MICHIGAN CREDIT UNION LEAGUE & AFFILIATES

July 26, 2023

Comment Intake—PACE
c/o Legal Division Docket Manager
Consumer Financial Protection Bureau
1700 G Street, NW
Washington DC 20552

Re: Docket No CFPB-2023-0029 / RIN 3170-AB84; Residential Property Assessed Clean Energy Financing (Regulation Z)

Dear Director Chopra,

The Michigan Credit Union League (MCUL), on behalf of our member credit unions, appreciates the opportunity to submit comments to the Consumer Financial Protection Bureau's (CFPB) Notice of Proposed Rulemaking (NPRM) on the establishment of new rules and consumer protections for residential Property assessed Clean Energy (R-PACE) loans. The MCUL is a statewide trade association representing 100% of the 194 credit unions located in Michigan and their over 5.9 million members.

MCUL appreciates the efforts made by the Bureau to enact consumer protection rules on Residential PACE loans. In Michigan, Commercial PACE became an option in 2010 with the passage of P.A. 270,[1] or the Property Assessed Clean Energy Act. In 2014, the state passed the Municipal Utility Residential Clean Energy Program Act,[2] which allows for a program similar to R-PACE loans, but attaches to a homeowners' utility bill instead of their taxes. While several attempts have been made to pass R-PACE legislation in the state, thus far, those attempts have been thwarted.

As the Bureau has described in the NPRM, R-PACE transactions have been the subject of scrutiny since their genesis. A majority of the problems identified appear to be a result of private, for-profit businesses fulfilling PACE programming instead of non-profit or government entities. The aforementioned Municipal Utility Residential Clean Energy Program Act was enacted, largely, at the request of the city of Holland, whose utilities are provided by the community-owned Holland Board of Public Works (BPW), where the city's Energy Smart Program[3] is managed. Michigan Saves, the state's green bank, has commented on the program, touting the programs' success.[4] The same cannot be said for R-PACE loans. A 2021 ProPublica[5] article describes how homeowners in Missouri are subject to long terms and high interest rates, targeting vulnerable, credit-poor consumers and risking many with their homes being sold at public auction for being unable to pay the high tax bill. That same year, comedian John Oliver took R-PACE to task during a segment[6] on his HBO show, LastWeekTonight, highlighting several examples of the program taking advantage of consumers via exploitative means. Concerns are multiplicitous and range from their high cost of financing to their deceptive marketing practices, to their lack of disclosures, to

1 http://www.legislature.mi.gov/documents/2009-2010/publicact/pdf/2010-PA-0270.pdf
2 https://www.legislature.mi.gov/(S(c2zekf120lw1ssskp0h3nogt))/documents/mcl/pdf/mcl-Act-408-of-2014.pdf
3 https://hollandbpw.com/en/energy-smart-program
4 https://michigansaves.org/news/five-years-of-financing-hows-the-on-bill-program-in-holland-doing/
5 https://www.propublica.org/article/missouri-pace-loans
6 https://www.youtube.com/watch?v=zv8ZPFOxJEc

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their priority lien position. In fact, it was the priority lien position that led the Federal Housing Finance Agency (FHFA) in prohibiting Fannie/Freddie from purchasing mortgages with R-PACE loans attached.[7] The Federal Trade Commission (FTC) has taken action against one of the major players in the space, Ygrene Energy Fund Inc. for many of the same reasons.[8]

While our concerns in the state have largely been focused on the increased risk of priority lien positions for our members (a concern not solved by the NPRM), MCUL appreciates that the Bureau has turned its attentions to these programs in providing robust regulation to protect the American consumers' interests, regardless of whether consumers in Michigan are immediately affected. In particular, MCUL is in strong support of the following:

1) *Ability to Repay*: The Proposed Rule seeks to extend the Dodd-Frank ability to repay (ATR) provisions to R-PACE financing transactions. This extension is of great importance, given the loans, at current, increase a borrower's tax burden without considering their financial capacity to manage such an increase, subjecting them to higher risks of tax default and, subsequently, mortgage default. Considering the numerous issues present in R-PACE lending, some of which are included in this letter, this move serves as a significant increase in consumer protection.

2) *PACE-Specific TILA Disclosures*: The Proposed Rule includes new definitions, new covered entities, and mandates specific disclosures concerning PACE loans. Such disclosures would address lien priority, tax assessments and implications for resale to be included in loan materials. More, the TILA amendments would ensure that PACE loans are treated like the loans that they are, ensuring that clear disclosures are provided on Annual Percentage Rates (APR), affording borrowers the opportunity to shop for alternative products, and extending standard mortgage protections, such as a three-day right of rescission and wait times between Loan Estimate and Closing Disclosure. These measures serve as essential tools for clarity, increased competition, consumer protection and, importantly, alerting borrowers to the potential risks associated with PACE loans. We firmly believe that these proposed disclosures are entirely appropriate in promoting transparency and safeguarding consumer interests.

For these reasons, MCUL strongly supports the measures in the proposed rulemaking. On behalf of Michigan's credit unions, thank you for your consideration.

In cooperation,

Bradley Willett
Director of Compliance and Regulatory Affairs

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[7] https://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-the-Federal-Housing-Finance-Agency-on-Certain-Super-Priority-Liens.aspx

[8] https://www.ftc.gov/news-events/news/press-releases/2022/10/ftc-california-act-stop-ygrene-energy-fund-deceiving-consumers-about-pace-financing-placing-liens