



July 26, 2023

The Honorable Rohit Chopra  
Director, Consumer Financial Protection Bureau  
1700 G Street NW  
Washington, DC 20552

RE: Residential Property Assessed Clean Energy Financing (R-PACE) Proposed Rule  
Docket No. CFPB-2023-0029; RIN 3170-AA84

Dear Director Chopra,

The National Council of State Housing Agencies (NCSHA)<sup>1</sup> appreciates the opportunity to comment on behalf of our state Housing Finance Agency (HFA) members on the Consumer Financial Protection Bureau's (CFPB) Residential Property Assessed Clean Energy Financing (R-PACE) Proposed Rule.

We commend CFPB's efforts to further the market's knowledge of R-PACE financing through your highly informative report, "Property Assessed Clean Energy (PACE) Financing and Consumer Financial Outcomes" (CFPB Report). We also are generally supportive of the proposed rule, which implements Section 307 of the Economic Growth, Regulatory Relief, and Consumer Protection Act. However, we encourage CFPB to add a requirement directing R-PACE financiers to report R-PACE financings to credit bureaus and to a homeowner's mortgage loan servicer (if applicable). CFPB also should require more explicit homeowner disclosures, as well as take steps to ensure that R-PACE financings do not interfere with loss mitigation processes established by FHA, Fannie Mae, or Freddie Mac. We also urge CFPB to expand its study of the R-PACE financing industry.

### **Background on State HFAs**

As funders of first mortgage and downpayment assistance mortgage loan programs for first-time and lower income homebuyers in their states, state HFAs are equally concerned that homeownership be sustainable. Most require homebuyer education or counseling as a condition of a homebuyer receiving downpayment assistance, which results in higher loan-to-value mortgage loans. In 2021, HFAs provided, on average, about \$8,070 in downpayment assistance to their program homebuyers, most of which was in the form of a loan.

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<sup>1</sup> NCSHA is a nonprofit, nonpartisan organization. None of NCSHA's activities related to federal legislation or regulation are funded by organizations that are prohibited by law from engaging in lobbying or related activities.

An R-PACE financing, were it not “an assessment”, would in most cases be in at least a third lien position. However, because it is “an assessment,” it jumps to a priority lien position, undermining and potentially making irrelevant the careful underwriting lenders put into originating the first mortgage and likely a second loan for downpayment assistance to make sure the loan(s) were affordable and the borrower had the ability to pay them.

Additionally, in 2021, 61 percent of HFA program mortgage loans were insured by FHA, and we estimate 21 percent were purchased by Fannie Mae or Freddie Mac – all entities that generally do not permit the purchase or insurance of mortgages on properties with an outstanding first-lien R-PACE obligation.

Sixteen state HFAs service their own mortgage program’s mortgage loans, and their staffs see first-hand the challenges lower income homeowners face in being sustainable borrowers. For example, notwithstanding the above-mentioned front-end homebuyer education or counseling requirements, servicing staff often explain to homeowners why their mortgage payments increased after an escrow analysis has increased a homeowner’s monthly payment.

R-PACE financings introduce uncertainty and risk to homeowners and mortgage loan servicers – neither of which would have been considered at mortgage loan origination. When a homeowner becomes delinquent or worse, the state HFA that services the loan advances the payment of real estate property taxes to the local taxing jurisdiction to ensure that the collateral securing their mortgage loan is not lost through a tax foreclosure sale. Higher assessments because of R-PACE financings increase the amounts servicers must advance.

Additionally, should a mortgage loan go to foreclosure sale, the R-PACE obligation has priority over the mortgage loan and any other junior lien (including for downpayment assistance), thereby increasing the loss severity of the mortgage lender in a way that was not planned or priced for at mortgage loan origination. Finally, as we note below, we are concerned that an R-PACE obligation may make it more difficult for a homeowner with an FHA, Fannie Mae, or Freddie Mac mortgage loan to enter into a loan modification or even a short sale or deed-in-lieu should the homeowner seek a non-foreclosure loss mitigation option.

