Re: Advanced Notice of Proposed Rulemaking on Residential Property Assessed Clean Energy Financing

COMMENT LETTER

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May 7, 2019
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Dear Sir or Madame:

The Conference of State Bank Supervisors ("CSBS" or "state regulators") appreciates the opportunity to comment on the Consumer Financial Protection Bureau's ("CFPB" or "Bureau") advanced notice of proposed rulemaking on Residential Property Assessed Clean Energy Financing (R-PACE). CSBS strongly supports the Bureau expanding consumer protections on R-PACE lending by carrying out the purposes of Truth in Lending Act's (TILA) ability-to-repay (ATR) requirements and applying TILA's general civil liability provision for violations of the ATR requirements. While CSBS has not taken a position on the merits of R-PACE lending, we are supportive of the Bureau considering further consumer protections in response to the unique nature of PACE loans.

CSBS has unique insight into PACE financing as many R-PACE lenders are state-supervised non-depository institutions. While some states have used their supervisory authority to help mitigate the risks posed by R-PACE loans to consumers within their state, until now these risks have not been addressed at the federal level. In 2017, California enacted their own consumer protections for R-PACE loans, including broad requirements related to ATR, pre-purchase disclosures, licensure and examination. Some R-PACE lenders in other states have even chosen to abide by the California law with respect to loans made outside of California. CSBS encourages the Bureau to consider the California law when carrying out the congressional directive necessitating regulatory action on R-PACE loans.

The unique nature of R-PACE loans is apparent in their structure. Although R-PACE loans are managed privately, they are added into the borrower's property tax bill as an assessment. As a result, the R-PACE loan obligation is associated with the property and not the consumer and may become a senior lien on the property. While some may portray this as a benefit, in some cases mortgage lenders will not allow for the sale of the property until the lien has been cleared. Notably, in 2017, spurred by concerns associated with the priority lien, the Federal Housing Authority (FHA) ceased insuring mortgages where the residential property was encumbered by a R-PACE loan holding first lien position.

R-PACE loans in their current form can be particularly concerning for two key reasons: consumers may not be properly educated on the concept of a priority lien, and the underwriting provisions for R-PACE loans may not be sufficiently robust. Consistent with our goal of ensuring consumer protection, state regulators support the Bureau in applying TILA requirements to R-PACE loans by requiring lenders to consider a borrower's income, credit history, credit obligations and monthly payments in the underwriting process. CSBS appreciates the opportunity to comment on the important issues prompted by R-PACE financing and the actions proposed by the Bureau to enhance consumer protections in this area.
Sincerely,

John W. Ryan
President & CEO

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