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CONSUMER FINANCIAL PROTECTION BUREAU

12 CFR Part 1026

[Docket No. CFPB-2023-0029]

RIN 3170-AA84

Residential Property Assessed Clean Energy Financing (Regulation Z)

AGENCY: Consumer Financial Protection Bureau.

ACTION: Final rule.

SUMMARY: Section 307 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) directs the Consumer Financial Protection Bureau (CFPB or Bureau) to prescribe ability-to-repay rules for Property Assessed Clean Energy (PACE) financing and to apply the civil liability provisions of the Truth in Lending Act (TILA) for violations. PACE financing is financing to cover the costs of home improvements that results in a tax assessment on the real property of the consumer. In this final rule, the CFPB implements EGRRCPA section 307 and amends Regulation Z to address how TILA applies to PACE transactions.

DATES: This final rule is effective March 1, 2026.

FOR FURTHER INFORMATION CONTACT: George Karithanom, Regulatory Implementation and Guidance Program Analyst, Office of Regulations, at 202-435-7700 or https://reginquiries.consumerfinance.gov/. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov*.

SUPPLEMENTARY INFORMATION:

Abbreviations

The following abbreviations are used in this final rule:

- APOR = Average Prime Offer Rate
- APR = Annual Percentage Rate
- Board = Board of Governors of the Federal Reserve System
- CAEATFA = California Alternative Energy and Advanced Transportation Financing Authority
- California DFPI = California Department of Financial Protection and Innovation
- CARES Act = Coronavirus Aid, Relief, and Economic Security Act
- EGRRCPA = Economic Growth, Regulatory Relief, and Consumer Protection Act
- FDIC = Federal Deposit Insurance Corporation
- FHA = Federal Housing Administration
- FHFA = Federal Housing Finance Agency
- FRFA = Final Regulatory Flexibility Analysis
- FTC = Federal Trade Commission
- HOEPA = Home Ownership and Equity Protection Act
- HUD = U.S. Department of Housing and Urban Development
- IRFA = Initial Regulatory Flexibility Analysis
- LTV = Loan to Value
- OCC = Office of the Comptroller of the Currency
- NCUA = National Credit Union Administration
- NEPA = National Environmental Policy Act
- NPRM = Notice of Proposed Rulemaking
- PACE = Property Assessed Clean Energy

- PACE Report = Property Assessed Clean Energy (PACE) Financing and Consumer Financial Outcomes, a CFPB report published on May 1, 2023
- RESPA = Real Estate Settlement Procedures Act
- RFA = Regulatory Flexibility Act
- TILA = Truth in Lending Act

I. Summary of the Final Rule

Section 307 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) directs the CFPB to prescribe ability-to-repay rules for Property Assessed Clean Energy (PACE) financing and to apply the civil liability provisions of the Truth in Lending Act (TILA) for violations.[1] In this final rule, the CFPB implements EGRRCPA section 307 and amends Regulation Z to address the application of TILA to "PACE transactions" as defined in § 1026.43(b)(15).

This final rule:

- Clarifies an existing exclusion to Regulation Z's definition of credit that relates to tax liens and tax assessments. Specifically, the CFPB is clarifying that the commentary's exclusion of tax liens and tax assessments from being "credit," as defined in § 1026.2(a)(14), applies only to involuntary tax liens and involuntary tax assessments.
- Makes a number of adjustments to the requirements for Loan Estimates and Closing Disclosures under §§ 1026.37 and 1026.38 that will apply when those disclosures are provided for PACE transactions, including:
  - Eliminating certain fields relating to escrow account information;

[1] 15 U.S.C. 1639c(b)(3)(C).

  - Requiring the disclosure of other fees and amounts not included in the principal and interest on the projected payments table in place of disclosure of mortgage insurance premiums;
  - Requiring the PACE transaction and other property tax payment obligations to be identified as separate components of estimated taxes, insurance, and assessments;
  - Clarifying certain implications of the PACE transaction on the property taxes;
  - Requiring disclosure of identifying information for the PACE company;
  - Requiring various qualitative disclosures for PACE transactions that will replace disclosures on the current forms, including disclosures relating to assumption, late payment, servicing, partial payment policy, and the consumer's liability after foreclosure; and
  - Clarifying how unit-periods will be disclosed for PACE transactions.
- Provides new model forms under H–24(H) and H–25(K) of appendix H for the Loan Estimate and Closing Disclosure, respectively, specifically designed for PACE transactions, as well as Spanish translations of those model forms under H–28(K) for the Loan Estimate and H–28(L) for the Closing Disclosure.
- Exempts PACE transactions from the requirement to establish escrow accounts for certain higher-priced mortgage loans, under § 1026.35(b)(2)(i)(E).
- Exempts PACE transactions from the requirement to provide periodic statements, under § 1026.41(e)(7).

- Applies Regulation Z's ability-to-repay requirements in § 1026.43 to PACE transactions with a number of adjustments to account for the unique nature of PACE financing, including requiring PACE creditors to consider certain monthly payments that they know or have reason to know the consumer will have to pay into the consumer's escrow account as an additional factor when making a repayment ability determination for PACE transactions extended to consumers who pay their property taxes through an escrow account on their existing mortgage.
- Provides that a PACE transaction is not a qualified mortgage as defined in § 1026.43.
- Extends the ability-to-repay requirements, as well as TILA section 130, to any "PACE company," as defined in § 1026.43(b)(14), that is substantially involved in making the credit decision for a PACE transaction.
- Provides clarification regarding how PACE and non-PACE mortgage creditors should consider pre-existing PACE transactions when originating new mortgage loans.

II. Background

A. PACE Financing Market Overview

How does PACE financing work?

PACE financing enables property owners to finance upgrades to real property through an assessment on their real property.[2] Eligible upgrade types vary by locality but often include

[2] Some States authorize PACE financing for residential and commercial property. In this final rule, the term PACE financing refers only to residential PACE financing unless otherwise indicated.

upgrades to promote energy efficiency or to help prepare for natural disasters. The voluntary financing agreements are made between the consumer and the consumer's local government or a government entity operating with the authority of several local governments,[3] and they leverage the property tax system for administration of payments. PACE financing is repaid through the property tax system alongside the consumer's other property tax payment obligations. PACE loans are typically collected through the same process as real property taxes.[4] Local governments typically fund PACE loans through bond issuance. PACE assessments are sometimes collateralized and sold as securitized obligations.

PACE loans are secured by a lien on the consumer's real property. The liens securing PACE loans typically have priority under State law similar to that of other real property tax liens, which are superior to other mortgage liens on the property, including those that predated the PACE lien.[5] In a foreclosure sale, this super-priority lien position means that any amount due on the PACE loan is paid with the foreclosure sale proceeds before any proceeds will flow to other liens. The PACE loan is tied to the property, not the property owner. As such, the repayment obligation remains with the property when property ownership transfers unless paid off at the time of sale.

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[3] Although PACE financing programs may be sponsored by individual local governments, many are sponsored by intergovernmental organizations whose membership consists of multiple local governments.

[4] *See, e.g.*, Cal. Sts. & Hwys. Code sec. 5898.30; Fla. Stat. sec. 163.081(1)(e); Fla. Stat. sec. 197.3632(8)(a); Mo. Stat. sec. 67.2815(5).

[5] *See, e.g.*, Cal. Sts. & Hwys. Code sec. 5898.30 (providing for "the collection of assessments in the same manner and at the same time as the general taxes of the city or county on real property, unless another procedure has been authorized by the legislative body or by statute . . . ."); Fla. Stat. sec. 163.081(7) ("The recorded agreement must provide constructive notice that the non-ad valorem assessment to be levied on the property constitutes a lien of equal dignity to county taxes and assessments from the date of recordation."). However, authorizing statutes in some States provide for subordinated-lien status for PACE financing. *See, e.g.*, Minn. Stat. sec. 216C.437(4); Me. Stat. tit. 35A sec. 10156(3), (4); 24 V.S.A. sec. 3255(b). The CFPB understands that there has been little to no loan volume in these programs. *See, e.g.*, Efficiency Maine, *FY2024 Annual Report*, at 40, https://www.efficiencymaine.com/docs/FY2024-Annual-Report.pdf.

Although some local governments operate PACE financing programs directly, most contract with private PACE companies to operate the programs. These private companies generally handle the day-to-day operations, including tasks such as marketing PACE financing to consumers, training home improvement contractors to sell PACE financing to consumers, overseeing originations, performing underwriting, and making decisions about whether to extend the loan. The PACE companies may also contract with third-party companies to administer different aspects of the loans after origination. Often, PACE companies purchase PACE bonds that are issued by local governments to fund the programs, which generate revenue for the PACE companies from interest on consumer payments. PACE companies are also sometimes involved in securitizing the bond obligations for sale as asset-backed securities. Additionally, PACE companies frequently earn various fees related to the transactions.[6]

PACE companies often rely heavily on home improvement contractors to sell PACE loans to consumers and facilitate their origination. Home improvement contractors frequently market PACE financing directly to consumers while selling their home improvement services, often door-to-door. They often serve as the primary point of contact with consumers during the origination process and collect application information that the PACE companies use to make underwriting and eligibility determinations. The contractors may also deliver disclosures relating to the PACE transaction and obtain the consumer's signature on the financing agreement.

Origin and growth of PACE programs

In 2008, California passed Assembly Bill no. 811 to enable the first PACE programs. The CFPB is aware of 19 States plus the District of Columbia that currently have enabling legislation

[6] *See, e.g.*, Energy Programs Consortium, *R-PACE, Residential Property Assessed Clean Energy, A Primer for State and Local Energy Officials* (Mar. 2017), https://web.archive.org/web/20201030223231/http:/www.energyprograms.org/wp-content/uploads/2017/03/R-PACE-Primer-March-2017.pdf.

for residential PACE financing programs, but only a small number of States have had active programs, primarily California, Florida, and Missouri.[7]

During the early years of PACE financing, lending activity appears to have been relatively limited, with cumulative obligations of around $200 million through 2013.[8] In 2014, PACE financing activity accelerated, peaking in 2016 with over $1.7 billion in investment.[9] This level of activity was maintained in 2017, but it declined between 2018 and 2021, dropping to an average investment of $769 million per year during those years.[10] Overall, as of December 31, 2023, the PACE financing industry had financed 371,000 home upgrades, totaling over $9.1 billion.[11]

Common financing terms

According to data analyzed in a report that the CFPB released concurrently with its PACE proposal (PACE Report), the term of PACE loans that were originated between July 2014 and December 2019 was most often 20 years, but ranged between five and 30 years.[12] The Report also finds that the interest rates for those loans clustered around 7 to 8 percent with annual percentage rates (APRs) averaging approximately a percentage point higher.[13] For

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[7] There has been pilot program activity for residential PACE financing in some States. *See, e.g.*, DevelopOhio, *Lucas County PACE program benefits homeowners* (Aug. 16, 2019), https://www.brickergraydon.com/DevelopOhio/Lucas-County-PACE-program-benefits-homeowners. Some States that previously authorized residential PACE financing programs have amended their statutes such that PACE financing is no longer authorized for single-family residential properties. *See, e.g.*, 2021 Wis. Act 175 (codified at Wis. Stat. sec. 66.0627).

[8] *See* PACENation, *Market Data,* https://www.pacenation.org/pace-market-data/ (last visited Mar. 30, 2023).

[9] *See id.*

[10] *See id.* The latest data available on the PACE financing industry trade association's website is for 2023.

[11] *See id.*

[12] *See* CFPB, *PACE Financing and Consumer Financial Outcomes* at Table 2 (May 2023), https://files.consumerfinance.gov/f/documents/cfpb_pace-rulemaking-report_2023-04.pdf. (PACE Report). The PACE Report is discussed in more detail in part II.B.

[13] *Id.*

reference, the average prime offer rate for primary mortgage loans was around 3.5 percent for most of the period studied in the PACE Report.[14] Fees vary by PACE program, but the CFPB has reviewed agreements that include fees for application, origination, tax administration, lien recordation, title, escrow, bond counsel, processing, underwriting, and fund disbursement. The CFPB is not aware of any PACE obligations that are open-end or have a negative-amortization feature.

Consumer protection concerns

The structure of PACE transactions carries certain unique risks for consumers. Primarily, the risks are due to the fact that PACE companies and secondary-market participants face very low repayment risk, regardless of whether consumers can repay.[15] If a house with a PACE lien is sold through foreclosure or tax sale, the sale proceeds are generally assured to cover the outstanding amounts owed on the PACE transaction because PACE loan amounts are a fraction of the value of the property, the loans do not accelerate, and the super-priority lien means that amounts due are paid before other mortgage debts. Additionally, because PACE loans do not accelerate, the remaining balance will stay with the property for the next homeowner to pay under the terms of the original financing agreement.

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[14] *See id*. at 13.

[15] *See, e.g.*, Morningstar, DBRS, *Rating U.S. Property Assessed Clean Energy (PACE) Securitizations*, Aug. 2024, at 19, 20, app. A ("Given the seniority of the amortizing PACE lien and corresponding low [loan-to-value], in the vast majority of cases, we typically assume the liquidation proceeds from a foreclosure sale are sufficient to bring the [residential] PACE Assessment current. Based on this assumption, a main credit risk to [residential] PACE ABS transactions is a delay in cash flow receipts related to nonpayment of the R-PACE Assessments over some period of time. . . . For [residential] PACE Assessments that go through the foreclosure process, once the process has concluded and the property sold, the [residential] PACE Assessment is typically considered reperforming/performing, and collections resume according to the original amortization schedule. Furthermore, the new property owner is subject to subsequent to default. The same process is then applied to the second and subsequent round of delinquency until the [residential] PACE Assessments are paid in full.").

Consumer groups have stated that PACE companies and home improvement contractors originate PACE loans quickly, often on the spot, without regard to affordability or consumer understanding. They have reported to the CFPB, including in comments to the proposed rule, deceptive sales tactics, aggressive sales practices, and fraud. A number of PACE industry stakeholders acknowledged in comments to the proposal that some consumers experienced mistreatment before many of the current consumer protection laws and practices were put in place.

Consumer advocates have criticized other aspects of PACE financing as well, such as the high cost of funding compared to other mortgage debt, excessive capitalized fees, and inadequate disclosures. They have argued that these aspects of PACE transactions can cause unexpected and unaffordable tax payment spikes that can lead to delinquency, late fees, tax defaults, and foreclosure actions.[16] Some local officials have echoed some of these concerns in discussions with CFPB staff.

The CFPB's PACE Report, discussed under parts II.B and VI.C, bears out some of these concerns. According to the Report, PACE loans originated between 2014 and 2019 increased consumers' property tax bills by about $2,700 per year on average, an average increase of about 88 percent.[17] The Report also finds that getting a PACE loan increased mortgage delinquency rates for consumers who had a pre-existing non-PACE mortgage by 2.5 percentage points over a

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[16] *See, e.g.*, Nat'l Consumer L. Ctr., *Residential (PACE) Loans: The Perils of Easy Money for Clean Energy Improvements* (Sept. 2017), https://www.nclc.org/images/pdf/energy_utility_telecom/pace/ib-pace-stories.pdf; *see also* Off. of the Dist. Att'y, Cnty. of Riverside, *News Release, District Attorneys Announce $4 Million Consumer Protection Settlement* (Aug. 9, 2019), https://rivcoda.org/community-info/news-media-archives/district-attorneys-announce-4-million-consumer-protection-settlement; Kirsten Grind, *America's Fastest-Growing Loan Category Has Eerie Echoes of Subprime Crisis,* Wall St. J. (Jan. 10, 2017), https://www.wsj.com/articles/americas-fastest-growing-loan-category-has-eerie-echoes-of-subprime-crisis-1484060984.

[17] *See* PACE Report at 4.

two-year period following the PACE origination, which represents an increased risk of a mortgage delinquency by about 35 percent over two years.[18]

Additionally, consumer advocates have expressed concern that some home improvement contractors involved in the origination of PACE transactions provide consumers with misleading information about potential energy savings or promote the most expensive energy improvements, regardless of their actual energy conservation benefits.[19] They have noted that such practices could result in homeowners receiving a smaller reduction in their utility bills than anticipated, making PACE financing payments more difficult to afford. Consumer advocates have also alleged that PACE financing is disproportionately targeted at older Americans, consumers with limited English proficiency or lower incomes, and consumers in predominantly Black or Hispanic neighborhoods.

These advocates and mortgage-industry stakeholders have also highlighted that, although a PACE loan technically remains with the property at sale, most home buyers are unwilling to take on the remaining payment obligation for a PACE lien, or their mortgage lender prohibits them from doing so.[20] Consumer advocates have reported that PACE consumers are often unaware of these issues when agreeing to the financing, which causes an unanticipated financial burden when consumers are required to pay off the PACE loan to complete a home sale.

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[18] *See id.* at 3.

[19] *See* Claudia Polsky, Claire Christensen, Kristen Ho, Melanie Ho & Christina Ismailos, *The Darkside of the Sun: How PACE Financing Has Under-Delivered Green Benefits and Harmed Low Income Homeowners*, Berkeley L., Env't L. Clinic, at 8-13 (Feb. 2021), https://www.law.berkeley.edu/wp-content/uploads/2021/02/ELC_PACE_DARK_SIDE_RPT_2_2021.pdf.

[20] *See* Freddie Mac, *Purchase and "no cash-out" refinance Mortgage requirements* (Mar. 31, 2022), https://guide.freddiemac.com/app/guide/section/4301.4. As of February 2023, guidelines from both Fannie Mae and Freddie Mac generally prohibit purchase of mortgages on properties with outstanding first-lien PACE obligations. Similarly, the Federal Housing Administration (FHA) updated its handbook requirements in 2017 to prohibit insurance of mortgage on properties with outstanding first-lien PACE obligations. *See* U.S. Dept. of Hous. & Urb. Dev., *Property Assessed Clean Energy (PACE)* (Dec. 7, 2017), https://www.hud.gov/sites/dfiles/OCHCO/documents/17-18ml.pdf.

Mortgage industry stakeholders have also asserted in comments to the proposal and through other communications that PACE financing introduces risk to the mortgage market, as PACE liens take priority over pre-existing mortgage liens.[21]

Since 2015, the CFPB has received over 125 complaints related to PACE financing, primarily from consumers in California and Florida. Many of the complaints allege fraud, deceptive practices, overly high costs, or trouble with refinancing the consumer's home. Twenty-eight of the complaints involve older adults, and five of the complaints involve consumers with limited English proficiency. Consumer advocates have suggested that consumers may not be aware of their ability to submit PACE complaints to the CFPB database or may have had difficulty categorizing them, which may have resulted in a lower number of complaints reported. Consumers in California are also able to submit complaints to their State PACE regulator and submitted 313 such complaints between 2020 and 2022 alone.[22]

In August 2019, Renovate America, Inc. (Renovate), a major PACE company at the time, reached a $4 million settlement with six counties and one city in California.[23] The complaint, filed in State court, alleged that Renovate misrepresented the PACE program or failed to make adequate disclosures about key aspects of the program, including its government affiliation, tax deductibility, transferability of ethe obligations to subsequent property owners, financing costs,

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[21] *See, e.g.*, Fed. Hous. Fin. Agency (FHFA), *FHFA Statement on Certain Energy Retrofit Loan Programs* (July 6, 2010), https://www.fhfa.gov/news/statement/fhfa-statement-on-certain-energy-retrofit-loan-programs; 85 FR 2736, *FHFA Notice and Request for Input on PACE Financing* (Jan. 16, 2020); *Joint Letter from Mortgage Trade Assocs. to FHFA Director Mark Calabria* (Mar. 16, 2020), https://www.housingpolicycouncil.org/_files/ugd/d315af_6cb569a5427f4e26ab4ef4d55038b3f6.pdf.

[22] Cal. Dep't of Fin. Prot. & Innovation, *Annual Report of Operation of Finance Lenders, Brokers, and PACE Administrators Licensed Under the California Financing Law*, at 41 (Aug. 2023) https://dfpi.ca.gov/wp-content/uploads/sites/337/2024/01/2022-Annual-Report-CFL-Aggregated.pdf.