Most state HFAs issue mortgage revenue bonds (MRB) to finance below-market interest rate mortgage loans for lower income homebuyers. MRBs have made first-time homeownership possible for over 3.4 million lower-income families, and historically, state HFAs have issued more than \$342.29 billion in MRBs.<sup>2</sup>

MRBs are unique to state and local housing finance agencies, and their structure differs significantly from the mortgage-backed securities (MBS) typically used by for-profit mortgage lenders. MRBs are debt securities with specified, fixed maturities or required sinking fund redemptions (usually semi-annual). Unlike MBS, MRBs are not structured as pass-through securities. Instead, state HFAs owe scheduled principal and interest payments to MRB investors, whether or not the principal and/or interest is received from homeowners.

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<sup>2</sup> Through December 31, 2021 (estimated).

Because of the nascent state of the R-PACE industry, it is not clear how R-PACE financings would impact the ability of state HFAs to make bond payments or what changes they would need to make to their MRB bond disclosures. While the proposed rule indicates CFPB interviewed bond issuers, we are not aware that it talked to any state HFA MRB issuers. We urge CFPB to do so before finalizing the proposed rule.

NCSHA's recommendations for how CFPB can improve its proposed rule follow.

### **Require Reporting of R-PACE Financings to Credit Bureaus**

It is our understanding that R-PACE obligations are not required to be reported to credit bureaus, perhaps because they are "assessments" and not "loans." A financing vehicle, whether it be a "loan" or an "assessment" that could result in or contribute to mortgage loan delinquency and perhaps the loss of a borrower's home, should indeed be required to be reported to the credit bureaus. This would not only ensure that a homeowner recognizes that the debt (no matter that it gets repaid via property assessment process) is an obligation they must repay, but it also may prevent a homeowner from becoming over-extended with either another R-PACE obligation or any other debt. Credit bureaus are repositories for borrower credit information, so requiring reporting of a financing obligation that could, if a delinquency persists, result in the forfeiture of someone's home is in the best interest of consumers, creditors, and sustainable homeownership.

### **Require R-PACE Finance Companies to Report Financings to the Homeowner's First Mortgage Servicer**

The most efficient and effective way to notify servicers of the origination of an R-PACE financing is to require the R-PACE financing company, upon the origination of the R-PACE debt obligation, to notify the homeowner's mortgage loan servicer if the homeowner has an outstanding mortgage loan. Relying on homeowners to do so may not result in the timely servicer notification that is necessary for the servicer to perform a timely new escrow analysis. As is noted in the CFPB report and proposed rule, depending upon when the escrow analysis is performed and increases communicated to homeowners, homeowners could receive a substantial, financially destabilizing increase in their monthly mortgage loan total payment, particularly if the amount of the R-PACE financing were substantial.

### **Strengthen Borrower Disclosures**

Most mortgage loans to low- and moderate-income homeowners are insured by FHA or bought by Fannie Mae or Freddie Mac. Yet, these entities, for good reason, do not permit the purchase of or insurance of their mortgages on properties with an outstanding first-lien R-PACE obligation. CFPB should require borrower disclosures on R-PACE financings that provide more information to homeowners obtaining an R-PACE financing. For example:

- The "Refinance" "Other Consideration" should be more explicit than the language proposed by CFPB<sup>3</sup> and should clearly tell homeowners that refinancing their mortgage loan into a similar loan

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<sup>3</sup> See Federal Register, Vol. 88, No. 91, Thursday, May 11, 2023, page 30434.

may not be possible if they have a Fannie Mae, Freddie Mac, or FHA mortgage loan if there is insufficient equity to pay off the R-PACE lien during the refinancing.

