May 7, 2019

Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552


Dear Sir or Madam:

On behalf of the 2.2 million credit union members we represent, the Heartland Credit Union Association (HCUA) appreciates the opportunity to comment on the Advance Notice of Proposed Rulemaking (ANPR) on Residential Property Assessed Clean Energy (PACE) Financing.

In general, PACE financing permits a property owner to finance the purchase of energy-related retrofitting or improvements and pay for those improvements through a special assessment on the property. PACE programs are authorized through the passage of state-level legislation and implemented on a local level. These state-approved programs typically allow the creation of special districts where a local municipality assesses levies on a property on which the owner has agreed to a PACE financing arrangement. While 21 states have authorized PACE programs, there are only active programs in California, Florida, and Missouri.

HCUA strongly recommends the CFPB should promulgate a PACE financing rule that subjects PACE programs to the entirety of the Truth in Lending Act (TILA) while also adding additional protections for consumers. In general, the CFPB’s PACE Financing Rule should address the proper underwriting requirements for PACE financing, including an “ability-to-repay” (ATR) analysis based on verified and documented information about the borrower. In addition, we recommend clear, understandable disclosures of the key terms, repayment, and potential impacts of a PACE lien provided to the homeowner prior to the execution of the contract by extending the TILA-Real Estate Settlement Procedures Act (RESPA) Integrated Disclosure (TRID) Rule to PACE; debt-to-income (DTI) ratios, which should not exceed the ratio established for traditional mortgage loans; its application to any type of residential PACE lending, regardless of brand name or how the program is marketed to the consumer; and preemption of state laws, unless a state has established a higher standard of consumer protection.

In addition, HCUA recommends the CFPB work with other relevant regulators and industry stakeholders during the development of a PACE Financing Rule. And finally, although the CFPB is likely unable to address the issue of lien status, HCUA would like to reiterate our concern with PACE lending’s first lien status under several state laws, and we oppose any type of lien priority that makes PACE loans preferable to other loan options.
HCUA recommends the CFPB issue a rule that requires PACE loan administrators to conduct a robust ATR analysis prior to the execution of the contract and approval of the loan. In order to determine whether the homeowner can afford the financing, the underwriting required pursuant to the CFPB’s rule must include:

- Income verification via tax returns or other reliable third-party records;
- An assessment of the borrower’s outstanding debt obligations;
- An assessment of the household’s monthly expenses;
- The borrower’s employment status; and
- An accurate consideration of the borrower’s credit history.

In addition, it is critical that the CFPB’s rulemaking require this determination to be conducted prior to the contract’s approval.

HCUA recommends the CFPB’s rule provide an effective disclosure regime to PACE financing programs, including a requirement to disclose:

- The total cost of the loan under the contract;
- A clear repayment schedule;
- The exact amount the homeowner’s annual tax assessment will increase;
- The fact that the homeowner could lose their property if they are unable to make these increased payments; and
- The impact of a PACE-related lien on a property’s value and salability.

The CFPB can ensure PACE loan recipients receive adequate disclosures related to the loan’s obligations by requiring PACE agreements to comply with the TRID Rule. HCUA believes homeowners should be informed of all the relevant information necessary to understand their PACE financing agreement and, for that reason, extending TRID to these agreements would be appropriate.

In summary, credit unions remain concerned with the impact PACE financing programs could have on members that participate in these arrangements due to their lack of proper disclosures, transparency, and consumer protections.

As always, we appreciate the opportunity to review this issue. We will be happy to respond to any questions regarding these comments.

Sincerely,

Brad Douglas
President/CEO