[23] *See* Riverside Cnty. Dist. Att'y, *District Attorneys Announce $4 Million Consumer Protection Settlement With "PACE" Program Administrator Renovate America, Inc.* (Aug. 9, 2019), https://rivcoda.org/community-info/news-media-archives/district-attorneys-announce-4-million-consumer-protection-settlement; *see also State of California v. Renovate America,* Case No. RIC1904068 (Super. Ct. Riverside Cnty. 2019).

and Renovate's contractor verification policy.[24] Subsequently, in June 2021, the California State PACE regulator moved to revoke Renovate's Administrator license, required to administer a PACE program in the State, after finding that one of its solicitors repeatedly defrauded homeowners in San Diego County.[25] Renovate ultimately consented to the revocation.[26]

In October 2022, Ygrene Energy Fund Inc. (Ygrene), a major PACE company, reached a $22 million settlement with the Federal Trade Commission (FTC) and the State of California over allegations regarding its conduct in the PACE marketplace.[27] In a joint complaint, the FTC and California alleged that Ygrene deceived consumers about the potential financial impact of its financing and unfairly recorded liens on consumers' homes without their consent.[28] The complaint further alleged that Ygrene and its contractors falsely told consumers that PACE financing would not interfere with the sale or refinancing of their homes and used high-pressure sales tactics and even forgery to enroll consumers into PACE programs.[29]

State laws and regulations in States with active PACE programs

California

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[24] *Id.*

[25] *See* Cal. Dep't of Fin. Prot. & Innovation, *DFPI Moves to Revoke PACE Administrator's License After Finding Its Solicitor Defrauded Homeowners* (June 4, 2021), https://dfpi.ca.gov/press_release/dfpi-moves-to-revoke-pace-administrators-license-after-finding-its-solicitor-defrauded-homeowners/.

[26] Cal. Dep't of Fin. Prot. & Innovation, *Settlement Agreement* (Sept. 8, 2021), https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/09/Admin.-Action-Renovate-America-Inc.-Settlement-Agreement.pdf?emrc=090ca0.

[27] *See* Fed. Trade Comm'n, *FTC, California Act to Stop Ygrene Energy Fund from Deceiving Consumers about PACE Financing, Placing Liens on Homes Without Consumers' Consent* (Oct. 28, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/10/ftc-california-act-stop-ygrene-energy-fund-deceiving-consumers-about-pace-financing-placing-liens; *see also Complaint for Permanent Injunction, Monetary Relief, Civil Penalties, and Other Relief, Fed. Trade Comm'n et al v. Ygrene Energy Fund Inc.,* No. 2:22-cv-07864 (C.D. Cal. 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/Complaint%20-%20Dkt.%201%20-%2022-cv-07864.pdf.

[28] *Id.*

[29] *Id.*

California authorized PACE programs in 2008 to finance projects related to renewable energy and energy efficiency, and later expanded the scope to include water efficiency, certain disaster hardening, and electric vehicle charging infrastructure measures.[30] Since 2008, California has passed several laws to add and adjust consumer protections for PACE programs, with major additions in a series of amendments that took effect around 2018 (collectively, 2018 California PACE Reforms). Current California law requires that, before executing a PACE contract, PACE program administrators must make a determination that the consumer has a reasonable ability to pay the annual payment obligations based on the consumer's income, assets, and current debt obligations.[31] California law also requires, among other protections, financial disclosures prior to consummation;[32] a three-day right to cancel, which is extended to five days for older adults;[33] mandatory confirmation-of-terms calls;[34] and restrictions on contractor compensation.[35] Additionally, California law imposes certain financial requirements for consumers to be eligible for PACE financing, including that consumers must be current on their property taxes and mortgage and generally not have been party to a bankruptcy proceeding within the previous four years.[36] There is also a maximum permissible loan-to-value ratio for

[30] *See, e.g.*, Cal. Sts. & Hwys. Code secs. 5898.12, 5899, 5899.3.

[31] Cal. Fin. Code secs. 22686 & 22687.

[32] Cal. Sts. & Hwys. Code sec. 5898.17.

[33] Cal. Sts. & Hwys. Code secs. 5898.16-.17.

[34] Cal. Sts. & Hwys. Code sec. 5913.

[35] Cal. Sts. & Hwys. Code sec. 5923.

[36] Cal. Fin. Code sec. 22684(a), (d)-(e).

PACE financing under California law.[37] California law exempts government agencies from some of these requirements.[38]

As part of the 2018 California PACE Reforms, California significantly increased the role of what is now called California's Department of Financial Protection and Innovation (DFPI).[39] In 2019, the DFPI began licensing PACE program administrators and subsequently promulgated rules implementing some of California's statutory PACE provisions, which became effective in 2021.[40] DFPI also has certain examination, investigation, and enforcement authorities over PACE program administrators, solicitors, and solicitor agents.[41]

PACE program administrators must be licensed by the DFPI under the California law. They must also establish and maintain processes for the enrollment of PACE solicitors and solicitor agents, including training and background checks.[42] PACE program administrators are required to annually share certain operational data with DFPI.[43] DFPI compiles the data in annual reports on PACE lending in California, which provide aggregated information on PACE loans, PACE program administrators and solicitors, and consumer complaints.[44]

Florida

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[37] Cal. Fin. Code sec. 22684(h).

[38] Cal. Fin. Code sec. 22018(a) (exempting public agencies from the definition of "program administrator" that is subject to the ability-to-pay requirements set forth under Cal. Fin. Code sec. 22687).

[39] Cal. AB 1284 (2017-2018), Cal. SB 1087 (2017-2018).

[40] 10 Cal. Code Regs. sec.1620.01 *et seq.* California law uses the term "program administrator" to refer to companies that are referred to here as PACE companies. *See* Cal. Fin. Code sec. 22018.

[41] Cal. Fin. Code sec. 22690. California law uses the term "PACE solicitor" and "PACE solicitor agent" to refer to persons authorized by program administrators to solicit property owners to enter into PACE assessment contracts, often home improvement contractors. *See* Cal. Fin. Code sec. 22017(a)-(b).

[42] Cal. Fin. Code secs. 22680-82.

[43] Cal. Fin. Code sec. 22692.

[44] *See, e.g.*, Cal. Dep't of Fin. Prot. & Innovation, *Annual Report of Operation of Finance Lenders, Brokers, and PACE Administrators Licensed Under the California Financing Law* (Aug. 2022), https://dfpi.ca.gov/wp-content/uploads/sites/337/2022/08/2021-CFL-Aggregated-Annual-Report.pdf.

Florida authorized PACE programs in 2010 to finance projects related to energy conservation and efficiency improvements, renewable energy improvements, and wind resistance improvements.[45] The State imposed additional consumer protections for PACE transactions, which took effect July 2024 after the CFPB issued the proposed rule.[46] Florida law imposes certain financial requirements to be eligible for PACE financing, including that consumers must be current on their property taxes and all mortgage debts on the property and have not been subject to bankruptcy proceedings within the preceding five years.[47] It also includes a maximum loan-to-value ratio,[48] requires disclosures about PACE loans and the terms of the PACE transaction,[49] and requires that the estimated annual payment amount for all PACE loans on a property does not exceed 10 percent of the property owner's annual household income.[50] Additionally, Florida law requires that the property owner provide holders or servicers of any existing mortgages secured by the property with notice of their intent to enter into a PACE financing agreement together with the maximum principal amount to be financed and the maximum annual assessment necessary to repay that amount.[51] Florida law also provides that a property owner may cancel a PACE transaction agreement within three business days of consummation without incurring any financial penalty for doing so[52] and requires a written disclosure to prospective purchasers of a property subject to a PACE transaction.[53] Additionally,

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[45] *See* Fla. HB 7179 (2010).

[46] *See* Fla. SB 770 (2024), codified at Fla. Stat. sec. 163.081.

[47] Fla. Stat. sec. 163.081(3)(a).

[48] *Id.*

[49] Fla. Stat. sec. 163.081(4).

[50] Fla. Stat. sec. 163.081(3)(a)(12).

[51] Fla. Stat. sec. 163.081(5).

[52] Fla. Stat. sec. 163.081(6).

[53] Fla. Stat. sec. 163.081(8).

Florida law directs counties and municipalities to maintain processes regulating home improvement contractors[54] and third-party program administrators,[55] regulates advertising practices surrounding PACE transactions,[56] and sets forth circumstances in which PACE financing agreements may be unenforceable.[57]

Missouri

Missouri authorized PACE programs in 2010 to finance projects involving energy efficiency improvements and renewable energy improvements.[58] In 2021, Missouri enacted new legislation imposing certain consumer protection requirements for PACE transactions. The law currently requires clean energy development boards (the government entities offering PACE programs) to provide a disclosure form to homeowners that shows the financing terms, including the total amount funded and borrowed, the fixed rate of interest charged, the APR, and a statement that, if the property owner sells or refinances the property, the owner may be required by a mortgage lender or a purchaser to pay off the obligation.[59] It also requires verbal confirmation of certain provisions of the contract, imposes specific financial requirements to execute a PACE contract, and provides for a three-day right to cancel.[60] The 2021 legislation also limited the term, amount of financing, and total indebtedness secured by the property and

[54] Fla. Stat. sec. 163.083.

[55] Fla. Stat. sec. 163.084.

[56] Fla. Stat. sec. 163.085.

[57] Fla. Stat. sec. 163.086.

[58] Mo. HB 1692 (2010), codified at Mo. Rev. Stat. sec. 67.2800(2)(8) (defining projects eligible for financing).

[59] Mo. HB 697, codified at Mo. Rev. Stat. sec. 67.2818(4).

[60] Mo. HB 697, codified at Mo. Rev. Stat. sec. 67.2817(2) (financial requirements to execute an assessment contract); 67.2817(4) (right to cancel); 67.2818(6) (verbal confirmation).

required the clean energy development board to review and approve PACE contracts.[61] The new requirements became effective January 1, 2022.[62]

Self-regulatory efforts

In addition to consumer protections mandated by State governments, in November 2021, the national trade association that advocates for the PACE financing industry announced voluntary consumer protection policy principles for PACE programs nationwide.[63] According to the trade association, the 22 principles are designed to establish a national framework for enhanced accountability and transparency within PACE programs and to offer greater protections for all consumers, as well as additional protections for low-income homeowners, based on stated income, and those over the age of 75.[64] They include provisions relating to ability-to-pay, financing disclosures, a right to cancel, and foreclosure-avoidance protections, among others.

In comments to the proposal, PACE industry stakeholders enumerated consumer protections that they said the industry has adopted. These commenters noted the use of certain disclosures by PACE originators, as well as other activities intended to enhance consumers' understanding of PACE transactions, such as confirmation-of-terms calls. PACE industry commenters also described industry underwriting standards, including loan-to-value limitations, and mandatory confirmation that the property owner is not in bankruptcy proceedings or delinquent on property taxes or mortgage payments. Industry commenters further described industry efforts to oversee

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[61] Mo. HB 697, codified at Mo. Rev. Stat. secs. 67.2817(2), 67.2818(2)-(3).

[62] Mo. HB 697, codified at Mo. Rev. Stat. sec. 67.2840.

[63] *See* PACENation, *PACENation Unveils 22 New Consumer Protection Policies for Residential PACE Programs Nationwide* (Nov. 5, 2021), https://www.pacenation.org/pacenation-unveils-22-consumer-protection-policies-for-residential-pace-programs-nationwide/.

[64] *Id.*

contractors, including efforts to verify contractors' licensing and insurance status, conduct background checks for contractors, require contractors to certify compliance with program policies and marketing standards, provide training to contractors, monitor contractor performance, terminate contractors who violate program policies, and withhold funds from the contractor for the project until the project is certified as complete by the homeowner and contractor. These commenters stated that industry actors closely monitor delinquency trends and provide consumers with a right to cancel and other protections following consummation.

B. Summary of the Rulemaking Process

Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018

The Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) was signed into law on May 24, 2018.[65] EGRRCPA section 307 amended TILA to mandate that the CFPB take regulatory action on PACE financing, which it defines as "financing to cover the costs of home improvements that results in a tax assessment on the real property of the consumer." It requires the CFPB to prescribe regulations that (1) carry out the purposes of TILA section 129C(a), and (2) apply TILA section 130 with respect to violations under TILA section 129C(a) with respect to PACE financing. It also requires that the regulations account for the unique nature of PACE financing.[66] TILA section 129C(a) contains TILA's ability-to-repay provisions for residential mortgage loans, and TILA section 130 contains civil liability provisions. Thus, section 307 requires the CFPB to apply TILA's ability-to-repay provisions to PACE financing, and to apply TILA's civil liability provisions for violations of those ability-to-

[65] Pub. L. 115-174, 132 Stat. 1296 (2018).

[66] EGRRCPA section 307, amending TILA section 129C(b)(3)(C)(ii), 15 U.S.C. 1639c(b)(3)(C)(ii). EGRRCPA section 307 also includes amendments authorizing the CFPB to "collect such information and data that the CFPB determines is necessary" in prescribing the regulations and requiring the CFPB to "consult with State and local governments and bond-issuing authorities."

repay provisions, all in a way that accounts for the unique nature of PACE financing. This final rule discusses the implementation of the ability-to-repay and civil liability requirements further in the section-by-section analysis of § 1026.43.

Outreach

To learn about PACE transactions and the industry, the CFPB has engaged with a wide variety of stakeholders since 2015, including consumer advocates, a range of public and private participants in the PACE financing industry, mortgage industry stakeholders, and representatives from energy and environmental groups. The engagement has included listening sessions, roundtable discussions, question-and-answer sessions, consultation calls soliciting stakeholder input, briefings of external stakeholders, panel appearances by CFPB staff, and written correspondence.

The CFPB's outreach relating to PACE financing is summarized at a high level below.[67] The outreach has supplemented information on PACE financing that the CFPB has gleaned from independent research; the comments responding to the Advance Notice of Proposed Rulemaking and the proposed rule, discussed below; the data collection described below in this in part; and information from publicly available sources such as news reports, research and analysis, and litigation documents. The CFPB also consulted with the Board and several other Federal agencies, as addressed in part VI.A.

[67] The CFPB also engaged in extensive outreach with numerous stakeholders to design and complete the CFPB data collection on PACE financing that is discussed below.

1. Consumer Advocates

The CFPB began corresponding with consumer advocates regarding PACE financing in 2016. These stakeholders have shared their concerns about consumer risks in the PACE financing market and stories of PACE financing resulting in financial harm to consumers.

The CFPB continued the engagement after EGRRCPA section 307 passed, meeting on numerous occasions with individual consumer advocates and consumer advocacy groups to discuss a range of topics related to PACE financing. For example, these stakeholders have shared their understanding of how the PACE financing industry functions, including the structure of the financial obligation, the different roles of government units and private parties, industry trends, and the effects of State legislation on PACE financing. They have also voiced consumer protection concerns and shared legal and policy analysis regarding the implementation of EGRRCPA section 307 and the application of TILA to PACE transactions.

2. Private PACE Industry Stakeholders

Since 2015, the CFPB has engaged on many occasions with various private PACE industry stakeholders, including private PACE companies, a national trade association, private companies that help administer the assessments (assessment administrators), and at least one bond counsel. These stakeholders have provided the CFPB a great deal of information about PACE transactions, industry business practices, market trends, and the roles of different industry participants.

Additionally, the PACE companies, assessment administrators, and the national trade association have shared industry trends and their views on how the industry has been developing in different jurisdictions. They have also shared their views on some of the challenges and progress the industry has experienced as the programs have evolved, including, for example, the

causes of fluctuations in loan volumes, industry efforts to improve the consumer experience, benefits of PACE financing, and the effects of consumer protection requirements in particular States. Some of these stakeholders have also shared their perspectives on EGRRCPA section 307 and this rulemaking.

3. State and Local Governments and Bond-Issuing Authorities

The CFPB has conferred on numerous occasions with State and local governments and bond-issuing authorities involved in PACE financing to gather information about PACE financing and this rulemaking, beginning before EGRRCPA section 307 and accelerating after it took effect given its mandate for the CFPB to "consult with State and local governments and bond-issuing authorities."[68] The CFPB has consulted with government sponsors of PACE financing programs, agencies involved in different aspects of the programs, local property tax collectors, public PACE financing providers, and county and city officials. The CFPB has engaged with bond-issuing authorities on a number of occasions, including discussions over the phone and in person, and through written correspondence. The CFPB has also conferred on a number of occasions with membership organizations representing municipalities.

In the course of developing the final rule, CFPB staff also conducted a series of consultation calls to promote awareness about the CFPB rulemaking and gather input on topics that the CFPB was considering addressing in this rulemaking, including, for example, whether the CFPB should use the same ability-to-repay framework for PACE financing that currently applies to mortgage credit or a different framework, what changes should be made to account for the unique nature of PACE financing, whether to apply any existing qualified mortgage definitions to PACE financing, how to apply TILA's general civil liability provisions to

[68] 15 U.S.C. 1639c(b)(3)(C)(iii)(II).

violations of the ability-to-repay requirements for PACE financing, and the implications of this rulemaking for PACE financing bonds. Before the CFPB issued the proposal, it held a series of calls with several stakeholder groups, including: (1) State agencies in the three States that currently offer PACE, (2) California local government officials, (3) Missouri local government officials, (4) Florida local government officials, and (5) State and local officials from states that do not currently offer PACE. CFPB staff held additional consultation calls with State and local governments and bond-issuing authorities after the NPRM's comment period closed, to solicit additional information and perspectives about this rulemaking and recent market developments.

During these outreach and consultation efforts, public entities involved in the operation of PACE financing and third parties operating on their behalf expressed divergent views on PACE financing. For example, some individuals from local tax collectors' offices and other government units expressed concern about the risks or challenges that PACE financing can create for consumers or local taxing authorities. In part because of these concerns, some government representatives shared consumer protection recommendations and background information about how the PACE financing industry operates in particular jurisdictions. Several localities with active PACE financing programs expressed consumer protection concerns and informed the CFPB that they would welcome application of TILA's ability-to-repay provisions to PACE, or that they have implemented certain consumer protection standards themselves. A nonprofit organization that administered a PACE financing program on behalf of a local government informed the CFPB that the locality ended its PACE financing program, largely due to consumer protection concerns. One stakeholder from a tax collector's office asserted that, while there are limits to PACE loan amounts relative to the market value of the home, standards for obtaining a home's market value are insufficient. This stakeholder asserted that, as a result,

PACE consumers could owe more than the market value of the property. This stakeholder also asserted that interest rates and APRs for PACE transactions are relatively high and do not reflect the fact that they are secure for investors and carry relatively low administrative costs, given that PACE transactions are repaid through the property tax system.

Other local governments (and third parties they work with) shared views that reflect more positive assessments of the industry. For example, representatives from one government sponsor of PACE financing (that later ceased sponsoring new PACE financing originations[69]) told the CFPB that the program carries important consumer benefits, including that it provides a financing option for home improvement projects that have energy and environmental benefits, and creates jobs. Local government representatives in certain jurisdictions expressed enthusiasm about aspects of PACE financing such as increased solar panel installations and indicated that they think PACE financing programs generally function well. Some government sponsors indicated that their PACE financing programs had instituted a number of practices that were consumer-protective, such as repayment analysis, low fees, contractor screening, or monitoring and oversight of private entities involved in the originations. Some government sponsors expressed concern that Federal regulation could negatively impact PACE programs, and that the CFPB should not apply TILA's ability-to-repay provisions or other consumer protections to PACE financing. Several State and local entities also informed the CFPB that consumer complaints had declined significantly in recent years.

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[69] The CFPB understands that a number of government sponsors, some of which participated in the CFPB's outreach, have stopped participating in new originations. *See, e.g.*, Jeff Horseman, *Riverside-based agency to end controversial PACE loans for energy improvements*, The Press-Enterprise (Dec. 12, 2022); Andrew Khouri, *L.A. County ends controversial PACE home improvement loan program*, L.A. Times (May 21, 2020), https://www.latimes.com/homeless-housing/story/2020-05-21/la-fi-pace-home-improvement-loans-la-county.

A public PACE provider asserted that PACE is an important public policy tool that provides financing to retrofit properties that are at risk of natural disaster, in particular wildfires. This stakeholder asserted that PACE financing helps homeowners maintain homeowners' insurance, and that its PACE program does not pose significant consumer risk. It requested that public PACE providers be exempt from the final rule.