We have been in a higher interest rate environment for the last year, and we are concerned about the impact R-PACE loans could have on mortgage loan refinancings likely to be considered when interest rates decrease – and on mortgage loan performance. Homeowners usually refinance when interest rates drop because they will reduce their monthly mortgage payments. It is likely that many homeowners who purchased their homes during this time of higher interest rates will want to refinance their mortgages as interest rates drop. Because of the R-PACE obligation, they will be unable to do so because they probably will not have built up sufficient equity to pay off the R-PACE obligation from a cash-out refinance. As a result, it is possible that homeowners with R-PACE financings will be driven to refinance with non-QM mortgage lenders who do not follow Fannie Mae, Freddie Mac, or FHA origination or servicing guidelines, or even to sub-prime lenders.

- Because the R-PACE financing could impair homeowners' ability to sell their homes when they choose, the proposed "Selling the Property" "Other Consideration"<sup>4</sup> should be more informative. Borrowers should clearly be informed that if there is insufficient equity to pay selling costs and pay off their mortgage and the R-PACE financing, they may not be able to sell their home.

### **Prohibit Prepayment Penalties**

The "Closing Disclosure" form proposed by CFPB<sup>5</sup> leaves a space to describe prepayment penalties. However, CFPB should prohibit prepayment penalties altogether if the first mortgage does not impose prepayment penalties. According to Rocket Mortgage, "Most people with a 30-year mortgage won't keep the original loan for 30 years. In fact, the average mortgage length is under 10 years."<sup>6</sup> This is because most homeowners will either sell their home or refinance their mortgage loan prior to the end of the term of their mortgage loan. Hence, it is likely that homeowners who have an R-PACE financing also will seek to prepay their R-PACE obligation. Homeowners should not be penalized for doing so.

### **Ensure that R-PACE Borrowers in Mortgage Loss Mitigation Processes Are Eligible to Receive a Loan Modification**

Because loan modifications, frequently used to help lower a homeowner's monthly payment during loss mitigation, are a new mortgage loan, CFPB should ensure that if a homeowner has a government-backed mortgage, R-PACE obligations do not prohibit that homeowner from having equal access to the same array of currently available loss mitigation options that are available to homeowners who have not taken on an R-PACE obligation, including loan modifications. (We recognize that having an R-PACE financing is likely to prevent a homeowner from entering into a short-sale because it is unlikely that a distressed homeowner will have enough equity to satisfy the outstanding mortgage debt and the R-PACE financing balance (which takes priority over the payment of mortgage loan debt).)

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<sup>4</sup> Ibid.

<sup>5</sup> Ibid., page 30435.

<sup>6</sup> <https://www.rocketmortgage.com/learn/average-mortgage-length>

### Areas for Additional CRPB Research and Potential Regulation

The R-PACE industry is not yet well-established across the country, which makes it timely for CFPB to also consider ways in which it can ensure that future R-PACE financing growth is done in a way that does not contribute to homeowner delinquency. For example:

- CFPB strictly regulates the types of fees that are permitted to be charged in mortgage originations (see 24 CFR Section 206.31). We are unaware of similar regulation of R-PACE financings. We urge CFPB to establish equivalent policies for the R-PACE industry.
- CFPB strictly regulates, through the Real Estate Settlement Procedures Act (RESPA), conflicts of interest between those who sell the real estate and those that finance it. We are unaware of analogous regulations that pertain to contractors who sell improvements to be financed by an R-PACE obligation and the R-PACE financiers. We urge CFPB to conduct research into this potentially fraught area and identify ways that RESPA-like regulations may be promulgated for the R-PACE industry.

In summary, NCSHA supports CFPB's efforts to begin to regulate the R-PACE industry. We urge CFPB to go even further than what Congress required to address the concerns expressed in this letter. Doing so would ensure that homeowners who enter into R-PACE financings in an effort to make the environment more sustainable by reducing their homes' energy consumption do not also make themselves less financially sustainable as homeowners.

Sincerely,

A handwritten signature in black ink, appearing to read "Garth Rieman", with a long horizontal flourish extending to the right.

Garth Rieman  
Director of Housing Advocacy and Strategic Initiatives