



July 26, 2023

Ms. Mary McCleod
General Counsel
Federal Housing Finance Agency
1700 G Street, NW
Washington, DC 20552

Re: RIN 3170-AA84

Dear Ms. McCleod:

The American Land Title Association (ALTA)¹ supports the Consumer Financial Protection Bureau's (CFPB) proposed rule to subject Property Assessed Clean Energy loans (PACE) to the ability to repay and disclosure requirements of the Truth in Lending Act. We are deeply concerned with liens related to PACE loans and have expressed our consumer protection concerns as early as 2010 when we sent a letter to the Federal Housing Finance Agency (FHFA) encouraging guidance and clarification.² As the market for those loans developed, we reiterated such concerns in another letter to FHFA in its 2012 rule making on the issue.³ Subsequently, in 2017, we supported S. 838, legislation to protect home owners from predatory PACE lenders.⁴ Given the impact these loans have on property rights and their relatively high costs and fees, we believe the CFPB should continue to watch this market with exacting scrutiny.

According to the CFPB's PACE report, the mean interest rate and annual percentage rate for PACE loans from 2014-2020 was 7.6% and 8.5%, respectively.⁵ These rates were much higher than prevailing first lien mortgage rates during that same time period. This is even though these loans get super priority tax lien status in foreclosure, making them more likely to be repaid than a first lien mortgage. When combined with analysis showing that over 95% of these loans would qualify as high-cost loans subject to additional consumer protections, it highlights significant gaps in regulatory oversight of these products.⁶

¹ALTA is the national trade association and voice of more than 6,000 title insurance agents, abstracters, and underwriters, ranging from small, one-county operations to large national title insurers in the United States. ALTA is represented by an active ALTA Member in every county in the United States. ALTA members search, review and insure land titles to protect homebuyers and mortgage lenders who invest in real estate.

² American Land Title Association, July 27, 2010, "American Land Title Association Asks For Clarifications Regarding Federal Clean Energy Program", <https://www.alta.org/news/news.cfm?20100727-American-Land-Title-Association-Asks-For-Clarifications--Regarding-Federal-Clean-Energy-Program->

³ American Land Title Association, March 26, 2012, "Comment Letter Re: (RIN) 2590-AA53", [Search Comments/Input | Federal Housing Finance Agency \(fhfa.gov\)](#)

⁴ American Land Title Association, April 24, 2017, "ALTA, Trade Groups Support PACE Bills", [ALTA - ALTA, Trade Groups Support PACE Bills](#)

⁵ McAlister, Siobhan and Sandler, Ryan. May 1, 2023, "Property Assessed Clean Energy (PACE) Financing and Consumer Financial Outcomes", [cfpb_pace-rulemaking-report_2023-04.pdf](#).

⁶ Ibid.

Additionally, over the past few years there have been several examples of predatory practices using PACE programs, especially in places where they were expected to be very effective, including California. In 2021, an article was written highlighting those companies aggressively understating the costs associated with maintaining PACE-related improvements.⁷ The California Department of Financial Protection and Innovation has received over 390 complains since 2019 about these very programs.

ALTA members recognize the value in lowering energy costs for consumers, creating jobs for the economy and reducing buildings' carbon footprint for the environment. However, we believe PACE loans should be subject to all the same consumer protections under TILA as any other mortgage loans. For this reason, we support the proposed rulemaking to require that PACE lenders conduct an ability to repay analysis and provide disclosures to consumers on PACE loan costs.

Lastly, while this proposal may not be a significant rule subject to the assessment requirements of section 1022 of Dodd-Frank, we encourage the CFPB to update its PACE report in five years after implementation of this rulemaking to determine its effectiveness.

Thank you for the opportunity to comment. We look forward to working with the CFPB on this important topic.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve Gottheim', with a stylized flourish at the end.

Steve Gottheim
General Counsel
sgottheim@alta.org

⁷ CBS, San Francisco, "Lawsuit Alleges Low-Income Homeowners Were Manipulated Into Getting PACE Green Energy Loans," April 12, 2021. <https://www.cbsnews.com/sanfrancisco/news/lawsuit-alleges-low-income-homeowners-were-manipulated-into-getting-pace-green-energy-loans/>