4. Other Stakeholders

The CFPB's outreach has also included other stakeholders with an interest in PACE financing. For example, several times since 2016, the CFPB has discussed PACE financing with national and State-level mortgage industry trade organizations. These stakeholders have provided updates on, for example, State-level developments in the PACE financing industry and analysis of Federal policy involving PACE financing. Some have also shared concerns, in comments to the proposal and through other channels, about the potential impact of PACE financing on mortgage industry participants, noting, for example, the priority position of liens securing PACE transactions relative to non-PACE mortgage liens, the challenges that non-PACE mortgage industry stakeholders have in obtaining information about PACE transactions and attendant risks, and that non-PACE mortgage servicers may need to collect PACE transactions through an escrow account, which may include advancing their own funds if the consumer is unable to afford the PACE financing payment. Some mortgage industry stakeholders have also raised consumer protection concerns, sharing anecdotal reports of consumer harm and asserting that, in practice, consumers have often had to repay the full PACE financing balance before they have been able to sell properties encumbered with a PACE financing lien. Some suggested that the CFPB should treat PACE like a non-PACE mortgage or apply TILA more generally to PACE.

Advance Notice of Proposed Rulemaking in 2019

On March 4, 2019, the CFPB issued an Advance Notice of Proposed Rulemaking to solicit information relating to residential PACE financing.[70] The purpose of the Advance Notice of Proposed Rulemaking was to gather information to better understand the PACE financing market and other information to inform a proposed rulemaking under EGRRCPA section 307.

In response to the Advance Notice of Proposed Rulemaking, the CFPB received over 115 comments, which were submitted by a variety of entities, including individual consumers, consumer groups, private PACE industry participants, mortgage stakeholders, energy and environmental groups, and government entities, among others. A summary of some of the legal and policy positions reflected in the Advance Notice of Proposed Rulemaking comments is included in the proposal.[71]

Data Collection and PACE Report

EGRRCPA section 307 authorizes the CFPB to "collect such information and data that the CFPB determines is necessary" to support the PACE rulemaking required by the section.[72] In October 2020, the CFPB requested PACE financing data from all companies providing PACE financing at that time. The request was voluntary and was intended to gather information on PACE transaction applications and originations between July 1, 2014, and December 31, 2019, including basic underwriting information used for applications, application outcomes, and loan terms. The CFPB also contracted with one of the three nationwide consumer reporting agencies to obtain credit record data for the PACE consumers in the PACE transaction data.

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[70] *Advance Notice of Proposed Rulemaking on Residential Property Assessed Clean Energy Financing*, 84 FR 8479 (Mar. 8, 2019).

[71] 88 FR 30388, 30392.

[72] 15 U.S.C. 1639c(b)(3)(C)(iii)(I).

In August 2022, the CFPB received from its contractor de-identified PACE data from the four PACE companies that were active in the PACE market at the time of submission and matching de-identified credit record data for the consumers involved in the PACE transactions.[73] The PACE company data encompassed about 370,000 PACE transaction applications submitted in California and Florida from 2014 to 2019 and about 128,000 resulting PACE transaction originations. The CFPB's contractor was able to provide matching credit data for about 208,000 individual PACE consumers, which included periodic credit snapshots for each consumer between June 2014 and June 2022. In total, the matched consumers submitted about 286,000 PACE applications and entered into approximately 100,000 PACE transactions.[74]

The CFPB used the acquired data to develop a report that analyzes the impact of PACE transactions on consumer outcomes, with a particular focus on mortgage delinquency. In addition to other analyses, the Report examines consumers who obtained originated PACE transactions and compares them to those who applied for PACE transactions and were approved but did not proceed. The report, entitled "PACE Financing and Consumer Financial Outcomes" was published concurrently with the NPRM.[75]

Among other findings, the PACE transactions analyzed in the PACE Report led to an increase in negative credit outcomes, particularly 60-day mortgage delinquency, with an increase of 2.5 percentage points over a two-year span following PACE transaction origination. Additionally, the PACE borrowers discussed in the PACE Report resided in census tracts with

[73] The CFPB received data from FortiFi Financial, Home Run Financing, Renew Financial, and Ygrene Energy Fund.

[74] Matched consumers resided in census tracts with smaller Hispanic populations, higher median income, and lower average education compared to consumers who were not matched. The PACE Report verifies that weighting the sample to be more like the full population of PACE consumers has no meaningful effect on the main results of the Report. PACE Report, *supra* note 12, at 11.

[75] *See* PACE Report, *supra* note 12.

higher percentages of Black and Hispanic residents than the average for their States.[76] However, the effect of PACE transactions on non-PACE mortgage delinquency was statistically similar for PACE borrowers in majority-white census tracts compared to those in census tracts that were not majority white.[77] The PACE Report also assesses the impact of the 2018 California PACE Reforms, discussed in part II.A. The analysis finds that these laws improved consumer outcomes while substantially reducing the volume of PACE lending.[78]

The CFPB discusses comments that addressed the PACE Report in part VI.

Notice of Proposed Rulemaking

The CFPB issued a proposed rule on PACE financing on May 1, 2023, concurrent with the PACE Report described in this part above. The NPRM was published in the *Federal Register* on May 11, 2023,[79] and the public comment period closed on July 26, 2023.[80] The CFPB proposed the following under Regulation Z:

- To clarify an existing exclusion to Regulation Z's definition of credit that relates to tax liens and tax assessments. Specifically, the CFPB proposed to clarify that the commentary's exclusion of tax liens and tax assessments from being "credit," as defined in § 1026.2(a)(14), applies only to involuntary tax liens and involuntary tax assessments.

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[76] *Id.* at 4.

[77] *Id.* at 38-39, Figure 11.

[78] *Id.* at 4-5.

[79] 88 FR 30388.

[80] The CFPB received several written requests to extend the comment period. The CFPB believes that interested parties had sufficient time to consider the CFPB's proposal and prepare their responses and did not extend the comment period beyond July 26, 2023. Seventy-six days elapsed between the date the NPRM was published in the *Federal Register* and the comment deadline, and ten additional days elapsed between the CFPB's issuance of the NPRM and its publication in the *Federal Register*. Additionally, the CFPB has received a number of ex parte comments after the close of the comment period. It has added these comments to the rulemaking docket and considered them in developing this final rule.

- To make a number of adjustments to the requirements for Loan Estimates and Closing Disclosures under §§ 1026.37 and 1026.38 that would apply when those disclosures are provided for PACE transactions.
- To provide new model forms under H–24(H) and H–25(K) of appendix H for the Loan Estimate and Closing Disclosure, respectively, specifically designed for PACE transactions.
- To exempt PACE transactions from the requirement to establish escrow accounts for certain higher-priced mortgage loans, under proposed § 1026.35(b)(2)(i)(E).
- To exempt PACE transactions from the requirement to provide periodic statements, under proposed § 1026.41(e)(7).
- To apply the ability-to-repay requirements in § 1026.43 to PACE transactions with a number of specific adjustments to account for the unique nature of PACE financing, including requiring PACE creditors to consider certain monthly payments that they know or have reason to know the consumer will have to pay into the consumer's escrow account as an additional factor when making a repayment ability determination for PACE transactions extended to consumers who pay their property taxes through an escrow account.
- To provide that a PACE transaction is not a qualified mortgage as defined in § 1026.43.
- To extend the ability-to-repay requirements and the liability provisions of TILA section 130 to any "PACE company," as defined in proposed § 1026.43(b)(14), that is substantially involved in making the credit decision for a PACE transaction.

- To provide clarification regarding how PACE and non-PACE mortgage creditors should consider pre-existing PACE transactions when originating new mortgage loans.

The CFPB received over 130 comments on the proposal. A variety of stakeholders submitted comment, including consumers and consumer groups, PACE companies, a public PACE provider, government sponsors of PACE programs, local government entities or their membership organizations, State agencies, a PACE industry trade association, an assessment administrator, home improvement contractor stakeholders, bond counsel, credit union stakeholders, mortgage industry stakeholders, environmental and energy stakeholders, chambers of commerce, Members of the U.S. Congress, the U.S. Small Business Administration Office of Advocacy, and State attorneys general. The CFPB has considered the comments and is adopting the proposal with certain adjustments as described in the sections below.

III. Legal Authority

The CFPB is finalizing amendments to Regulation Z pursuant to its authority under the Consumer Financial Protection Act of 2010 (CFPA) and other provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),[81] EGRRCPA section 307, TILA, and the Real Estate Settlement Procedures Act of 1974 (RESPA).[82]

A. Dodd-Frank Act

Section 1022(b)(1) of the CFPA authorizes the CFPB to prescribe rules "as may be necessary or appropriate to enable the CFPB to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof."[83] Among

[81] Pub. L. 111-203,124 Stat. 1376 (2010).

[82] 12 U.S.C. 2601 *et seq.*

[83] 12 U.S.C. 5512(b)(1).

other statutes, TILA, RESPA, and the CFPA are Federal consumer financial laws.[84] Accordingly, the CFPB is exercising its authority under CFPA section 1022(b) to prescribe rules that carry out the purposes and objectives of TILA, RESPA, and the CFPA and prevent evasion of those laws.

Section 1405(b) of the Dodd-Frank Act provides that, notwithstanding any other provision of title XIV of the Dodd-Frank Act, in order to improve consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures, the CFPB may exempt from or modify disclosure requirements, in whole or in part, for any class of residential mortgage loans if the CFPB determines that such exemption or modification is in the interest of consumers and in the public interest.[85] Section 1401 of the Dodd-Frank Act, which amends TILA section 103(cc)(5), generally defines a residential mortgage loan as any consumer credit transaction that is secured by a mortgage on a dwelling or on residential real property that includes a dwelling, other than an open-end credit plan or an extension of credit secured by a consumer's interest in a timeshare plan.[86] Notably, the authority granted by section 1405(b) applies to disclosure requirements generally and is not limited to a specific statute or statutes. Accordingly, Dodd-Frank Act section 1405(b) is a broad source of authority to exempt from or modify the disclosure requirements of TILA and RESPA. In developing this final rule, the CFPB has considered the purposes of improving consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures and the interests of consumers and the public. The CFPB is finalizing these amendments pursuant to its authority under Dodd-Frank Act section 1405(b). For the reasons

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[84] CFPA section 1002(14), 12 U.S.C. 5481(14) (defining “Federal consumer financial law” to include the “enumerated consumer laws” and the provisions of CFPA); CFPA section 1002(12), 12 U.S.C. 5481(12) (defining “enumerated consumer laws” to include TILA and RESPA).

[85] Pub. L.111-203, 124 Stat. 1376, 2142 (2010) (codified at 15 U.S.C. 1601 note).

[86] Pub. L.111-203, 124 Stat. 1376, 2138 (2010) (codified at 15 U.S.C. 1602(cc)(5)).

discussed below and in the 2013 TILA-RESPA Rule, the CFPB believes the final rule is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

B. TILA

TILA section 105(a) directs the CFPB to prescribe regulations to carry out the purposes of TILA and provides that such regulations may contain additional requirements, classifications, differentiations, or other provisions and may further provide for such adjustments and exceptions for all or any class of transactions that the CFPB judges are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.[87] A purpose of TILA is to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various available credit terms and avoid the uninformed use of credit.[88] Additionally, a purpose of TILA sections 129B and 129C is to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive, or abusive.[89]

TILA section 105(b), amended by the CFPA, requires publication of an integrated disclosure for mortgage loan transactions covering the disclosures required by TILA and the disclosures required by sections 4 and 5 of RESPA.[90] The purpose of the integrated disclosure is to facilitate compliance with the disclosure requirements of TILA and RESPA and to improve

[87] 15 U.S.C. 1604(a).

[88] 15 U.S.C. 1601(a).

[89] 15 U.S.C. 1639b(a)(2).

[90] Pub. L. 111-203, 124 Stat. 1376, 2108 (2010) (codified at 15 U.S.C. 1604(b)).

borrower understanding of the transaction. The CFPB provided additional discussion of this integrated disclosure mandate in the 2013 TILA-RESPA Rule.[91]

Section 105(f) of TILA, 15 U.S.C. 1604(f), authorizes the CFPB to exempt from all or part of TILA any class of transactions if the CFPB determines after the consideration of certain factors that TILA coverage does not provide a meaningful benefit to consumers in the form of useful information or protection.

TILA section 129C(b)(3)(A) directs the CFPB to prescribe regulations to carry out the purposes of the subsection.[92] In addition, TILA section 129C(b)(3)(B)(i) authorizes the CFPB to prescribe regulations that revise, add to, or subtract from the criteria that define a qualified mortgage upon a finding that such regulations are necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of TILA section 129C; or are necessary and appropriate to effectuate the purposes of TILA sections 129B and 129C, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections.[93]

In section 307 of the EGRRCPA, codified in TILA section 129C(b)(3)(C), Congress directed the CFPB to conduct a rulemaking to "prescribe regulations that carry out the purposes of [TILA's ATR requirements] and apply section 130 [of TILA] with respect to violations [of the ATR requirements] with respect to [PACE] financing, which shall account for the unique nature of [PACE] financing."[94]

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[91] 78 FR 79730, 79753-54 (Dec. 31, 2013).

[92] 15 U.S.C. 1639c(b)(3)(A).

[93] 15 U.S.C. 1639c(b)(3)(B)(i).

[94] 15 U.S.C. 1639c(b)(3)(C)(ii).

C. RESPA

RESPA section 4(a), amended by the CFPA, requires publication of an integrated disclosure for mortgage loan transactions covering the disclosures required by TILA and the disclosures required by sections 4 and 5 of RESPA.[95]

Section 19(a) of RESPA authorizes the CFPB to prescribe such rules and regulations and to make such interpretations and grant such reasonable exemptions for classes of transactions as may be necessary to achieve the purposes of RESPA.[96] One purpose of RESPA is to effect certain changes in the settlement process for residential real estate that will result in more effective advance disclosure to home buyers and sellers of settlement costs.[97] In addition, in enacting RESPA, Congress found that consumers are entitled to greater and more timely information on the nature and costs of the settlement process and to be protected from unnecessarily high settlement charges caused by certain abusive practices in some areas of the country.[98] In developing rules under RESPA section 19(a), the CFPB has considered the purposes of RESPA, including to effect certain changes in the settlement process that will result in more effective advance disclosure of settlement costs.

IV. Discussion of the Final Rule

A. General Comments on the NPRM

The CFPB received comments addressing several topics other than those discussed in the section-specific analyses below. These topics are largely outside the scope of this rulemaking.

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[95] Pub. L. 111-203, 124 Stat. 1376, 2103 (2010) (codified at 12 U.S.C. 2603(a)). See discussion of integrated disclosure above.

[96] 12 U.S.C. 2617(a).

[97] 12 U.S.C. 2601(b).

[98] 12 U.S.C. 2601(a). In the past, RESPA section 19(a) has served as a broad source of authority to prescribe disclosures and substantive requirements to carry out the purposes of RESPA.

Super-Priority Lien Status

Many mortgage industry stakeholders and consumer groups expressed concerns about the super-priority status held by liens securing PACE transactions. Several commenters stated that the super-priority status of PACE liens increases risks for borrowers, mortgage lenders, communities, and secondary mortgage market participants. A mortgage industry trade association asserted that PACE transactions violate the first-lien status of mortgages and create risk for consumers and communities. One mortgage industry trade association stated that the super-priority lien status undermines mortgage lenders' underwriting by increasing the loss severity during foreclosure for the mortgage lender in a way that was not priced in, limits saleability of mortgages, and requires mortgage servicers to advance funds to secure the security interest when consumers go delinquent on property taxes and PACE obligations. A credit union stated that the super-lien priority decreases home marketability, and an escrow association stated that consumers have not understood the priority status of PACE liens.

Some commenters, including a credit union and other mortgage industry stakeholders, described challenges with identifying the presence of existing PACE liens. Some commenters, including a community bankers association, a credit union trade association, and a group of mortgage industry and consumer group stakeholders, asked the CFPB to work with State and local governments to find solutions to better identifying PACE liens or downgrading their priority status.

In contrast to these comments, a PACE company asserted that a PACE transaction's super-priority lien status makes PACE transactions more secure, which allows capital markets to embrace lower interest rates, with the savings passed on to consumers. Another PACE company stated that, in California, there is a loss reserve in place and only two claims have ever been

made, showing the concerns related to whether the lien status would impair the security of first mortgage loans have not materialized.

Requests for Additional Regulatory Requirements

Several commenters suggested additional regulation of PACE financing that was not contemplated in the proposed rule. For instance, a State housing agency association suggested requiring PACE companies to report PACE transactions to credit bureaus, prohibiting prepayment penalties on PACE transactions if the first mortgage does not impose prepayment penalties, regulating the types of fees allowed on PACE transactions, and imposing conflict-of-interest provisions on PACE transactions like those found under RESPA. A PACE company recommended prohibiting payments to home improvement contractors for marketing services and for work done prior to project completion. This commenter also suggested the CFPB craft protections against antitrust or defamation claims for PACE companies, similar to those available to financial institutions who file Suspicious Activity Reports, so that they can more effectively share information about problematic home improvement contractors.

A consumer group suggested the CFPB require independent verification before PACE-financed work begins (specifically, an energy audit to verify the need for cost-effective improvements and verifying the consumer understands related costs and risks) and after work is completed but before the contractor is paid. Another consumer group urged the CFPB to prohibit false assertions made on social media websites.

A consortium of consumer groups stated that the CFPB should finalize the proposal quickly and should monitor and incorporate consumer protections into other emerging lending products intended to be environmentally friendly (*i.e.*, “green” lending products, such as those being implemented under Inflation Reduction Act programs), to minimize what they

characterized as public harm and negative consequences that resulted from the problematic design and predatory practices of PACE financing. A few other consumer and environmental groups echoed the need for collaboration among Federal agencies on green lending products to share lessons learned from PACE financing and to ensure these products are fair, safe, affordable, and sustainable for consumers.

National Environmental Policy Act

Two PACE companies and a PACE industry trade association stated that the National Environmental Policy Act (NEPA) applies to the CFPB's PACE financing rulemaking. These commenters asserted that the CFPB should complete an environmental impact statement under NEPA. Specifically, commenters expressed concerns that the proposed rule would have a significant adverse impact on the quality of the human environment by causing fewer PACE loans to be originated, thereby reducing the environmental benefits associated with PACE financing, including benefits related to the reduction of water and energy consumption.

The CFPB has prepared an environmental assessment and finding of no significant impact regarding the proposed rule, to be published in the *Federal Register* concurrently with this final rule. The environmental assessment provides the basis for the conclusion that the proposed rule, which the CFPB is adopting in this final rule with small changes described below, will not have a significant effect on the human environment.[99] In developing the environmental assessment, the CFPB considered commenters' estimates of the environmental benefits associated with PACE financing. As discussed in the environmental assessment, the CFPB found that those estimates likely overstate the impacts on energy and water consumption that PACE loans provide. It also found, however, that even assuming that the proposal would entirely

[99] CFPB, *Environmental Assessment and Finding of No Significant Impact* (Dec. 17, 2024).

eliminate PACE financing (an outcome the CFPB does not expect to occur), the proposed rule would not result in significant effects on the human environment. Based on the finding of no significant impact, the CFPB determined that an environmental impact statement need not be prepared as some commenters suggested.

B. Section-by-Section Analysis

1026.2 Definitions and Rules of Construction.

1026.2(a) Definitions

1026.2(a)(14) Credit

Section 1026.2(a)(14) defines “credit” to mean “the right to defer payment of debt or to incur debt and defer its payment.” The CFPB proposed to clarify that comment 2(a)(14)-1.ii’s exclusion of tax liens and tax assessments from the definition of credit applies only to involuntary tax liens and involuntary tax assessments, and not to voluntary ones, such as PACE transactions. The CFPB proposed to change the comment by adding the word “involuntary” to clarify which tax liens and tax assessments are not considered credit. Without an exclusion for voluntary tax liens and voluntary tax assessments, the proposal separately recognized that PACE transactions would meet TILA’s definition of “credit.” For the reasons discussed below, the CFPB is finalizing comment 2(a)(14)-1.ii as proposed, to clarify that involuntary tax liens, involuntary tax assessments, court judgments, and court approvals of reaffirmation of debts in bankruptcy are not considered credit for purposes of the regulation.[100]

Many commenters addressed this part of the proposal. Consumer groups, mortgage industry stakeholders, and a State agency were generally supportive of amending the comment,

[100] The CFPB is also finalizing a conforming change later in the comment, inserting the word “involuntary” before “tax lien” in an illustrative example of third-party financing that is credit for purposes of the regulation notwithstanding the exclusion.

as well as recognizing PACE transactions as credit. Some of these commenters asserted that PACE transactions meet the definition of consumer credit under TILA and Regulation Z and should be treated as such. Several consumer groups stated that Congress's directive to prescribe rules for PACE financing under TILA assumes that PACE transactions will be treated as credit because the CFPB would otherwise have no authority to issue regulations under TILA, as TILA governs consumer credit. A State agency stated that PACE transactions are clearly a form of consumer credit, and that the proposed amendment appears to be the simplest and most efficient means of allowing PACE transactions to be subject to the requirements of TILA and Regulation Z. Some mortgage industry stakeholders and consumer groups stated that, as voluntary home-secured financing, PACE transactions are mortgages or their functional equivalents and should be treated the same under TILA.

