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## CFPB's PACE Loan Proposal Could Impact Other Creditors

By: [Stephanie Shea](#)

The Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 amended TILA to require the CFPB to issue rulemaking addressing Property Assessed Clean Energy (PACE) loans. Specifically, the Act required the CFPB to apply TILA's ability-to-repay (ATR) requirements to PACE loans and to apply TILA's civil liability provisions to a PACE lender's violation of those ATR requirements.

This month, the CFPB issued a proposed rule, starting this PACE loan rulemaking process. 88 FR 30388. In that proposal, the CFPB proposes not only to revise Regulation Z's ATR rules to address PACE loans, but also proposes quite a few other significant changes, some of which will impact other creditors. The comment period ends July 26, 2023.

**PACE Loans Are Reg Z-Covered Credit.** The first other significant proposed change pertains to the plethora of disagreement over whether PACE loans meet Regulation Z's definition of "credit." The root of this disagreement is a comment in Regulation Z that excludes "tax liens" and "tax assessments" from its definition of "credit." PACE loans cover the costs of home improvements that result in a tax assessment on the consumer's real property. Accordingly, since PACE loans result in a tax assessment and since Regulation Z's commentary excludes "tax assessments" from coverage, at least some PACE lenders take the position that PACE transactions are not TILA/Regulation Z-covered credit. To make clear its position that PACE transactions are TILA/Regulation Z-covered credit, the CFPB proposes to revise that commentary to only exclude involuntary tax assessments, not the tax assessments that arise from voluntary PACE transactions.

**PACE-Specific TRIDs.** The second other significant proposed change is that the CFPB is proposing to revise the Loan Estimate and Closing Disclosure to more effectively disclose information about PACE transactions, given their unique nature.

**ATR.** Under the ATR rule, creditors must consider the consumer's monthly payment for "mortgage-related obligations." The CFPB proposes to revise the definition of "mortgage-related obligations" to make perfectly clear that when considering the consumer's monthly payment for mortgage-related obligations, creditors must include payments for pre-existing PACE transactions. Switching gears, one component of the general ATR standard is that creditors must make their ATR determination based on information they've verified from reasonably reliable records. The CFPB proposes to make clear that a creditor does not meet this verification requirement if (i) it knows or has reason to know that a consumer has an existing PACE transaction, (ii) it relies on information a governmental organization provides, either directly

or indirectly, and (iii) that information does not reflect the PACE transaction. For example, what if a consumer informs the creditor of the PACE transaction in the application materials? With this proposed revision, a creditor could not fulfill the requirement to verify the consumer's property taxes solely using property tax records or property tax information in a title report that does not include the existing PACE transaction.

Sticking with the ATR rule for another moment, the CFPB is also proposing that PACE transactions would not qualify for any of the Qualified Mortgages. Last, in extremely simplified terms, the CFPB is proposing to revise the rules surrounding the consideration of monthly escrow payments to include any monthly escrow payments resulting from the PACE transaction plus a cushion, if applicable.

**HOEPA & Periodic Statements.** The CFPB is also requesting comment on whether it needs to revise any of the Home Ownership and Equity Protection Act (HOEPA) rules in Regulation Z so that they apply to PACE transactions that meet the definition of a high-cost mortgage in Regulation Z. Furthermore, the CFPB proposes to exempt PACE transactions from the mortgage periodic statement requirements.

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**[Stephanie Shea](#)**

Shareholder

(949) 224-6463

[sshea@buchalter.com](mailto:sshea@buchalter.com)



**[Michael Flynn](#)**

Of Counsel

(303) 253-6750

[mflynn@buchalter.com](mailto:mflynn@buchalter.com)