access.

Several proven models for delivering affordable energy efficiency and climate resilience upgrades minimize risks to low-income consumers.

Community solar. Instead of requiring installation of expensive rooftop panels, community solar programs give customers access to the benefits of solar energy without requiring installation of panels through subscriptions to a solar array or farm, often within their utility's service territory. Community solar may offer a less risky, more beneficial option for low-income utility customers, particularly when strong consumer protections are included in community solar contracts. For further information about consumer protections in community solar, please see NCLC's report on community solar.

Zero-cost weatherization programs. The U.S. Department of Energy's Weatherization Assistance Program (WAP)[12] helps lower costs for low-income households by decreasing energy use through whole-building assessment and installation of energy-saving equipment. Households that take advantage of the program save an average of $372 each year on energy costs.[13] Additional weatherization funding comes from the U.S. Department of Health and Human Services' Low Income Home Energy Assistance Program (LIHEAP), state-authorized funding, and utility companies' customer-funded programs. Immense need and limited and variable funding, however, limit access to these services.

Government-backed green mortgages. Fannie Mae, Freddie Mac, FHA, USDA, and the U.S. Department of Veterans Affairs offer loans to finance energy- and water-efficiency upgrades, resilience against natural disasters, and to pay off some energy-related debts, such as PACE loans. Other than the stretch ratios described above, these loans generally use conventional, sustainable underwriting. Fannie and Freddie also have maintained green mortgage-backed securities to promote energy-efficiency lending.

C. Financing programs, public and private, must include robust consumer protections.

Robust consumer protections represent critical components of any energy efficiency or renewable energy financing program. The following recommendations are essential components of a strong program or product.

AFFORDABILITY

Lead with zero- or low-cost programs. Financing programs should not be marketed to low income customers who can obtain the same measures cost-free through other programs.

[12] WAP serves all 50 states, Washington D.C., Native American tribes, and all five U.S. territories. [13] *See* U.S.

Braid and stack benefits. Integrating (braiding) rebates and other incentives represents a critical step in making improvements affordable and delivery efficient.

Protect ability to repay. Any financing program must build in strong "ability to repay" standards. Financing products are credit and should be treated as such. Projected energy savings should not serve as justifications for payments above levels otherwise deemed affordable. Financing terms must not extend beyond the projected "useful life" of the improvements. Disconnection from essential utility service must not serve as a collection tool. Reserve funds should be established to compensate customers when promised savings do not materialize and they become delinquent on their payments as a result.

Ensure affordable monthly bills for those not enrolled in zero cost programs. To keep utility bills affordable for consumers enrolled in a TOB program or other financing products, states and companies should adopt robust affordability measures—including percentage-of-income payment plans, discount rates, and restrictions on disconnection—to mitigate the risks of energy efficiency financing.

TRANSPARENCY AND ACCOUNTABILITY

Require independent energy audits. Policymakers should require energy audits—which give homeowners useful information about ways to improve energy efficiency—performed by independent parties with no financial incentive in a potential project.

Require written disclosures. Consumers must receive clear, written disclosures, in their preferred language, that explain costs and terms, with a waiting period before consummation and a right to cancel for a period after the transaction. Subsequent occupants of houses or apartments with existing TOB debt tied to the meter should receive clear disclosure of the obligation (monthly surcharge amount) before signing a lease or making a home purchase.

Assure oversight of contractors, remedies, and fair lending practices. Regulations should include clear prohibitions against deceptive or predatory sales practices, and should restrict marketing of financing programs to third parties with no financial incentive in a sale. Customers with complaints should have a meaningful dispute-resolution process, with compensation for financial harm. Program design and implementation should include considerations of equitable access, language access, and community engagement.

DATA-INFORMED PROGRAMS

Collect data. Meaningful data on initial financing and product performance, including demographic data, should be collected and published to ensure equitable and sustainable program design.

Thank you for your consideration. We look forward to additional opportunities to work with SEEC Institute to promote equitable and sustainable access to energy efficiency and renewable energy.

Sincerely,

Alys Cohen
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