A number of consumer groups and mortgage industry stakeholders stated that applying TILA's mortgage requirements to PACE transactions would curb abuses and help ensure consumers qualify and understand repayment obligations. Two consumer groups expressed support for applying the mortgage requirements under TILA and Regulation Z to PACE transactions and suggested a number of adjustments to enhance consumer protections. One credit union trade association stated that it was critical that consumers with PACE transactions have the same rights and protections as with other home-secured lending, particularly because foreclosure related to unpaid municipal levies may involve a faster process than a civil mortgage foreclosure.

A number of commenters suggested covering PACE transactions as TILA credit would be important because the structure of PACE transactions creates risk for consumers or other stakeholders. Some consumer groups and mortgage industry stakeholders asserted that the role of private contractors in PACE transactions has spurred predatory practices. A few commenters

indicated that alternatives to PACE financing, such as solar funds, home equity lines of credit, or second mortgages may be safer for consumers or carry lower fees or interest rates. One credit union league asserted various concerns about PACE financing, such as high interest rates, exploitation and targeting of vulnerable consumers, risks of losing homes, deceptive marketing practices, and a lack of disclosures. A few commenters made assertions about possible negative impacts of PACE financing on certain groups of consumers, including older Americans, lower-income consumers, consumers with limited English proficiency, and majority Black or Hispanic communities.

Several commenters, including consumer groups, mortgage industry stakeholders, and environmental groups, asserted that treating PACE transactions like mortgages would ensure a level playing field for market participants. Some mortgage industry and consumer group stakeholders stated that the proposal would ensure that PACE transactions receive the same level of scrutiny and safeguards as non-PACE mortgage products. One consumer group and one title insurance trade association stated that PACE transactions tend to come with higher costs, fees, and interest rates than non-PACE mortgage products, warranting scrutiny for the market. One environmental group commented that PACE companies effectively act like mortgage bankers without having to comply with banking or lending regulations.

Many PACE industry stakeholders objected to treating PACE transactions as credit under TILA. Some commenters stated that PACE transactions are legally distinguishable from consumer credit. Several commenters, including PACE companies and a government sponsor, referred to State law or case law to assert that PACE transactions are not consumer credit or are property tax assessments. A PACE company stated that there is no legal difference between voluntary and involuntary tax assessments, and that voluntariness does not render a tax

assessment consumer credit. This commenter also asserted that the proposal did not distinguish between voluntary and involuntary court judgments, which, like tax assessments and tax liens, were excluded from "credit" under existing comment 2(a)(14)-1.ii.

PACE companies, trade associations, and a government sponsor of PACE programs asserted that covering PACE transactions as consumer credit under TILA would not be supported by EGRRCPA section 307 or other TILA provisions. Several commenters stated that treating PACE transactions as credit would be overreach because, they asserted, it would exceed Congress's narrow directive in EGRRCPA section 307 by applying TILA to all voluntary tax assessments and tax liens.

Some commenters stated that the CFPB lacks statutory authority to regulate PACE transactions as proposed because they are tax assessments subject to State law and are not credit under TILA. A few commenters stated that EGRRCPA section 307's mandate was narrow, and that the term "consumer credit" cannot be reasonably interpreted to include PACE transactions. A few commenters asserted that, if Congress had intended to make definitional changes and subject PACE transactions to further regulation beyond ability to repay and civil liability, it would have said so explicitly. A PACE company stated that EGRRCPA section 307 would be superfluous if PACE transactions were TILA credit because they would already be covered. A few commenters asserted that TILA's preservation of governmental immunity from certain remedies is evidence that Congress did not intend TILA to apply generally to PACE transactions, since TILA liability generally attaches to creditors, and local governments would be creditors in PACE transactions.

Several commenters took issue with the coverage of government sponsors of PACE programs. Eight Members of the U.S. Congress stated that local governments that levy PACE

financing as property tax assessments are not "creditors." Two membership organizations for local governments asserted that, since PACE government sponsors are plausibly the "creditors" in PACE transactions but are protected from civil and criminal penalties under TILA, the text of TILA itself forbids including PACE financing in the definition of credit. Another government association asserted that, while the public agency is the entity entering into the financing agreements, issuing bonds secured by the obligations, and bearing ultimate responsibility for their administration and enforcement, the public agency should not be treated as a creditor. One government sponsor asserted that the rule would have a disproportionate effect on its State and would significantly reduce PACE originations.

Many local governments and a public PACE provider requested an exclusion for government-operated PACE programs. One public PACE provider stated, among other things, that such programs are designed to achieve public policy objectives, are subject to rigorous underwriting standards and other robust consumer protections, are not driven by a profit motive, and have not resulted in claims of abuse or negative outcomes. One nonprofit commenter asserted that the likelihood of fraud, deception, and abuse is virtually nil where a government entity alone administers a PACE program.

Several commenters took issue with TILA coverage on the ground that PACE transactions run with the underlying property and are not personal liabilities. One PACE company asserted that, while TILA defines "credit" to mean, in part, a "right granted by a creditor to a debtor . . . ," there are no "debtors" in PACE transactions—that "debtors" are natural persons to whom the credit is extended, whereas PACE transactions are attached to the property and are not personal liabilities. Eight Members of the U.S. Congress, several PACE companies, trade associations, and a local government organization asserted that PACE

transactions are not personal debts but rather tax assessments that are levied against and run with the land. One PACE company asserted that PACE transactions are not consumer credit because their primary purpose is to advance State environmental and economic policies, whereas TILA and Regulation Z define "consumer credit" in part to mean credit that is primarily for personal, family, or household purposes. This commenter also stated that PACE transactions are attached to the property and are not personal debts.

PACE companies, government sponsors, local government trade groups, a PACE industry trade association, an energy industry stakeholder, and eight Members of U.S. Congress opposed treating PACE transactions as mortgages under TILA. A PACE company stated that PACE does not meet TILA's definition of residential mortgage loan, in part because the lien will arise as a matter of State law pursuant to governments' power of taxation. A different PACE company stated that PACE transactions are not residential mortgage loans as defined in TILA. Several commenters, including PACE companies and a government sponsor, asserted that EGRRCPA section 307's directive to "account for the unique nature" of PACE transactions in prescribing regulations indicates that Congress did not intend to treat them as mortgage loans. One PACE company stated that the distinctions between principal and interest payments and property tax payments under TILA point to PACE transactions being distinct from mortgage loans. A PACE industry trade association and a PACE company, among others, asserted several differences between PACE transactions and mortgages, including that PACE transactions do not accelerate, are nonrecourse, and have longer foreclosure timelines. One PACE company stated that TILA's requirements are designed for higher dollar amount mortgages. The PACE company stated that PACE transactions are functionally and practically distinguishable from mortgages, and that they are significantly smaller than mortgages and therefore less risky for consumers. An

environmental group and a PACE industry trade association stated that PACE assessments have structural protections that mortgages do not, including that consumers have years (versus months) for consumers to come current on their property taxes before local governments can initiate a foreclosure or tax sale.

Numerous commenters, including eight Members of the U.S. Congress, home improvement contractors, and an environmental group, stated that treating PACE financing like a mortgage loan would disregard the unique nature of PACE transactions. The eight Members of the U.S. Congress characterized PACE transactions as land-secured municipal finance, and other commenters, including a PACE company, a government sponsor, and another industry stakeholder, characterized them as property tax assessments imposed by government entities to advance important public policy purposes as mandated by State law. Some commenters stated that State and local governments have authorized similar transactions for some time, and that such transactions have only been authorized for projects that advance public purposes dictated by State and local governments.

Numerous commenters, including PACE companies, government sponsors, membership organizations for local governments, home improvement contractors, energy stakeholders, and others, expressed a wide variety of concerns about PACE transactions being subject broadly to TILA. They stated, for example, that broad TILA coverage would (1) exceed the mandate in EGRRCPA section 307, which required only ability-to-repay and civil liability regulations; (2) introduce substantial burden that would be unwarranted given the industry’s progress on consumer protections in recent years; (3) deter industry actors from participating and render the programs nonviable or reduce PACE originations, which they stated would reduce access to

credit, push consumers into more expensive forms of financing, or limit revenue options for State and local governments.

Some commenters asserted that broad TILA coverage would be unwarranted. Some stated, for example, that the CFPB lacked sufficiently reliable, recent data or anecdotes to justify broad application of TILA to PACE transactions. Several commenters stated that data sources, including the data discussed in the PACE Report, reports issued by the California Department of Financial Protection and Innovation (California DFPI), and analysis from private bond rating agencies, for example, do not support the conclusion that PACE transactions are particularly harmful. Some commenters asserted that available data in fact demonstrates, for example, that PACE financing correlates with a negligible impact on credit outcomes; that PACE financing has relatively low delinquency rates, sometimes lower than general aggregate property taxes and mortgages; or that foreclosure rates for homes with a PACE lien are quite low. A PACE company asserted that only two claims have been made on the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) loan loss reserve, which the commenter interpreted to mean that mortgage industry concerns relating to the priority status of PACE liens are overblown.

Some commenters, including PACE companies and home improvement contractors, pointed to specific TILA requirements that they asserted would pose particular challenges if applied to PACE transactions. For example, a PACE company and a home improvement contractor stated that TILA's disclosure and appraisal requirements do not make sense or are overly costly for PACE transactions compared to other mortgages, in part because the time to close on a non-PACE mortgage is longer and the transaction is for a much larger dollar amount. PACE companies and home improvement contractors asserted that loan originator requirements

would impose undue costs and could cause home improvement contractors to stop offering PACE financing to consumers, either by choice or because they could not satisfy applicable requirements under State law. A PACE company also stated that Regulation Z requirements as to the treatment of credit balances would inhibit prepayment of property taxes.

Numerous commenters opposed PACE transactions being subject to the higher-priced mortgage loan appraisal requirement, including public and private industry stakeholders, home improvement contractors, and energy groups. A PACE company, an energy industry stakeholder, and home improvement contractor firms asserted that the higher-priced mortgage loan appraisal requirement would increase cost or delay and deter home improvement contractor participation in PACE programs. The PACE company stated that the higher-priced mortgage loan appraisal requirement and TILA's high-cost mortgage protections[101] would effectively cap the rates and fees for PACE transactions, which could make PACE financing economically nonviable. One home improvement contractor firm stated that the cost of an appraisal, estimated to be $300-$500, is unnecessary because the current valuation process used by industry stakeholders is more conservative than receiving an appraisal. Two PACE companies and an industry trade association recommended permitting the use of automated valuation models (AVMs) instead of appraisals—they asserted that AVMs are effective and more efficient than appraisals and already permitted under California law.

Some commenters stated that applying TILA to PACE transactions would delay PACE originations. Comments about delay in the context of specific TILA requirements, such as the TILA-RESPA integrated disclosure requirements for which there is a mandatory waiting period

[101] *See* the discussion of §§ 1026.32 and 1026.34 for a full discussion of comments pertaining to the application of TILA's high-cost mortgage protections.

between disclosure and consummation, are discussed below. One home improvement contractor asserted that a delay would result in financial hardship for contractors who do not get paid until the consumer signs off on the project. Another commenter stated that this delay threatens the point-of-sale nature of PACE transactions, which would be detrimental because PACE transactions allow for emergency repairs and upgrades to help consumers obtain homeowners insurance.

One PACE company asserted that TILA's right of rescission would not benefit consumers and would be confusing for consumers and burdensome for States. The commenter stated that PACE transactions are already subject to a right to cancel under State law and industry practice, including a five-day right for senior citizens under California law.

A number of commenters, including an assessment administrator, PACE companies, government sponsors, bond counsel, a trade association for special districts, and a public PACE provider stated that the proposal would extend TILA coverage to many assessment financing transactions that are not commonly known as PACE. These commenters stated that this coverage would create concern and uncertainty for non-PACE financing. Some of these commenters asserted that coverage of non-PACE transactions would exceed the congressional mandate provided in EGRRCPA section 307 and impede State and local governments' ability to use their taxing and bonding authorities as they see fit. A public PACE provider recommended covering voluntary *contractual* assessments, instead of simply voluntary assessments, to avoid covering obligations arising from what the commenter referred to as traditional voluntary assessment districts.

Many commenters, including PACE companies, a public PACE provider, home improvement contractors, eight Members of the U.S. Congress, an assessment administrator, an

industry trade association, bond counsel, and a group of State attorneys general, stated that PACE transactions already have sufficient consumer protections in place. Some of these commenters stated that PACE transactions are already sufficiently regulated at the State and local levels. One trade association representing special districts stated that State and local regulations strike an effective balance of consumer protection and enabling PACE financing to achieve its objectives. Many commenters stated that PACE companies have instituted a series of additional consumer protections as well, including verifying project completion before payment, various consumer communications, and oversight of home improvement contractors. One environmental group stated that PACE programs are accountable to local government oversight.

PACE industry stakeholders also stated that the rate of consumer complaints involving PACE transactions has been low. A PACE company and an industry trade association asserted that approximately one in 1,000 PACE loans have prompted consumer complaints across several years. A different trade association stated that a California DFPI report on PACE showed only 69 complaints, and that all but two were resolved. Two PACE companies stated that the number of complaints has been trending down, suggesting that industry reforms have been effective at addressing the consumer protection issues from prior years.

Many commenters stated that the proposal was premised on outdated concerns, and that the CFPB should have relied more heavily on more recent trends and information. Some commenters, including PACE companies, a State agency, and a government sponsor, stated that evidence, including evidence from the PACE Report and California DFPI reports, for example, demonstrates that consumer outcomes improved after California's and Missouri's consumer-protection legislation took effect. Citing to data from CAEATFA and the Institutional Investor Journal of Structured Finance, one PACE company asserted that PACE financing does not

prevent subsequent home sales. This commenter also stated that PACE delinquency rates are improving, and that PACE customers are usually able to catch up on delinquent tax payments, noting that 461 PACE delinquencies were reflected in a 2021 annual report, down from 889 delinquencies in the previous year's report. Eight Members of the U.S. Congress stated that the delinquency rate in Florida is lower than in California after its 2018 California PACE Reforms.

A number of these commenters acknowledged that, before States and private industry stakeholders instituted consumer protection measures, there were concerns associated with PACE financing. Several commenters acknowledged that malfeasance by some home improvement contractors created risk and harm for consumers. One PACE company and a government sponsor stated that home improvement contractor malfeasance included, for example, misrepresentation, forging signatures on the loan contracts or completion certificates, creating false business records or contact information, and simply disappearing after the proceeds were disbursed. One State regulator stated that around 45 percent of claimants under a State-established financial restitution program for consumer fraud in residential solar purchases from licensed contractors were PACE customers, and that most of the relevant contracts were executed before the 2018 California PACE Reforms took effect.

Several consumers who reported receiving a PACE transaction described various protections and benefits that they received associated with the loan. They asserted, for example, that the PACE transactions provided financing for home improvements on a short timeline and lowered their homeowner's insurance premiums. One home improvement contractor estimated that 90 percent of homeowners that the company has helped secure a PACE loan have benefited from the program.

Several commenters asserted positive impacts and benefits of PACE transactions, which they asserted the proposed rule would diminish. Examples included (1) increased home values, (2) increased access to homeowner's insurance, (3) better access to credit for some consumers, (4) job creation, (5) environmental benefits, (6) lower utility bills, and (7) positive impacts for small businesses. One environmental group commented that PACE transactions are unique because they provide affordable, equitable, fixed-rate financing for homeowners to achieve public policy goals.

Some commenters stated that PACE programs are uniquely designed to help the environment and communities by facilitating green and disaster-resilient homes. One public PACE provider, in discussing a recent history of natural disasters, characterized PACE financing as a critical public policy and public safety tool. One PACE company stated that local governments can tailor their PACE programs to serve the individual community needs.

Several commenters also stated that PACE transactions represent a better alternative to other financing options. An individual commenter stated that PACE financing provides low-cost private capital funding to consumers, and that given current high interest rates on credit cards, a reduction in the availability of PACE financing would be troubling for their State. An environmental group stated that the proposal would reduce PACE funding access, which would push homeowners into more expensive, less equitable financing options that do not vet or monitor contractors or contain anti-consumer clauses like variable rates or prepayment penalties.

PACE industry stakeholders also identified certain elements of the transactions that the commenters asserted make PACE transactions more affordable, understandable, or secure. These included assertions that PACE transactions are nonrecourse and do not accelerate upon default, and that the total loan amount correlates to the property value and a loan term that cannot exceed

the useful life of the home improvement that is financed with the PACE loan. Commenters asserted that PACE transactions carry a relatively low fixed interest rate, require no downpayment, have no prepayment penalty, and fully amortize. Commenters noted that home improvement contractors typically receive no payment until the project is complete, and that PACE transactions can help lower insurance premiums for homes that have been improved with a completed PACE financed project. An industry trade association for the PACE industry asserted that PACE financing is less risky than home equity lines of credit or a second mortgage, which the commenter said can strip equity without a corresponding home improvement project that would increase property value.

At least three commenters expressed concern that the proposed rule, if finalized, would interfere with State consumer protection laws that apply to PACE transactions. A PACE company, a government sponsor, and a trade association asserted that the proposed rule would complicate or conflict with existing State laws, or interfere with States' ability to adjust their laws to address concerns over time. One commenter suggested this could possibly result in preemption of State laws.

A number of commenters, including State attorneys general, PACE companies, and bond counsel, stated that regulating PACE transactions in this rulemaking would be unconstitutional under principles of federalism, sovereign immunity, and commandeering. Several commenters asserted that the CFPB's proposal would encroach on States' rights to use local taxing and bonding authorities as they see fit.

Numerous commenters asserted that the proposal could have an impact on access to credit for home improvements to improve energy efficiency of homes or to strengthen homes' resilience to withstand natural disasters. A bank that provides PACE funding stated that PACE

financing provides access to capital to many borrowers who would otherwise be unable to pay for energy efficiency, renewable energy, or resilience home improvements. Members of the U.S. Congress stated that PACE transactions provide low-to-moderate income families with access to affordable financing for retrofits and energy efficient home improvements.

Numerous commenters, including but not limited to eight Members of the U.S. Congress, PACE companies, and a government association, stated that PACE financing helps consumers obtain, maintain, or reduce the cost of homeowner's insurance. A home improvement contractor asserted that the homeowners that use PACE financing are the most vulnerable to high energy bills and/or catastrophic damage to their homes during a strong storm or hurricane. One environmental group asserted that California protections caused reduced PACE originations at a time when there are not enough financing opportunities to meet what they cast as overwhelming needs.

For the reasons set forth herein, the CFPB is finalizing its proposed amendment to comment 2(a)(14)-1.ii. As finalized, amended comment 2(a)(14)-1.ii states that involuntary tax liens, involuntary tax assessments, court judgments, and court approvals of reaffirmation of debts in bankruptcy are not considered credit for purposes of the regulation. By adding the word "involuntary" in several places to modify the tax assessments and tax liens excluded under comment 2(a)(14)-1.ii, the CFPB clarifies that the comment does *not* exclude tax liens and tax assessments that arise from voluntary contractual agreements, such as PACE transactions. Thus, tax liens and tax assessments that are voluntary will be credit subject generally to TILA if they meet the definition of credit under TILA and Regulation Z and are not otherwise excluded.[102]

[102] Under the finalized amendment, tax liens and tax assessments that are not voluntary for the consumer would continue to be excluded.

The amendment brings the exclusion in comment 2(a)(14)-1.ii in line with the plain text definition of credit in TILA. TILA defines “credit” to mean the “right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment,” and Regulation Z defines “credit” as “the right to defer payment of debt or to incur debt and defer its payment.”[103]

PACE transactions easily fit these definitions—the agreements provide for consumers to receive funding for home improvement projects and repay those funds over time in installments.[104] Consumers voluntarily incur these financial obligations and are signatories to the financing agreements. In brief, consumers choose to take out the PACE debt obligation and must repay it over time.[105]

That PACE transactions are repaid alongside property tax payments, do not accelerate, are nonrecourse, or can remain with the property after the consumer sells the home does not change the fundamental nature of the transaction. Nor do other reasons commenters asserted for why PACE transactions should not be treated as TILA credit—including that PACE financing is authorized for important public policy purposes under State law, may have characteristics that differ from other types of mortgage obligations, or has produced benefits for industry

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[103] 15 U.S.C. 1602(f); 12 CFR 1026.2(a)(14).

[104] Treating PACE transactions as TILA credit is consistent with the FTC’s assertion of claims against a PACE company under the CFPB’s Regulation N, 12 CFR part 1014, which the parties settled pursuant to a proposed court order. *See Stipulation as to Entry of Order for Permanent Injunction, Monetary Judgement, and Other Relief* (Oct. 28, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/Stipulation%20-%20Dkt.%202%20-%2022-cv-07864.pdf; *see also* part II.A (describing the settlement). Regulation N, also known as the Mortgage Acts and Practices—Advertising Rule, implements section 626 of the Omnibus Appropriations Act, 2009, as amended. 12 U.S.C. 5538. Regulation N applies to the advertising, marketing, and sale of a “mortgage credit product,” defined as “any form of credit that is secured by real property or a dwelling and that is offered or extended to a consumer primarily for personal, family, or household purposes.” 12 CFR 1014.2. Regulation N defines “credit” identically to Regulation Z but does not include any commentary analogous to comment 2(a)(14)-1.ii to Regulation Z.

[105] *See also*, 89 FR 68086, 68087 (Aug. 23, 2024); 89 FR 61358, 61360 (July 31, 2024).

participants and communities. That States may also have laws in place for PACE financing is similarly immaterial.[106]

Covering PACE transactions as credit under TILA notwithstanding these characteristics is consistent with the treatment of other covered credit transactions. For example, TILA explicitly treats other nonrecourse obligations as consumer credit,[107] and many mortgages are effectively nonrecourse under State anti-deficiency statutes.[108] Other forms of TILA-covered financing may also advance important public policy purposes under State law. To the extent there are unique aspects of PACE transactions that warrant adjustments, as mandated by EGRRCPA, the CFPB is codifying amendments or exemptions to that end, as described below.[109] The amendment to comment 2(a)(14)-1.ii does not specifically address the coverage or characteristics of PACE transactions; it merely removes ambiguity that the existing regulatory comment may have created, and that is not reflected in the statute's definition of "credit." Indeed, the original text of comment 2(a)(14)-1.ii was not intended to impinge on the statutory

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[106] States have rules in place governing transactions that may also be subject to TILA, including, for example, door-to-door sales (*see, e.g.*, Idaho Admin. Code r. 04.02.01.160; Ohio Admin. Code 109:4-3-11; Utah Admin. Code r. R152-11-9; Wis. Admin. Code ATCP § 127.62) and home improvement contractor work (*see, e.g.*, Haw. Rev. Stat. secs. 444-1 to 444-36; Haw. Code R. secs. 16-77-1 to 16-77-117; La. Stat. secs. 37:2150 to 37:2764; N.J. Stat. secs. 17:16C-62 to 17:16C-94; N.J. Stat. secs. 17:16C-95 to 17:16C-103; N.J. Stat. sec. 56:8-151; Wash. Rev. Code secs. 19.186.005 to 19.186.060). In response to commenters' concerns that the proposed rule, if finalized, would interfere with State consumer-protection laws that apply to PACE transactions, the CFPB notes that TILA preempts State disclosure laws only if they are "inconsistent" with it. TILA section 11(a), 15 U.S.C. 1610(a); 12 CFR 1026.28(a)(1). Additionally, any State may apply to the CFPB to exempt a class of transactions within the State from certain TILA and Regulation Z provisions if the State's law is substantially similar to the Federal law (or, for credit billing provisions, affords the consumer greater protection than the Federal law) and there is adequate provision for enforcement. 15 U.S.C. 1633; 12 CFR 1026.29(a).

[107] *See e.g.*, 12 CFR 1026.33 (requirements applicable to nonrecourse reverse mortgages).

[108] *See generally* Alaska Stat. sec. 34.20.090; Ariz. Rev. Stat. secs. 33-814(G), 33-729(A); Cal. Civ. Proc. Code secs. 580a-580d; Haw. Rev. Stat. sec. 667-38; Minn. Stat. sec. 582.30; Mont. Code secs. 71-1-232, 71-1-317; Nev. Rev. Stat. secs. 40.455, 40.458, 40.459; N.C. Gen. Stat. secs. 45-21.36, 45-21.38, 45-21.38A; N.D. Cent. Code sec. 32-19-03; Okla. Stat. tit. 12, secs. 686, 765, 773; Okla. Stat. tit. 46, sec. 43; Or. Rev. Stat. sec. 86.797(2); Wash. Rev. Code secs. 61.24.100.

[109] The considerations discussed in this section as to why PACE transactions should not be subject to TILA also generally apply with respect to other voluntary transactions that involve an assessment on the property and are repaid through the property tax system, even when they are not commonly known as PACE transactions.

coverage of voluntary transactions, such as PACE. The Board of Governors of the Federal Reserve System (Board) issued the comment in 1981 when it officially "adopted, in substance" existing staff opinion letters regarding Regulation Z.[110] In preamble and in several such letters preceding issuance of the 1981 official staff interpretation, the Board was clear that in addressing only whether certain involuntary tax and assessment obligations were credit under TILA and Regulation Z. In one letter, the Board stated that the definition of "credit" "necessarily assumes the right to avoid incurring debt. That is, the debt must arise from a contractual relationship, voluntarily entered into, between the debtor and creditor."[111] Because "such a relationship [did] not exist in the delinquent tax arrangement case," the Board found that TILA and Regulation Z "would not govern the transaction."[112]

Other staff opinion letters contained similar analyses,[113] and the Board reiterated this reasoning in final rule preamble shortly before issuing the 1981 official staff interpretation, again focusing on the involuntary nature of the obligations as the reason they were not credit.[114] The Board explained:

> Certain transactions do not involve the voluntary incurring of debt; others do not involve the right to defer a debt. Tax liens, tax assessments and court judgments (including reaffirmations of a debt discharged in bankruptcy, if approved by a court) fall into this category and are therefore not covered by the regulation.[115]

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[110] *See* 46 FR 50288, 50288, 50292 (Oct. 9, 1981).

[111] Fed. Rsrv. Bd., *Public Information Letter No. 166* (1969).

[112] *Id.*

[113] *See* Fed. Rsrv. Bd., *Public Information Letter No. 153* (1969) (finding that sewer assessment installment payments did not arise "from a contractual relationship voluntarily entered into, between debtor and creditor" and thus, that TILA and Regulation Z would not apply); Fed. Rsrv. Bd., *Public Information Letter No. 40* (1969) ("[T]he term 'credit', for the purposes of Truth-in-Lending, assumes a contractual relationship, voluntarily entered, between creditor and debtor. Since such a relationship [did] not exist in the case of tax assessments by the Sewer District (and, similarly in the case of ad valorem taxes imposed by a city), . . . such assessments (and city taxes) would not fall within the coverage of [TILA] or Regulation Z.").

[114] 46 FR 20848, 20851 (Apr. 7, 1981).

[115] *Id.*

Moreover, in this preamble and in the 1981 official staff interpretation, the Board specifically juxtaposed the excluded obligations with voluntary ones, stating that, while the obligations it was excluding are not credit, "third-party financing of such obligations (for example, obtaining a bank loan to pay off a tax lien) would constitute credit for Truth in Lending purposes."[116] There is no indication that, in issuing the comment excluding tax liens and tax assessments, the Board had considered any tax lien or tax assessment that had originally arisen from a voluntary contractual agreement.[117]

Recognizing PACE financing as TILA credit is consistent not only with TILA's definition of "credit," but with the goals of EGRRCPA section 307. By directing the CFPB to prescribe certain regulations for PACE financing under TILA, in EGRRCPA section 307, Congress evinced its intent for PACE transactions to be covered as TILA credit, in line with the text of the statute. To the extent there has been uncertainty as to whether PACE financing is credit under TILA, EGRRCPA section 307's explicit choice to address PACE financing using TILA resolves the question.

More generally, Congress enacted TILA in part to enable consumers "to compare more readily the various credit terms available" to them, and to "avoid the uninformed use of credit."[118] Many commenters noted that PACE financing can be used in place of other forms of consumer credit (including home equity lines of credit, personal loans, credit cards, and mortgage loans) but there was no consensus on which product was best for the consumer.

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[116] *Id.*; *see also* 46 FR 50288, 50292 (Oct. 9, 1981) (adopting the relevant comment with the same language). In 2011, the authority to interpret TILA and implement Regulation Z transferred to the CFPB, which republished the 1981 Board interpretation as an official CFPB interpretation in comment 2(a)(14)-1.ii with no substantive changes.

[117] With regard to the comment noting that the proposal did not distinguish between voluntary and involuntary court judgments, which are also discussed in comment 2(a)(14)-1.ii, those transactions are distinct from PACE transactions and are outside the scope of this rulemaking.

[118] TILA section 102(a), 15 U.S.C. 1601(a).

Ensuring that consumers can compare these alternatives promotes competition and falls squarely within the congressional intent and purpose of TILA. Commenters concerned about coverage of PACE transactions under TILA provided no compelling reason why consumers should not receive the same disclosures and protections when entering into a PACE transaction as when entering into any other financing transaction that could result in the loss of their home. Additionally, clarifying that voluntary tax liens and tax assessments may still qualify as TILA credit is necessary to prevent circumvention or evasion of TILA's purposes, including as to PACE transactions.

Regarding comments opposing TILA coverage because PACE transactions attach to the property, the CFPB notes that PACE transactions are offered or extended to consumers. Unlike involuntary tax assessments and liens,[119] which are imposed upon real property as a function of ownership and without the owner's specific consent, PACE transactions cannot be completed without a natural person (the homeowner) signing a voluntary financing agreement secured by their home; these transactions, like other mortgage transactions, are always offered or extended to consumers and are secured by residential real property that they personally own.[120]

Moreover, consumers who agree to PACE transactions are functionally responsible for ensuring their repayment. PACE transactions are either repaid, with interest, alongside regular

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[119] In response to the suggestion to carve out voluntary contractual assessments from the credit exclusion, the CFPB concludes that adding the word "involuntary" into comment 2(a)(14)-1.ii appropriately distinguishes between transactions that the consumer chooses to enter into and transactions that are not voluntary for the consumer.

[120] *See* 12 CFR 1026.1(c)(1)(i) (stating one of the four conditions of Regulation Z coverage is when "[t]he credit is offered or extended to consumer"); *see also* 12 CFR 1026.2(a)(12) (defining "consumer credit" as that which is "offered or extended to a consumer primarily for personal, family, or household purposes"); *see also* Fla. Stat. sec. 163.081(2) ("The owner of record of the residential property within the jurisdiction of an authorized program may apply to the authorized program administrator to finance a qualifying improvement. The program administrator may only enter into a financing agreement with the property owner."); Cal. Sts. & Hwys. Code sec. 5898.20 (authorizing the creation of PACE programs whereby "public agency officials and property owners may enter into voluntary contractual assessments for public improvements and to make financing arrangements").

property tax payments, or, if those payments are not made, at a tax sale or foreclosure. Further, as several mortgage industry stakeholders noted, before a PACE borrower can refinance a home or sell it, they typically must pay off the remaining balance on the PACE transaction or reduce the sales price to account for the existing lien.[121] In this way, transferring a home with an outstanding PACE transaction is no different than transferring a property subject to any other outstanding lien or mortgage.

Because PACE transactions are credit secured by residential real property, removing the exclusion in comment 2(a)(14)-1.ii as to voluntary tax assessments and tax liens ensures that PACE loans are subject to TILA's mortgage requirements. For example, various disclosure and other requirements will apply to the entity that is the "creditor" as defined in § 1026.2(a)(17), which the CFPB understands is typically the government sponsor in a PACE transaction.[122] Other requirements will apply to any entity that operates as a "loan originator" for a PACE transaction, which could include a PACE company or home improvement contractor depending on the roles those entities play in a particular transaction.[123] Thus, the clarification is necessary

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[121] Most home buyers are unwilling to take on the remaining payment obligation for a PACE lien, or their mortgage lender prohibits them from doing so. Guidelines from both Fannie Mae and Freddie Mac generally prohibit purchase of mortgages on properties with outstanding first-lien PACE obligations. *See* Fannie Mae, *Property Assessed Clean Energy Loans* (Dec. 16, 2020), https://selling-guide.fanniemae.com/sel/b5-3.4-01/property-assessed-clean-energy-loans and Freddie Mac, *Refinance of Mortgages secured by properties subject to an energy retrofit loan* (Sept. 4, 2024), https://guide.freddiemac.com/app/guide/section/4301.8. Similarly, the FHA updated its handbook requirements in 2017 to prohibit insurance of mortgage on properties with outstanding first-lien PACE obligations, *see* U.S. Dept. of Hous. & Urb. Dev., *Property Assessed Clean Energy (PACE)* (Dec. 7, 2017), https://www.hud.gov/sites/dfiles/OCHCO/documents/17-18ml.pdf.

[122] Implementing TILA section 103(g), § 1026.2(a)(17) defines "creditor" generally as a person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments, and to whom the obligation is initially payable. The CFPB's understanding, consistent with comments in response to the proposed rule and other research, is that these characteristics apply to government sponsors of PACE transactions in the PACE programs that have been active.

[123] Section 1026.36(a)(1) generally defines a "loan originator" as a person who, in expectation of direct or indirect compensation or other monetary gain or for direct or indirect compensation or other monetary gain, performs any of the following activities: takes an application, offers, arranges, assists a consumer in obtaining or applying to obtain, negotiates, or otherwise obtains or makes an extension of consumer credit for another person; or through advertising

to effectuate the purposes of the statute, such as ensuring the meaningful disclosure of credit terms to enable the consumer to comparison shop.[124] Ensuring that voluntary consumer transactions such as PACE are subject to the same protections as other credit products with similar characteristics strengthens competition among financial institutions and other firms engaged in the extension of consumer credit.[125]

Regarding comments raising concerns about the costs or operational challenges that the higher-priced mortgage loan appraisal rule could introduce, the CFPB notes that TILA section 129H(b)(4) provides the CFPB and certain other agencies with joint rulemaking and exemption authority with respect to the higher-priced mortgage loan appraisal rule.[126] As such, any future rulemaking relating to an higher-priced mortgage loan appraisal rule exemption would need to be considered and issued jointly by the CFPB, Board, FDIC, OCC, NCUA, and FHFA; the agencies would need to determine that "the exemption is in the public interest and promotes the safety and soundness of creditors."

Regarding concerns that TILA coverage would delay PACE originations, other products that meet the statutory definition of credit, including home equity lines of credit, personal loans, credit cards, or second mortgages, may also be used for home improvement projects and emergency repairs. As discussed below, work on a home improvement project frequently does

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or other means of communication represents to the public that such person can or will perform any of these activities. See the section-by-section analysis of § 1026.41 for discussion of servicing provisions in Regulation Z.

[124] *See* 15 U.S.C. 1601(a).

[125] *Id.*

[126] 15 U.S.C. 1639h(b)(4). Specifically, the agencies with joint rulemaking and exemption authority for the higher-priced mortgage loan rule are the CFPB, the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), the National Credit Union Association (NCUA), and the Federal Housing Finance Agency (FHFA). *See* TILA section 129H(b)(4)(A), 15 U.S.C. 1639h(b)(4)(A).

not and cannot start immediately,[127] and to the extent there is urgency to originate a PACE transaction, there are regulatory mechanisms to permit consumers to modify or waive the mandatory waiting periods and receive the PACE loan early, including the bona fide personal financial emergency exception to the TRID waiting periods.[128] Moreover, many commenters pointed to the point-of-sale business practice common to PACE financing as contributing to increased consumer risk. TILA coverage of PACE transactions will thus help consumers compare the various available credit terms and ensure competition among the various financial institutions and other firms engaged in the extension of consumer credit.[129]

The CFPB declines to adopt other exemptions recommended by commenters, including with regard to PACE programs administered by governments without the assistance of private PACE companies, government units as “creditors” under TILA with respect to PACE transactions, or PACE transactions secured by subordinate liens. Although some of these factors could lower risks for consumers, they do not affect whether a PACE transaction is credit under TILA. PACE consumers in these circumstances will benefit from TILA protections in the ways Congress intended when codifying TILA’s protections.

Recent efforts by States and PACE industry stakeholders to enhance consumer protections do not make TILA requirements less meaningful for PACE consumers. Further, as the PACE industry continues to grow, some States may not impose consumer protection requirements similar to those under TILA, and new private participants may enter the industry that do not share the same commitment to consumer protections as current industry stakeholders have shown in recent years. For example, as some commenters asserted, while PACE borrowers

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[127] *See* part VI.D.

[128] *See* 12 CFR 1026.19(e)(1)(v) and (f)(1)(iv).

[129] *See* 15 U.S.C. 1601(a).

may have more time to come current on late payments than on a traditional home mortgage, these protections are highly variable from State to State, and the ultimate result may be the same—the loss of one's home due to default. The PACE Report demonstrates—and a number of industry stakeholders acknowledged in comments—that, in previous years, PACE financing created significant risk for consumers. Nonetheless, TILA applies regardless of the current level of risk in any specific credit market.

In response to comments asserting the rule unconstitutionally restricts States' tax powers, the CFPB notes that PACE transactions are voluntary financing agreements between homeowners and creditors that do not implicate or restrict States' sovereign taxation authority. Moreover, Federal limits on State taxation are authorized under the Commerce Clause, and treating PACE transactions as TILA credit does not violate commandeering or related federalism principles. Congress expressly directed the application of ability-to-repay rules and civil liability provisions to PACE transactions in EGRRCPA section 307. Rather than directing States to enact, administer, or enforce a Federal program, the rule implements Congress's mandate in EGRRCPA section 307 to ensure that States choosing to extend PACE credit to consumers comply with applicable Federal requirements.

The CFPB finalizes the amendment to comment 2(a)(14)-1.ii pursuant to its authority under TILA section 105(a) and consistent with EGRRCPA section 307. The amendment is necessary and proper to carry out TILA's purposes and prevent circumvention or evasion thereof, including the purposes of assuring the meaningful disclosure of credit terms and avoiding the uninformed use of credit. Additionally, EGRRCPA section 307 directs the CFPB to prescribe certain regulations for PACE financing under TILA, which governs credit transactions. The amendment to comment 2(a)(14)-1.ii is necessary to remove any ambiguity that the original

comment created as to PACE transactions and to carry out congressional intent, both as to TILA and EGRRCPA.

1026.32 Requirements for High-Cost Mortgages and 1026.34 Prohibited Acts or Practices in Connection with High-Cost Mortgages

The Home Ownership and Equity Protection Act (HOEPA) amended TILA in 1994 to address abusive practices in refinancing and home-equity mortgage loans with high interest rates or high fees.[130] The provisions of HOEPA are implemented in Regulation Z in §§ 1026.32 and 1026.34.[131]

The CFPB did not propose any changes to these provisions and is not amending them in this final rule. Sections 1026.32 and 1026.34 will apply to PACE transactions that are high-cost mortgages under § 1026.32(a)(1) in the same way as other high-cost mortgages.[132] The CFPB requested comment on whether any clarification was required with respect to how HOEPA's provisions, as implemented in Regulation Z, apply to PACE transactions that may qualify as high-cost mortgages.

Several commenters supported requiring HOEPA compliance for PACE loans. A credit union trade association asserted that HOEPA should apply, to ensure that consumers with PACE loans receive the same protections as those with other mortgage loans. In response to the CFPB's specific request for comment on the treatment of late fees, consumer group commenters opposed

[130] Pub. L. 103-325, 108 Stat. 2160.

[131] 12 CFR part 1026.

[132] A mortgage is generally a high-cost mortgage if (1) the spread between the APR and the average prime offer rate (APOR) is greater than 6.5 percentage points for a first-lien transaction or 8.5 percentage points for a subordinate-lien transaction, (2) points and fees exceed 5 percent of the total loan amount (for loans under $20,000) or the lesser of 8 percent or $1,000 (for loans over $20,000), or (3) the creditor can charge prepayment penalties more than 36 months after consummation or in an amount exceeding 2 percent of the amount prepaid. 12 CFR 1026.32(a)(1). As discussed in the PACE Report, the CFPB estimates that a small percentage of PACE transactions would exceed the APR-APOR spread trigger, while over one-third of existing PACE transactions have points and fees that would exceed the HOEPA points and fees coverage trigger. PACE Report, *supra* note 12, at 15.

distinguishing late fees that apply under property tax law from those that are imposed by the PACE contract. They recommended specifying that there is no distinction. They asserted that such a distinction would contravene the intent of HOEPA—to protect vulnerable consumers who receive relatively expensive mortgage loans—because property tax late penalties can be significant and must be paid on top of interest required by the PACE financing agreement.

A State agency similarly stated that HOEPA's late fee limitations should not be relaxed for PACE loans. This commenter pointed to the HOEPA provision concerning late payment charges at § 1026.34(a)(8)(iv), which the commenter characterized as punitive for consumers who are more likely to default. The commenter also stated that PACE lenders should not be permitted to increase interest rates after default; it asserted that doing so could force borrowers who are having difficulty into foreclosure or inescapable debt.

A PACE company, an industry trade association, and a PACE government sponsor asserted that requiring HOEPA compliance would inhibit PACE originations. A PACE company stated that HOEPA application would make PACE lending cost-prohibitive or economically nonviable. Several asserted that HOEPA would increase compliance costs. A PACE industry trade association and a government sponsor asserted that PACE programs are already costly to administer due to certain consumer protections or consumer benefits, and that the CFPB failed to consider these factors in proposing to subject PACE transactions to HOEPA's requirements.

A PACE company and a government sponsor asserted that requiring HOEPA compliance would effectively cap the price of PACE loans. A PACE company and an industry trade association opposed HOEPA application because PACE transactions are smaller and generate less revenue than many other high-cost mortgage loans. The trade association stated that lower revenue and higher origination costs make it more difficult to originate PACE loans and come in

under the high-cost thresholds. One PACE company asserted that, if the CFPB does not exempt PACE loans, it should raise the applicable HOEPA thresholds for PACE transactions. Some PACE industry commenters addressed high-cost requirements in combination with higher-priced mortgage loan requirements, generally opposing both sets of requirements.

One PACE company commented that two high-cost requirements in Regulation Z would make compliance difficult or impossible: the prohibition on loan proceeds being paid to home improvement contractors under § 1026.34(a)(1), and housing counseling certification requirements under § 1026.34(a)(5).

Having considered the comments, the CFPB has determined not to adjust the HOEPA requirements for PACE loans. As described in the discussion of § 1026.2(a)(14), the CFPB is amending commentary to Regulation Z to clarify that voluntary transactions such as PACE are credit under TILA notwithstanding their integration into the property tax system. Consumers receiving high-cost PACE loans should receive HOEPA protections just as consumers receiving other high-cost mortgage loans do.

For example, the additional disclosures and credit counseling requirements will ensure consumers are provided information to inform their credit decisions,[133] and restrictions on certain riskier loan features will enhance the safety of the loans.[134] Additionally, the limitations on fees that can be charged for payoff statements may make it easier for consumers who receive high-cost PACE loans to access loan information at minimal cost, which could be useful in light of the final rule's exemption of PACE loans from the periodic statement requirement under § 1026.41.[135]

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[133] *See* 12 CFR 1026.32(c) (disclosure requirements); 34(a)(5) (pre-loan counseling requirements).

[134] *See* 12 CFR 1026.32(d).

[135] *See* 12 CFR 1026.34(a)(9).

More generally, weakening the HOEPA requirements for PACE loans would be inconsistent with the governing statute. Under TILA section 129(p), the CFPB may exempt specific mortgage products or categories of mortgages from certain HOEPA prohibitions if the CFPB finds that the exemption (1) is in the interest of the borrowing public, and (2) will apply only to products that maintain and strengthen homeownership and equity protection.[136]

Limiting HOEPA application would neither be in the interest of the borrowing public nor maintain and strengthen homeownership and equity protection. As described in part II.A, the super-priority status of liens securing PACE loans means that the parties involved in originating PACE loans have limited incentive to ensure consumer understanding and affordability. This leaves consumers at risk.

The findings in the PACE Report bear out these concerns. The PACE Report finds that more than 70 percent of PACE borrowers had pre-existing non-PACE mortgages, and PACE industry commenters suggested that the true figure is closer to 90 percent. The PACE Report finds that PACE lending increased mortgage delinquency rates by 2.5 percentage points over a two-year period—getting a PACE loan increased the risk of mortgage delinquency by about 35 percent.[137] The PACE Report further finds that the probability of delinquency on a pre-existing mortgage loan was substantially higher for PACE consumers with low credit scores—consumers in the sub-prime credit score group experienced an increase in mortgage delinquency almost two and a half times the average effect.[138]

The CFPB also notes that the exemption authority in TILA section 129(p) does not apply to certain HOEPA requirements.

[136] 15 U.S.C. 1639(p).

[137] *See* PACE Report, *supra* note 12, at 4, 26-27.

[138] *See id.* at 36-37.

The CFPB acknowledges, as industry commenters have noted, that lending practices and State law have evolved since the origination of the PACE loans reflected in the PACE Report, that consumers may choose to select PACE financing despite the higher costs relative to other forms of financing, and that PACE financing may help some consumers access credit or may advance public policy purposes. These considerations do not provide a basis for limiting HOEPA protections.

Although some commenters asserted that the application of HOEPA protections would inhibit PACE lending or make it infeasible, the CFPB estimated that nearly two-thirds of PACE loans studied in the PACE Report would not have exceeded HOEPA thresholds (including nearly 90 percent of PACE loans in Florida).[139]

One PACE company asserted that HOEPA application would prevent payment of home improvement contractors with funds from the PACE loan. However, Regulation Z specifically allows for payment of home improvement contracts with loan proceeds in certain circumstances.[140] Although one commenter expressed concern that HUD has not approved housing counseling for PACE loans, in general HUD does not approve housing counseling for particular types of mortgage loans. Current housing counseling requirements include counseling on topics such as financial literacy and budget planning, which are applicable irrespective of the loan product.[141]

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[139] *See id.* at 15-16.

[140] Section 1026.34(a)(1) prohibits payment to a contractor under a home improvement contract from the proceeds of a high-cost mortgage, *other than* (1) by an instrument payable to the consumer or jointly to the consumer and the contractor, or (2) at the election of the consumer, through a third-party escrow agent in accordance with terms established in a written agreement signed by the consumer, the creditor, and the contractor prior to the disbursement.

[141] Dep't of Hous. & Urb. Dev., *Housing Counseling Program Handbook (7610.1)* (Apr. 2024), https://www.hud.gov/program_offices/administration/hudclips/handbooks/hsgh/7610.1.

1026.35 Escrow Accounts

1026.35(b) Exemptions

1026.35(b)(2)(i)

1026.35(b)(2)(i)(E)

TILA section 129D generally requires creditors to establish escrow accounts for certain higher-priced mortgage loans.[142] Regulation Z implements this requirement in § 1026.35(a) and (b). The CFPB proposed to exempt PACE transactions from this higher-priced mortgage loan escrow requirement. For the reasons discussed in this section, the CFPB is finalizing the proposed exemption.

Regulation Z defines a higher-priced mortgage loan as a closed-end consumer credit transaction secured by the consumer's principal dwelling with an APR exceeding the average prime offer rate (APOR)[143] for a comparable transaction by a certain number of percentage points.[144] With certain exemptions, Regulation Z § 1026.35(b) prohibits creditors from extending higher-priced mortgage loans secured by first liens on consumers' principal dwellings unless an escrow account is established before consummation for payment of property taxes, among other charges (higher-priced mortgage loan escrow requirement).

The CFPB received comments on the proposed exemption from the higher-priced mortgage loan escrow requirement from consumer groups and public and private PACE industry

[142] 15 U.S.C. 1639d.

[143] Section 1026.35(a)(2) defines APOR as an APR that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics.

[144] 12 CFR 1026.35(a)(1) defines higher-priced mortgage loan to mean "a closed-end consumer credit transaction secured by the consumer's principal dwelling with an APR that exceeds the APOR for a comparable transaction as of the date the interest rate is set" by at least 1.5, 2.5, or 3.5 percentage points depending on the lien priority and the size of the loan relative to the maximum principal obligation eligible for purchase by Freddie Mac.

stakeholders, none of which advocated for retaining the requirement for PACE transactions. A PACE company suggested increasing applicable thresholds to avoid higher-priced mortgage loan requirements generally, since PACE originators would have to do the same amount of work as non-PACE mortgage originators but receive only a fraction of the revenue. An industry trade association made a similar point, stating that the revenue from fees and interest from PACE loans is significantly smaller than that of non-PACE mortgage loans and that the higher-priced mortgage loan requirements would be unduly costly for PACE loans.

The CFPB concludes that requiring escrow accounts for PACE transactions that would be subject to the higher-priced mortgage loan escrow requirement would provide little or no benefit to consumers and would introduce unnecessary challenges and costs associated with implementation and compliance.

Many PACE borrowers already have escrow accounts through their pre-existing mortgage loan.[145] For these consumers, PACE payments are already incorporated into the mortgage escrow accounts as part of the property tax payment. The CFPB has determined that TILA's higher-priced mortgage loan escrow requirements are not warranted for PACE borrowers who do not have an escrow account with a pre-existing mortgage loan.

If PACE transactions had escrow accounts, those escrow accounts would be governed by rules in Regulation X.[146] The rules include a variety of requirements governing, for example, escrow account analyses, escrow account statements, and the treatment of surpluses, shortages, and deficiencies in escrow accounts.[147] Although these protections serve important consumer

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[145] The PACE Report estimated that nearly three-fourths of PACE borrowers had a mortgage loan at the time the PACE loan was consummated. *See* PACE Report, *supra* note 12, at 12. Several PACE industry commenters stated that the figure is closer to 90 percent.

[146] *See generally* Regulation X, 12 CFR 1024.17.

[147] *Id.*

protection purposes with respect to the administration of escrow accounts for non-PACE mortgages, the consumer benefit for PACE loans is significantly reduced. Therefore, the CFPB has determined that requiring compliance would not be warranted for PACE loans given the lack of consumer benefit.[148]

Further, certain escrow account disclosures required under Regulation X[149] and Regulation Z[150] could be confusing in the context of PACE transactions. The escrow account disclosures were developed to address more traditional escrow accounts; they would not effectively communicate that an escrow account for a PACE transaction would collect the principal and interest payments for the PACE loan as part of the property tax payment. Additionally, the escrow account disclosures, if required for PACE transactions, might create uncertainty about whether the PACE transaction affects the consumer's pre-existing mortgage escrow account, when applicable.

To the extent consumers lack information about their overall payment obligations, and to the extent this could lead to them receiving unaffordable PACE loans, such concerns are better addressed through other TILA provisions, including the TILA-RESPA integrated disclosures and ability-to-repay requirements that are tailored to PACE as discussed further below.[151] While an escrow account can help spread out payments and thereby reduce the risk of payment shock or default, the CFPB at this time concludes that the cost and complexity of doing so for the share of PACE borrowers without an existing escrow account outweigh the potential consumer benefits.

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[148] Commenters to the 2008 higher-priced mortgage loan escrows rule estimated that the cost could range between one million and $16 million for a large creditor. *See* 73 FR 44521, 44558 (July 30, 2008).

[149] *See* 12 CFR 1024.17(g)-(j).

[150] *See* 12 CFR 1026.37, .38.

[151] *See* section-by-section analyses of §§ 1026.37, 1026.38, and 106.43, *infra*.

The CFPB is adopting this exemption pursuant to TILA sections 105(a) and 105(f). Exempting PACE transactions from the requirements of TILA section 125D is necessary or proper to effectuate the purposes of TILA. Having considered the factors enumerated in TILA section 105(f), the CFPB has determined that the requirements of TILA section 125D would not provide a meaningful benefit to consumers in the form of useful information or protection. In particular, the requirements of TILA section 125D would significantly complicate, hinder, and make more expensive the credit process for PACE transactions, and the goal of consumer protection would not be undermined by this exemption.

TILA-RESPA Integrated Disclosure Requirements Implemented Under Sections 1026.37 and 1026.38

The CFPA directed the CFPB to integrate the mortgage loan disclosures required under TILA and RESPA sections 4 and 5, and to publish model disclosure forms to facilitate compliance.[152] The CFPB issued regulatory requirements and model forms to satisfy these statutory obligations in 2013 (2013 TILA-RESPA Rule).[153] The requirements and forms generally apply to closed-end consumer credit transactions secured by real property or a cooperative unit, other than a reverse mortgage subject to § 1026.33.[154]

The integrated disclosures consist of two forms: a Loan Estimate and a Closing Disclosure. The Loan Estimate provides the consumer with good faith estimates of credit costs

[152] CFPA sections 1098 & 1100A, codified at 12 U.S.C. 2603(a) & 15 U.S.C. 1604(b), respectively.

[153] *See* 78 FR 80225 (Dec. 31, 2013); 80 FR 43911 (July 24, 2015). The TILA-RESPA integrated disclosure requirements have been amended several times. *See* https://www.consumerfinance.gov/rules-policy/final-rules/2013-integrated-mortgage-disclosure-rule-under-real-estate-settlement-procedures-act-regulation-x-and-truth-lending-act-regulation-z/.

[154] *See* § 1026.19(e)(1) and (f)(1).

and transaction terms. The Closing Disclosure is a final disclosure reflecting the actual terms of the transaction.

As the CFPB explained in the 2013 TILA-RESPA Rule, the TILA-RESPA integrated disclosure forms are designed to make it easier for consumers to locate key cost information to help consumers decide whether they can afford the loan.[155] The forms also provide information to compare different loan offers.[156] The benefits of these forms are important for PACE borrowers just as they are for other mortgage borrowers.

The CFPB has determined that certain elements of the current TILA-RESPA integrated disclosures should be adapted so that the forms more effectively disclose information about PACE transactions. After proposing amendments and considering comments, the CFPB is finalizing the modifications to the Loan Estimate and Closing Disclosure described below. Where this final rule does not provide a PACE-specific version of a particular provision, the existing requirements in §§ 1026.37 and 1026.38 will apply. As with other mortgage transactions, elements of the forms that are not applicable for PACE transactions may generally be left blank.[157]

Requiring the Disclosures for PACE Transactions

Many commenters supported implementation of the CFPB's proposed Loan Estimate and Closing Disclosure for PACE transactions, including consumer groups, mortgage industry trade associations, a credit union league, and a banking trade association. Several consumer groups and credit union leagues stated that TILA-RESPA integrated disclosure forms would provide consumers with detailed information about PACE transactions, which would improve

[155] 78 FR 79730, 80225 (Dec. 31, 2013).

[156] *Id.*

[157] *See* comments 37-1 & 38-1.

transparency and consumers' ability to comparison shop. Several mortgage industry trade associations and consumer groups stated that TILA-RESPA integrated disclosure forms would improve the process through which PACE is marketed to consumers.

Commenters raised a number of issues with the information that consumers currently receive during the marketing and origination process. For example, some stated that PACE transactions are often marketed through door-to-door solicitations and are sometimes accompanied by insufficient disclosures. Several mortgage industry trade associations and consumer groups stated that some PACE solicitations include pressure to sign up and misrepresentations of various features of the PACE loan, including projected energy savings.

Some commenters suggested that these problems can contribute to consumers' inability to afford a PACE loan. One consumer group indicated that inadequate disclosures and the lack of standardized TILA disclosure forms often lead to unexpected and unaffordable tax payment spikes, which may cause delinquency and late fees. Many commenters stated that requiring a Loan Estimate and Closing Disclosure for PACE transactions would alleviate these problems and improve consumers' experience during PACE originations.

One government sponsor of PACE programs and one PACE company expressed concern regarding the cost of implementing the TILA-RESPA integrated disclosures, particularly because the Loan Estimate and Closing Disclosure have what the commenters stated are duplicative fields, and because the forms contain fields that are irrelevant for PACE transactions. The government sponsor and PACE company also asserted that requiring the TILA-RESPA integrated disclosures would be ill-advised because the CFPB did not test the proposed modifications. PACE companies and one PACE industry trade association asserted that the current PACE disclosure regime, which includes among other things disclosures and calls with

the consumer to confirm their understanding of the transaction, is sufficient. Commenters also stated that TILA-RESPA integrated disclosures are better suited to non-PACE mortgage transactions, which are larger than PACE transactions. One PACE company asserted that implementing TILA-RESPA integrated disclosure forms would be burdensome for financing transactions involving home improvement projects, which often involve change orders, because re-disclosure would be required for every change.

In this final rule, the CFPB is requiring TILA-RESPA integrated disclosures for PACE loans, with modifications from the proposal as described below. The CFPB is also finalizing model forms in appendix H–24(H) (Loan Estimate) and appendix H–25(K) (Closing Disclosure) and Spanish-language versions in appendix H–28(K) (Loan Estimate) and appendix H–28(L) (Closing Disclosure).

The CFPB reiterates that the Loan Estimate and Closing Disclosure provide uniform mortgage disclosures that help consumers readily compare financing options, across financing products. Disclosures provided under State law or voluntarily by PACE companies, while potentially useful for consumers, would not be a substitute. Further, with respect to concerns that certain fields on the TILA-RESPA integrated disclosures would not pertain to PACE transactions, as with other mortgage transactions, fields that are irrelevant to particular PACE transactions may generally be left blank. With respect to the comment that the forms were not tested by the CFPB, the CFPB notes that, while the PACE-specific modifications were not tested, the current TILA-RESPA integrated disclosure forms, on which the PACE forms were based, were tested by the CFPB.

With respect to the comment that TILA-RESPA integrated disclosure forms are particularly burdensome for PACE home improvement projects because change orders would

require re-disclosure, the CFPB notes that many non-PACE home improvement loans, including those with change orders, use the TILA-RESPA integrated disclosure forms. Also, a revised Loan Estimate is not required for changes in the amounts of estimated charges for third-party services not required by the creditor; rather, that original estimated charge is in good faith under the rule so long as it was based on the best information reasonably available to the creditor at the time the disclosure was provided. Further, the TILA-RESPA integrated disclosure requirements apply to disclosures made before or at consummation. The rule only requires re-disclosure post-consummation in limited instances, primarily if an event in connection with the settlement occurs during the 30-calendar-day period after consummation and that event causes the Closing Disclosure to become inaccurate and results in a change to an amount paid by the consumer from what was previously disclosed.[158]

The CFPB is implementing the disclosure requirements described in the section-by-section analyses of §§ 1026.37(p) and 1026.38(u) pursuant to its authority under TILA section 105(a) and 105(f), and RESPA section 19(a). For the reasons discussed in the respective section-by-section analyses, the CFPB has determined that the implementation would be necessary and proper to carry out the purposes of TILA and RESPA. The provisions that implement the disclosure requirements under TILA section 105(a), including adjustments or exceptions discussed in the applicable section-by-section analyses, are intended to assure a meaningful disclosure of credit terms, avoid the uninformed use of credit, or facilitate compliance with TILA. In general, the changes are intended to make the Loan Estimate and Closing Disclosure more effective and understandable for PACE borrowers, and to facilitate compliance given the common features of PACE transactions. The CFPB has determined that the provisions that

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[158] *See* 12 CFR 1026.19(f)(2)(iii).

implement the disclosure requirements under RESPA section 19(a), including interpretations discussed in the applicable section-by-section analysis, further the purposes of RESPA and are consistent with the CFPB's authority under RESPA section 19(a).

For the reasons discussed in the respective section-by-section analyses, the CFPB is finalizing various exemptions in §§ 1026.37(p) and 1026.38(u) pursuant to its authority under TILA section 105(a) and 105(f). With respect to TILA section 105(a), the CFPB has determined that the exemptions are necessary and proper to carry out TILA's purposes, including by assuring the meaningful disclosure of credit terms and avoiding the uninformed use of credit. Additionally, with respect to TILA section 105(f), the CFPB's determination, after considering the factors in TILA section 105(f)(2), is that the disclosures exempted under this final rule would not provide meaningful benefit to consumers in the form of useful information or protection. In the CFPB's analysis, the exempted disclosure requirements would significantly complicate, hinder, or make more expensive credit for PACE transactions, and the exemptions do not undermine the goal of consumer protection. Where doing so would help assure the meaningful disclosure of credit terms and avoid the uninformed use of credit, the final rule replaces the exempted disclosures with disclosures that serve similar purposes to the existing disclosures, but that better fit the context of PACE transactions.

Specific Recommendations for Changes to Existing Forms

Some commenters asserted that certain aspects of the existing Loan Estimates or Closing Disclosures could be confusing to consumers under the proposal. For example, a PACE company suggested that disclosure of loan purpose, required under § 1026.37(a)(9) for the Loan Estimate and § 1026.38(a)(5)(ii) for the Closing Disclosure, could be confusing to consumers. Consumer groups and a PACE company made similar assertions about the loan type, required under

§ 1026.37(a)(11) for the Loan Estimate and § 1026.38(a)(5)(iv) for the Closing Disclosure. A PACE company stated that the information required under § 1026.37(g)(3) pertaining to escrow costs should be removed, consistent with other aspects of the proposed form as explained below, in part to avoid consumer confusion. Two consumer groups made a similar point about the similar disclosure on the Closing Disclosure as discussed under § 1026.38(u) below.

The CFPB did not propose to amend these requirements and is not making changes in the final rule. The existing provisions are not likely to cause confusion. Additionally, with respect to the loan type and loan purpose disclosures, referring to PACE loans in a disclosure using mortgage terminology, such as disclosing the loan purpose as a "home equity loan," will not likely cause consumer confusion and instead will help reinforce that PACE loans are mortgages. The CFPB also expects that consumers are less likely to be confused by the escrow-related fields under §§ 1026.37(g)(3) and 1026.38(g)(3) than fields referencing escrow payments elsewhere on the form because of their content and location on the form. To the extent that §§ 1026.37(g)(3) or 1026.38(g)(3) do not apply to a particular transaction, creditors may leave the fields blank.

The CFPB likewise is not adopting recommendations to remove references to PACE transactions as "loans" or to limit the length of the TILA-RESPA integrated disclosure forms, as PACE industry stakeholders suggested. The term "loan" accurately describes PACE transactions, so its use helps avoid the uninformed use of credit. And changing the length requirements for PACE forms would make them dissimilar to those used in non-PACE transactions, which would frustrate the purposes of TILA to assure meaningful disclosure of credit terms to enable consumers to compare more readily the various credit terms available and avoid the uninformed use of credit.

Waiting Period

The CFPB is not amending the timing requirements for the Loan Estimate and Closing Disclosure for PACE transactions. The CFPB explained in the 2013 TILA-RESPA Rule that the seven-business-day waiting period between provision of the Loan Estimate and consummation is intended to effectuate the purposes of both TILA and RESPA by enabling the informed use of credit and ensuring effective advance disclosure of settlement charges.[159] The CFPB explained that the three-business-day period following provision of the Closing Disclosure greatly enhances consumer awareness and understanding of the costs associated with the mortgage transaction.[160] As explained in the 2013 TILA-RESPA Rule, it is important for consumers to have a meaningful opportunity to shop for a mortgage loan, compare the different financing options available, and negotiate for favorable terms, and the waiting period should only be waived in the most stringent of circumstances.[161]

Numerous consumer groups and mortgage industry trade associations expressed support for adopting the TILA-RESPA integrated disclosure timing requirements for PACE transactions. These commenters stated that the waiting periods will provide consumers time to review detailed information and make informed financial decisions. These commenters asserted that consumers often feel rushed through the origination process for PACE transactions because they are faced with door-to-door solicitations from contractors who pressure them to sign up quickly and do not provide adequate time to review applicable information. Several consumer groups stated that the mandatory waiting periods are necessary for consumers to consider the impact of the loan on

[159] 78 FR 79730, 79802-03 (Dec. 31, 2013); *see also id*. at 79806-07 (reasoning in context of considering amendments to bona fide personal financial emergencies that, at least with respect to relatively large mortgage loans, the seven-business-day waiting period would provide consumers a meaningful opportunity to shop for a loan, compare available financing options, and negotiate favorable terms, and that the seven-business-day waiting period "is the minimum amount of time" in which consumers could meaningfully do so).

[160] 78 FR 79730, 79847 (Dec. 31, 2013).

[161] *Id.* at 79806-07.

future transactions. For example, these groups indicated that PACE transactions may affect a consumer's ability to refinance or sell their home in the future.

Several home improvement contractors and one PACE trade association opposed imposing TILA-RESPA integrated disclosure timing requirements on PACE transactions. These commenters stated that the mandatory waiting periods would have adverse effects for PACE businesses as well as consumers. Specifically, these commenters asserted that PACE-related home improvements are often for emergency situations, and that the TILA-RESPA timing requirements would prevent PACE companies from starting work quickly, which would cause harm to consumers. Some commenters expressed concern that the mandatory waiting periods would impede PACE companies' ability to attract customers, particularly because they would impede the point-of-sale financing model that PACE customers prefer.

Two PACE providers asserted that the mandatory waiting period should not apply to PACE loans because the mandatory timelines were created for non-PACE mortgages, many of which are larger transactions than PACE loans. One PACE company stated that waiting periods are not required for most financing transactions, including auto loans, which are usually costlier than PACE transactions. One PACE company stated that Regulation Z provides an exception to the timing requirements for loans secured by a timeshare interest, and that the regulation should similarly make exceptions for PACE loans because of similarities between the two types of obligations.

One home improvement contractor and one PACE company commented that, because California law already provides a right to cancel for PACE transactions, the TILA-RESPA integrated disclosure waiting period is unnecessary. One PACE company stated that the waiting

period is unnecessary because the FTC's Cooling-Off Rule gives consumers three days to cancel certain sales, including sales made at consumer's homes.

As with the substantive disclosures, the waiting periods associated with the TILA-RESPA integrated disclosures will be important for PACE borrowers, particularly given concerns that the origination process for some PACE borrowers may not provide enough time to understand the obligation and shop for other financing options.[162] As explained in part II.A, PACE loans are highly secure for investors even when consumers cannot afford to pay. This structure can affect incentives of originators, making it important for PACE consumers to have enough time to consider the uniform disclosures. Point-of-sale originations have long been a source of concern—many States require a cooling-off period before home improvement loans based on point-of-sale originations, and this precise concern was at the root of many of HOEPA's original purposes.[163]

The CFPB notes that Regulation Z allows consumers to modify or waive applicable waiting periods if the consumer has a bona fide personal financial emergency.[164] Some commenters stated that consumers may face emergency situations necessitating swifter originations—to the extent the emergency is a bona fide personal financial emergency, Regulation Z already provides an exception.

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[162] *See* part II.A, *supra*.

[163] *See To Protect Home Ownership and Equity through Enhanced Disclosure of the Risks Associated with Certain Mortgages: Hearings on The Home Ownership and Equity Protection Act of 1993*, Hearing on S. 924 before the S. Comm. on Banking, Fin. & Urb. Affs., 103d Cong. (1993); *The Home Equity Protection Act of 1993*, Hearings on H.R. 3153 before the Subcomm. on Consumer Credit & Ins. of the H. Comm. on Banking, Fin. & Urb. Affairs, 103d Cong. (1994); *Reverse Redlining; Problems in Home Equity Lending*, Hearings before the S. Comm. on Banking, Hous., & Urb. Affs., 103d Cong. (1993) (describing potential targeting of a widowed immigrant consumer by point-of-sale loan originators who "came door to door trying to sell home improvements at an inflated price, on very severe credit terms"); *see, e.g.*, Home Solicitation Sales Act of 1971, Cal. Civ. Code secs. 1689.5-1689.13 (allows the buyer in almost any consumer transaction involving $25 or more, which takes place in the buyer's home or away from the seller's place of business, to cancel the transaction within three business days after signing the contract).

[164] 12 CFR 1026.19(e)(1)(v), (f)(1)(iv).

With respect to the comment that the mandatory waiting periods are not appropriate for PACE loans because PACE loans are smaller than other mortgage loans, the CFPB notes that neither TILA nor Regulation Z impose different waiting periods for mortgage loans under a certain size. Indeed, the waiting periods under the current rule apply to home equity loans of a similar size to PACE transactions, many of which may not have the same structural risks as PACE transactions.

As to the comment that waiting periods are not required for other types of transactions, such as auto loans, the CFPB notes that, unlike mortgage loans subject to the waiting period, auto lending is not secured by the consumer's real property. TILA explicitly requires waiting periods for credit secured by a dwelling.[165] Congress specifically intended for transactions subject to the TILA-RESPA integrated disclosure rule to be subject to certain waiting periods.

Regarding the comment that the CFPB should provide for exceptions to the timing requirements for PACE loans because Regulation Z already does so for timeshare loans, the CFPB notes that PACE loans have structural risks as described above that waiting periods would directly address. Also, timeshare loans are secured only by the consumer's fractional interest in a timeshare unit, so the financial stakes, while significant, are somewhat lower. The CFPB also notes that TILA section 128(b)(2)(G)(i)(*1*) specifically excludes timeshare plans from the statutory TILA-RESPA waiting period requirements but provides no similar exclusion for other types of credit secured by a dwelling.[166]

In response to the comments that the TILA-RESPA waiting period is unnecessary because State law or the FTC's Cooling-Off Rule already provides a right to cancel PACE loans,

[165] 15 U.S.C. 1638(b)(2)(A).

[166] *See* 15 U.S.C. 1638(b)(2)(G)(i)(*1*) (referring to "a plan described in" 11 U.S.C. 101(53D)).

the CFPB notes that the waiting period applies to other home equity loans that involve door-to-door solicitation, and there is no reason to exempt PACE home improvement contractors in particular. Also, a waiting period and a right to cancel provide different consumer protections. The TILA-RESPA waiting period ensures that consumers have time to understand the obligation and shop before signing up, whereas rights to cancel or rescission rights apply after consummation. Additionally, the final rule will provide a nationwide baseline waiting period for PACE transactions under Regulation Z.

Section 1026.37 Content of Disclosures for Certain Mortgage Transactions (Loan Estimate)

1026.37(p) PACE Transactions

Section 1026.37 implements the TILA-RESPA integrated disclosure requirements by setting forth the requirements for the Loan Estimate. Proposed § 1026.37(p) sets forth modifications to the Loan Estimate requirements for "PACE transactions," as defined under proposed § 1026.43(b)(15), to account for the unique nature of PACE. The CFPB is finalizing § 1026.37(p) largely as proposed.

1026.37(p)(1) Itemization

TILA section 128(a)(6), (a)(16), (b)(2)(C), and (b)(4) are currently implemented in part by § 1026.37(c)(1) through (5), which generally requires creditors to disclose a table itemizing each separate periodic payment or range of payments, among other information, under the heading "Projected Payments." As part of the projected payments table, § 1026.37(c)(2) requires the itemization of each separate periodic payment or range of payments disclosed on the periodic payments table. The CFPB is finalizing changes to certain of these requirements under § 1026.37(p)(1)(i) and (ii) as explained below.

1026.37(p)(1)(i) Other Fees and Amounts

Section 1026.37(c)(2)(ii) requires the disclosure of the maximum amount payable for mortgage insurance premiums corresponding to the principal and interest payment disclosed on the projected payments table, labeled "Mortgage Insurance."

Two consumer groups, a PACE company, and a government sponsor of PACE programs suggested that the field for "Mortgage Insurance" that currently appears in the projected payments table does not fit because PACE transactions do not carry mortgage insurance. The consumer groups also suggested adding a field titled "Annual Administrative Fee" to capture a fee that consumers must often pay that would not be considered part of their principal or interest payment.

The CFPB is adding § 1026.37(p)(1)(i) to ensure the projected payments table accurately discloses payment information relevant to the PACE transaction. Section 1026.37(p)(1)(i) removes the mortgage insurance field from the projected payments table for PACE transactions because that field is not applicable to PACE transactions as some commenters asserted—the CFPB is unaware of any PACE transactions that carry mortgage insurance. In place of the mortgage insurance field, § 1026.37(p)(1)(i) requires the disclosure of "Fees and Other Amounts," which includes the maximum amount payable for any fees or other amounts corresponding to the periodic payment for the PACE transaction that are not disclosed as part of the principal and interest disclosure under § 1026.37(c)(2)(i). Section 1026.37(p)(1)(i) requires that the amount disclosed under the "Fees and Other Amounts" field be included in the calculation of the total periodic payment under § 1026.37(c)(2)(iv) in place of the amount disclosed for mortgage insurance under § 1026.37(c)(2)(ii).

1026.37(p)(1)(ii) Escrow

As part of the projected payments table, the creditor is required to state the total periodic payment under § 1026.37(c)(2)(iv), as well as the constituent parts of the total periodic payment under § 1026.37(c)(2)(i) through (iii). Relevant here, § 1026.37(c)(2)(iii) generally requires a field for the disclosure of the amount payable into an escrow account to pay for some or all mortgage-related obligations, as applicable, labeled "Escrow," together with a statement that the amount disclosed can increase over time. The CFPB proposed to exempt PACE transactions from the escrow account payment disclosure requirements under § 1026.37(c)(2)(iii).

As discussed in the analysis of § 1026.35(b)(2)(i)(E), the CFPB is unaware of any PACE transactions that carry their own escrow accounts. Thus, absent an exemption, the escrow account payment field under § 1026.37(c)(2)(iii) would have generally been disclosed as "0" if this field were included on the Loan Estimate associated with any PACE transaction.[167] This entry would likely cause confusion for PACE borrowers who pay their property taxes into pre-existing escrow accounts associated with non-PACE mortgage loans, since PACE transactions are typically part of the property tax payment. It also would likely create doubt for the consumer about whether the PACE transaction will be repaid through the existing escrow account. The exemption in this final rule will mitigate this risk.

The CFPB did not receive any comments and is finalizing proposed § 1026.37(p)(1), renumbered as § 1026.37(p)(1)(ii), to accommodate the addition of § 1026.37(p)(1)(i), as described above.

1026.37(p)(2) Taxes, Insurance, and Assessments

TILA sections 128(a)(16) and 128(b)(4)(A) are currently implemented in part by § 1026.37(c)(4)(ii). Section 1026.37(c)(4) requires creditors to include in the projected payments

[167] *See* existing comment 37(c)(2)(iii)-1.

table[168] information about taxes, insurance, and assessments, with the label “Taxes, Insurance & Assessments.” Section 1026.37(c)(4)(ii) generally requires disclosure of the sum of mortgage-related obligations, including property taxes, insurance premiums, and other charges.[169] Section 1026.37(c)(4)(iii) through (vi) requires various statements about this disclosure. Under § 1026.37(p)(2)(i) and (ii), the CFPB proposed to retain most of these requirements for PACE transactions, with changes to the disclosures currently required under § 1026.37(c)(4)(iv), (v), and (vi) for PACE transactions.

Currently, § 1026.37(c)(4)(iv) requires a statement of whether the sum of mortgage-related obligations disclosed pursuant to § 1026.37(c)(4)(ii) includes payments for property taxes, certain insurance premiums, or other charges.[170] The CFPB proposed § 1026.37(p)(2)(i) to provide specificity as to the PACE payment. The CFPB proposed to require a statement of whether the amount disclosed pursuant to § 1026.37(c)(4)(ii) includes payments for the PACE

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[168] As noted in the section-by-section analysis of § 1026.37(p)(1), § 1026.37(c) generally requires creditors to disclose a table itemizing each separate periodic payment or range of payments, among other information, under the heading “Projected Payments.”

[169] Section 1026.37(c)(4)(ii) requires disclosure of “[t]he sum of the charges identified in § 1026.43(b)(8), other than amounts identified in § 1026.4(b)(5), expressed as a monthly amount, even if no escrow account for the payment of some or any of such charges will be established.” Section 1026.43(b)(8) defines mortgage-related obligations as “property taxes; premiums and similar charges identified in § 1026.4(b)(5), (7), (8), and (10) that are required by the creditor; fees and special assessments imposed by a condominium, cooperative, or homeowners association; ground rent; and leasehold payments.” See also the section-by-section analysis of § 1026.37(p)(7)(i) for discussion of the applicable unit-period for PACE transactions.

[170] Section 1026.37(c)(4)(iv) refers to “payments for property taxes, amounts identified in § 1026.4(b)(8), and other amounts described in” § 1026.37(c)(4)(ii). Section 1026.4(b)(8), in turn, refers to “[p]remiums or other charges for insurance against loss of or damage to property, or against liability arising out of ownership or use of property, written in connection with a credit transaction.” Additionally, the CFPB notes that a creditor issuing a simultaneous loan that is a PACE transaction would generally be required to include the simultaneous PACE loan in calculating the sum of taxes, assessments, and insurance described in § 1026.37(c)(4)(ii), since the simultaneous PACE loan would increase the consumer's property tax payment. This is consistent with existing comment 19(e)(1)(i)-1, which cross-references existing § 1026.17(c)(2)(i) and generally provides that creditors must make TILA-RESPA integrated disclosures based on the best information reasonably available to the creditor at the time the disclosure is provided to the consumer. As discussed in the section-by-section analysis of § 1026.43(c)(2)(iv), the CFPB is also clarifying in this final rule that a creditor originating a PACE transaction knows or has reason to know of simultaneous loans that are PACE transactions if the transactions are included in any existing database or registry of PACE transactions that includes the geographic area in which the property is located and to which the creditor has access.

transaction and, separately, whether it includes payments for the non-PACE portions of the property tax payment. The CFPB proposed to require the statement about the PACE loan payment to be labeled “PACE Payment,” and the statement about the other property taxes “Property Taxes (not including PACE loan).” The proposed changes were intended to help consumers understand that the PACE transaction will increase the consumer's property tax payment.

Section 1026.37(c)(4)(iv) also currently requires creditors to state whether the constituent parts of the taxes, insurance, or assessments will be paid by the creditor using escrow account funds. The CFPB proposed under § 1026.37(p)(2)(i) to eliminate this requirement for PACE transactions. The CFPB reasoned in the proposal that omitting this information would avoid potential consumer confusion for similar reasons as explained in the discussion of proposed § 1026.37(p)(1).

The CFPB also proposed amendments to the requirements in § 1026.37(c)(4)(v) and (vi). Currently, § 1026.37(c)(4)(v) requires a statement that the consumer must pay separately any amounts described in § 1026.37(c)(4)(ii) that are not paid by the creditor using escrow account funds; and § 1026.37(c)(4)(vi) requires a reference to escrow account information, required under § 1026.37(g)(3), located elsewhere on the Loan Estimate. The CFPB proposed to replace these disclosures with the following for PACE transactions: (1) a statement that the PACE transaction, described in plain language as a “PACE loan,” will be part of the property tax payment; and (2) a statement directing the consumer, if the consumer has a pre-existing mortgage with an escrow account, to contact the consumer's mortgage servicer for what the consumer will owe and when. The proposed disclosures were intended to promote consumer understanding of PACE transactions and their effect on any pre-existing mortgage loans, and that

omitting the two existing disclosures would not impair consumer understanding of the transaction.

One credit union league supported requiring the disclosure of PACE loans separately from other property tax obligations among the disclosure of estimated taxes, insurance, and assessments under proposed § 1026.37(p)(2)(i). The commenter stated that homeowners would benefit from this requirement and, more generally, from clarification of the implications of the PACE transaction on property taxes.

Two consumer groups also suggested adjusting the qualitative disclosures proposed under § 1026.37(p)(2)(ii). They recommended including a statement that the PACE loan would increase the consumer's monthly escrow payment by a certain specific amount, as well as a prompt for the consumer to notify their mortgage servicer of the change and request a short-year escrow account analysis so that the escrow amount can be adjusted to account for the change.

The CFPB is finalizing the proposed changes to § 1026.37(p)(2)(i) and (ii) with modifications. As finalized, section § 1026.37(p)(i) contains a small change for precision. Section 1026.37(p)(2)(ii) requires, in addition to the proposed disclosure, a statement that, if the consumer has a pre-existing mortgage with an escrow account, the PACE loan will increase the consumer's escrow payment. The CFPB agrees with consumer group commenters that an explicit disclosure of the impact of the PACE loan on the consumer's escrow payment will be useful for consumers. However, the recommendation to include a prompt for the consumer to notify their mortgage servicer of the change and to request an escrow account analysis could be confusing or too technical to be useful for some consumers.

1026.37(p)(3) Contact Information

TILA section 128(a)(1) is currently implemented in part by § 1026.37(k), which requires disclosure of certain contact information, under the heading "Additional Information About this Loan." [171] In general, a creditor must disclose: (1) the name and NMLSR ID,[172] license number, or other unique identifier issued by the applicable jurisdiction or regulating body for the creditor, labeled "Lender," and mortgage broker, labeled "Mortgage Broker," if any; (2) similar information for the individual loan officer, labeled "Loan Officer," of the creditor and the mortgage broker, if any, who is the primary contact for the consumer; and (3) the email address and telephone number of the loan officer. Section 1026.37(k)(1) through (3) further provides that, in the event the creditor, mortgage broker, or loan officer has not been assigned an NMLSR ID, the license number or other unique identifier issued by the applicable jurisdiction or regulating body with which the creditor or mortgage broker is licensed and/or registered shall be disclosed, with the abbreviation for the State of the applicable jurisdiction or regulating body.

The CFPB proposed to additionally require similar disclosures for PACE companies if such information was not disclosed under the requirements described above. Specifically, under § 1026.37(p)(3), the CFPB proposed to require disclosure of the PACE company's name, NMLSR ID (labeled "NMLS ID/License ID"), email address, and telephone number of the PACE company (labeled "PACE Company," a term defined under § 1026.37(b)(14)). The CFPB proposed, similar to § 1026.37(k)(1) through (3)'s existing requirements with respect to creditors, mortgage brokers, and loan officers, that, in the event that the PACE company has not been assigned an NMLSR ID, the creditor must disclose on the Loan Estimate the license

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[171] Section 1026.37(k) also integrates the disclosure of certain information required under appendix C to Regulation X.

[172] Under § 1026.37(k)(1), the NMLS ID refers to the Nationwide Mortgage Licensing System and Registry identification number.

number or other unique identifier issued by the applicable jurisdiction or regulating body with which the PACE company is licensed and/or registered, along with the abbreviation for the State of the applicable jurisdiction or regulatory body stated before the word "License" in the label, if any. The CFPB proposed commentary to clarify that these disclosures would not be required under the proposal if the PACE company's contact information was otherwise disclosed pursuant to § 1026.37(k)(1) through (3). As proposed in comment 37(p)(3)-1, for example, if the PACE company is a mortgage broker as defined in § 1026.36(a)(2), then the PACE company is disclosed as a mortgage broker and the field for PACE company may be left blank.

Two consumer groups recommended mandating disclosure of the contact information and State license number for the home improvement contractor involved in the PACE transaction, stating that it would help consumers spot potential fraud by the home improvement company, especially if the PACE company lists a home improvement company that is different from the home improvement company with which the consumer has been dealing.

Two consumer groups, a State agency, and one credit union league agreed with the CFPB's proposed addition of a "PACE Company" field for disclosure of license and contact information for the PACE company. These consumer groups and a PACE government sponsor also addressed the proposal to include PACE companies under the "Mortgage Broker" heading when applicable. Some consumer groups asserted that PACE companies are not perceived as mortgage brokers and engage in many activities that go beyond the services of a mortgage broker. To avoid consumer confusion, the consumer groups suggested requiring the company to fill in the "PACE Company" fields in all cases, as well as "Mortgage Broker" fields if the company also serves as a mortgage broker. The government sponsor suggested that the Loan

Estimate make reference to PACE Company instead of mortgage broker because in practice, the two serve different functions.

The CFPB is finalizing proposed § 1026.37(p)(3) with an adjustment. The CFPB agrees with commenters that the PACE Company's contact information should be disclosed under the PACE Company field for each PACE transaction and is finalizing this requirement, regardless of whether such information is also disclosed under the mortgage broker field. This approach will help provide clarity for consumers. To accommodate this change, the CFPB is not finalizing proposed comment 37(p)(3)-1.

As explained in the 2013 TILA-RESPA Rule, disclosing the name and NMLSR ID number, if any, for the creditor, mortgage broker, and loan officers employed by such entities provides consumers with the information they need to conduct the due diligence as to whether these parties are appropriately licensed.[173] Having this information may also help consumers assess the risks associated with services and service providers associated with the transaction, which in turn serves the purposes of TILA, RESPA, and the CFPA.[174] Similar considerations apply to the disclosure of the PACE company.

The CFPB declines the suggestion to include fields for the home improvement contractor's information. Some home equity loans used to finance home improvement projects are marketed by contractors, similar to PACE transactions. Home improvement contractor contact information is not required for those non-PACE home equity loans, and this final rule will maintain consistency with respect to PACE transactions.

1026.37(p)(4) Assumption

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[173] 78 FR 79730, 79975-76 (Dec. 31, 2013).

[174] *See id.*

TILA section 128(a)(13) is currently implemented in part by § 1026.37(m)(2), which requires the creditor to disclose a statement of whether a subsequent purchaser of the property may be permitted to assume the remaining loan obligation on its original terms, labeled "Assumption." This existing disclosure requirement could be misleading for PACE transactions. In general, PACE payment obligations can transfer with the sale of the property, such that the subsequent property owner would be required to pay the remaining obligation as a function of property ownership. However, the new homeowners generally do not technically assume the loans.

The CFPB proposed to require a statement reflecting a PACE-specific risk that stakeholders have indicated sometimes occurs when consumers try to transfer the PACE obligation by selling the property. The CFPB proposed for the statement to state that, if the consumer sells the property, the buyer or the buyer's mortgage lender may require the consumer to pay off the PACE transaction as a condition of the sale. The CFPB proposed to require the creditor to label this disclosure "Selling the Property" and use the term "PACE loan" in the disclosure. The intent was to further the purposes of TILA by providing useful information about key risks of PACE loans, thus avoiding the uninformed use of credit.

A number of mortgage industry trade associations, a credit union trade association, and consumer groups supported the proposed disclosure. Some stated that it would convey useful information or counter misinformation about whether PACE loans can be assumed. Consumer groups and a mortgage trade association suggested also requiring information pertaining to the PACE loan's potential effect on a consumer's ability to refinance their non-PACE mortgage. For example, a mortgage trade association suggested adding language notifying the consumer that they may not be able to sell the home if they do not have enough equity after paying off various

loans, including the PACE loan. Consumer groups and a mortgage trade association suggested adding a disclosure that the PACE loan may negatively affect the consumer's ability to refinance a pre-existing non-PACE mortgage.

After reviewing the comments, the CFPB is finalizing the disclosure as proposed. Although additional information pertaining to the effect of a PACE loan on a consumer's ability to refinance their non-PACE mortgage or sell their home could be helpful to consumers, the CFPB concludes that such information is not necessary given the new disclosure requiring a statement that if the consumer sells the property, the buyer or the buyer's mortgage lender may require the consumer to pay off the PACE transaction as a condition of the sale.

1026.37(p)(5) Late Payment

TILA section 128(a)(10) is currently implemented in part by § 1026.37(m)(4), which requires the creditor to disclose a statement detailing any charge that may be imposed for a late payment. Unlike non-PACE mortgage loans, however, late payment charges for PACE transactions are typically determined by taxing authorities as part of the overall property tax payment. It may be challenging to disclose all late charges that may be associated with a property tax delinquency succinctly and effectively on the Loan Estimate, either under existing § 1026.37(m)(4) or otherwise. The CFPB understands that some States impose several types of late charges, some of which can change as the delinquency persists or depend on factors that are unknown at the time of the disclosure.

To avoid potential confusion for consumers and ensure the Loan Estimate includes useful information about the charges a PACE borrower might accrue in delinquency, the CFPB proposed to implement TILA section 128(a)(10) for PACE transactions by requiring the disclosure in proposed § 1026.37(p)(5) rather than the existing disclosure in § 1026.37(m)(4).

The CFPB proposed to require creditors to include one or more statements relating to late charges, as applicable. First, under § 1026.37(p)(5)(i), the CFPB proposed a statement detailing any charge specific to the PACE transaction that may be imposed for a late payment, stated as a dollar amount or percentage charge of the late payment amount, and the number of days that a payment must be late to trigger the late payment fee, labeled "Late Payment." The CFPB proposed to clarify under comment 37(p)(5)-1 that a charge is specific to the PACE transaction if the property tax collector does not impose the same charges for general property tax delinquencies. Although the CFPB is not aware of PACE transactions that impose such PACE-specific late charges, if any PACE transactions do provide for it, disclosure of late payment information would be incomplete without it. If a PACE transaction does not provide for late charges, the disclosure would not have been required under the proposal.

Second, under § 1026.37(p)(5)(ii), the CFPB proposed to require, for any charge that is not specific to the transaction, either (1) a statement notifying the consumer that, if the consumer's property tax payment is late, they may be subject to penalties and late fees established by their property tax collector, as well as a statement directing the consumer to contact the tax collector for more information; or (2) a statement describing any charges that may result from property tax delinquency that are not specific to the PACE transaction, which may include dollar amounts or percentage charges and the number of days a payment must be late to trigger the fee. The CFPB proposed these requirements to provide flexibility for the creditor while ensuring that the Loan Estimate contains useful information about charges that may result from a property tax delinquency.

A credit union trade association suggested in a comment that the CFPB also require a disclosure of the risk of foreclosure or tax sale. Two consumer groups expressed support for

proposed § 1026.37(p)(5)(i) but recommended against finalizing § 1026.37(p)(5)(ii). They asserted that creditors should be required to provide specific information about the potential charges and penalties for untimely payment, as the fees and penalties for late property tax payments are clearly established and well-known to PACE creditors and the information would improve consumer understanding before consummation.

The CFPB is finalizing § 1026.37(p)(5) and associated commentary as proposed. The additional disclosures recommended by commenters may be difficult for PACE providers to disclose in a manner that is useful to consumers and may be unknowable at the time of disclosure in certain circumstances, including in jurisdictions where charges associated with late payment that are not specific to the PACE transactions may not be known at the time of the disclosure.

1026.37(p)(6) Servicing

RESPA section 6(a) is currently implemented by § 1026.37(m)(6), which requires the creditor to disclose a statement of whether the creditor intends to service the loan or transfer the loan to another servicer, using the label “Servicing.” PACE transactions are not subject to transfer of servicing rights as far as the CFPB is aware. Thus, the CFPB proposed to implement RESPA section 6(a) for PACE transactions by requiring a servicing-related disclosure that would be more valuable for PACE borrowers.

The CFPB proposed to require the PACE creditor to provide a statement that the consumer will pay the PACE transaction, using the term “PACE loan,” as part of the consumer’s property tax payment. The CFPB proposed to require a statement directing the consumer, if the consumer has a mortgage escrow account that includes the consumer's property tax payment, to contact the consumer’s mortgage servicer for what the consumer will owe and when. The CFPB proposed to preserve the label “Servicing” for the disclosure.

Two consumer groups stated that PACE loans are not subject to transfer of servicing rights. These groups and one mortgage trade association suggested that the CFPB add more language to the disclosure about how consumers may make their PACE payments through a mortgage escrow account or directly to the tax authority. The mortgage trade association also suggested requiring disclosure of other potential legal and contractual implications, including the possibility of technical default on a pre-existing mortgage loan as a consequence of the PACE loan, or consequences of failing to pay the PACE loan in a timely fashion.

After considering the comments, the CFPB is finalizing § 1026.37(p)(6) as proposed, with one change—the phrase "mortgage escrow account" will be changed to "mortgage with an escrow account" for readability and clarity. Requiring the disclosure in § 1026.37(p)(6) will promote the informed use of credit. The additional disclosures that commenters recommended are too attenuated from the central purpose of the disclosure in § 1026.37(p)(6), which is to convey information about the servicing of the PACE loan. Certain suggestions would also be too vague or technical to be useful for consumers.

1026.37(p)(7) Exceptions

1026.37(p)(7)(i) Unit-Period

Because PACE transaction payments are repaid with the property taxes once or twice a year, the applicable unit-period disclosed on the Loan Estimate would typically be annual or semi-annual. The CFPB proposed for the model form for PACE under proposed appendix H–24(H) to use "annual" in the tables disclosing loan terms and projected payments. The CFPB proposed under § 1026.37(p)(7)(i) that, wherever the proposed form uses "annual" to describe the frequency of any payments or the applicable unit-period, the creditor shall use the appropriate term to reflect the transaction's terms, such as semi-annual payments. This is similar

to existing § 1026.37(o)(5), which permits unit-period changes wherever the Loan Estimate or § 1026.37 uses "monthly" to describe the frequency of any payments or uses "month" to describe the applicable unit-period.[175]

Two consumer groups supported the CFPB's proposal. The CFPB did not receive any other comments regarding this part of the proposal. The CFPB is finalizing § 1026.37(p)(7)(i) as proposed.

1026.37(p)(7)(ii) PACE Nomenclature

The CFPB understands that PACE companies may market PACE loans to consumers using brand names that do not include the term "Property Assessed Clean Energy" or the acronym "PACE." To improve the Loan Estimate's usefulness for consumers, the CFPB proposed § 1026.37(p)(7)(ii) to clarify that, wherever § 1026.37 requires disclosure of the term "PACE" or the proposed model form in appendix H–24(H) uses the term "PACE," the creditor may substitute the name of a specific PACE financing program that will be recognizable to the consumer. The CFPB proposed comment 37(p)(7)(ii)-1 to provide an example of how a creditor may substitute the name of a specific PACE financing program that is recognizable to the consumer as PACE on the form.

The CFPB received comments from two consumer groups supporting the proposal but suggesting that the CFPB clarify in regulatory text or commentary that the nomenclature change is only available if it will be used consistently throughout the marketing materials and financing documents, and that the creditor must otherwise use the phrase "PACE loan." One mortgage

[175] Comment 37(o)(5)-4 explains that, for purposes of § 1026.37, the term "unit-period" has the same meaning as in appendix J to Regulation Z.

industry trade association suggested requiring that the creditor add "(a covered PACE-type financing program)" after the branded name.

The CFPB is finalizing § 1026.37(p)(7)(ii) as proposed and comment 37(p)(7)(ii)-1 with one change from the proposal. In addition to providing an example of how a creditor may substitute the name of a specific PACE financing program that is recognizable to the consumer, the comment as finalized clarifies that the name of a specific PACE financing program will not be recognizable to the consumer unless it is used consistently in financing documents for the PACE transaction and any marketing materials provided to the consumer. This will increase the likelihood that the Loan Estimate identifies the name of a specific PACE financing program that is recognizable to the consumer.

Section 1026.38 Content of Disclosures for Certain Mortgage Transactions (Closing Disclosure)

1026.38(u) PACE Transactions

Section 1026.38 implements the TILA-RESPA integrated disclosure requirements by setting forth the requirements for the Closing Disclosure. Proposed § 1026.38(u) set forth modifications to the Closing Disclosure requirements under § 1026.38 for "PACE transactions," as defined under § 1026.43(b)(15), to account for the unique nature of PACE. The CFPB is finalizing § 1026.38(u) largely as proposed.

1026.38(u)(1) Transaction Information

TILA section 128(a)(1) is currently implemented in part by § 1026.38(a)(4), which requires disclosure of identifying information for the borrower, the seller, where applicable, and

the lender,[176] under the heading “Transaction Information.” [177] The CFPB proposed § 1026.38(u)(1) to additionally require the Closing Disclosure for a PACE transaction to include the name of any PACE company involved in the transaction, labeled “PACE Company.” Proposed § 1026.38(u)(1) referred to proposed § 1026.43(b)(14) for the definition of “PACE company” for these purposes: a person, other than a natural person or a government unit, that administers the program through which a consumer applies for or obtains PACE financing.

Two consumer groups supported requiring the PACE company’s identifying information under “Transaction Information.”

The CFPB is finalizing § 1026.38(u)(1) as proposed. As the CFPB explained in the 2013 TILA-RESPA Rule, disclosing the identifying information for the borrower, seller, and lender promotes the informed use of credit.[178] Disclosing the PACE company's identifying information will do the same.[179]

1026.38(u)(2) Projected Payments

TILA section 128(a)(6), (a)(16), (b)(2)(C), and (b)(4) is currently implemented in part by § 1026.38(c). Under § 1026.38(c)(1), the Closing Disclosure must disclose the information in the projected payments table required on the Loan Estimate under § 1026.37(c)(1)-(4),[180] with

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[176] For purposes of § 1026.38(a)(4)(iii), the lender is defined as “the name of the creditor making the disclosure.” In relevant part, the “creditor” is a “person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments (not including a down payment), and to whom the obligation is initially payable.” *See* § 1026.2(a)(17). As noted in the discussion of § 1026.2(a)(14), government sponsors are typically the creditors for PACE transactions.

[177] Section 1026.38(a)(4) also integrates the disclosure of certain information required under appendix A to Regulation X.

[178] 78 FR 79730, 80002-03 (Dec. 31, 2013).

[179] *See* part II.A for discussion of the central role PACE companies often play in PACE transactions.

[180] Section 1026.37(c)(1)-(3) requires information about the initial periodic payment or range of payments, and § 1026.37(c)(4) requires information about estimated taxes, insurance, and assessments. The CFPB is finalizing changes to these disclosure requirements for PACE transactions as described in the section-by-section analysis of § 1026.37(p)(1) and (2).

certain exceptions. These disclosures generally include the total periodic payment, as well as an itemization of the periodic payment's constituent parts. Additionally, § 1026.38(c)(2) requires the projected payments table on the Closing Disclosure to include a statement referring the consumer to a detailed disclosure of escrow account information located elsewhere on the form.

Under § 1026.38(u)(2), the CFPB proposed changes to the projected payments table for the Closing Disclosure in a PACE transaction to mirror the changes to the projected payments table on the Loan Estimate under § 1026.37(p)(1) and (2). The CFPB proposed these changes for the same reasons as set forth in the discussion of § 1026.37(p)(1) and (2) above.

For the reasons set forth in the discussion of § 1026.37(p)(1) and (2), the CFPB is adopting § 1026.38(u)(2) as proposed, to state that the creditor shall disclose the projected payments information required by § 1026.38(c)(1) as modified by § 1026.37(p)(1) and (2). The final rule also removes from the Closing Disclosure projected payments table a reference to escrow-related information located elsewhere on the form. The CFPB is exempting the escrow-related information under § 1026.38(u)(6).

1026.38(u)(3) Assumption

For the reasons discussed in the section-by-section analysis of proposed § 1026.37(p)(4), proposed § 1026.38(u)(3) would have implemented TILA section 128(a)(13) for PACE transactions by requiring the creditor to use the subheading “Selling the Property,” instead of “Assumption,” and to disclose the information required by § 1026.37(p)(4) in place of the information required under § 1026.38(l)(1).

Comments received related to the assumption disclosure are discussed in the section-by-section analysis of § 1026.37(p)(4). The CFPB is adopting § 1026.38(u)(3) as proposed for the reasons discussed under § 1026.37(p)(4).

1026.38(u)(4) Late Payment

The CFPB proposed that the “Late Payment” disclosure on the Closing Disclosure for PACE transactions only include late payment charges specific to the PACE transaction and not charges imposed by the State or locality for late payment of taxes. This proposed change parallels the changes to the Loan Estimate, described in the section-by-section analysis of § 1026.37(p)(5).

Comments received related to the Late Payment disclosure are discussed in the section-by-section analysis of § 1026.37(p)(5). The CFPB is adopting § 1026.38(u)(4) as proposed for the reasons discussed under § 1026.37(p)(5).

1026.38(u)(5) Partial Payment Policy

TILA section 129C(h) is currently implemented by § 1026.38(l)(5), which requires certain disclosures regarding the lender's acceptance of partial payments under the subheading “Partial Payments.” Section 1026.38(l)(5)(i) through (iii) generally requires disclosure of whether the creditor accepts partial payments and, if so, whether the creditor may apply the partial payments or hold them in a separate account. Section 1026.38(l)(5)(iv) requires a statement that, if the loan is sold, the new lender may have a different policy.

For PACE transactions, however, the current partial payment disclosure may not accurately and effectively reflect partial payment options. In general, partial payment policies for PACE transactions are typically set by the taxing authority and not by the creditor. The tax collector may offer payment options not described accurately in the disclosure required under § 1026.38(l)(5), and any payment options would likely apply to the full property tax payment, not only to the PACE payment specifically. Further, if a PACE borrower pays their property taxes into an escrow account on a pre-existing mortgage loan, their PACE loans may be subject

to a partial payment policy associated with the pre-existing mortgage loan, which the disclosure of partial payment policies associated with the creditor for the PACE transaction would not necessarily reflect.

The CFPB proposed to require under § 1026.38(u)(5) that, in lieu of the information required by § 1026.38(l)(5), the creditor shall disclose a statement directing the consumer to contact the mortgage servicer about the partial payment policy for the account if the consumer has a mortgage escrow account for property taxes, and to contact the tax collector about the tax collector's partial payment policy if the consumer pays property taxes directly to the tax authority. The CFPB is finalizing § 1026.38(u)(5) as proposed to avoid potential inaccuracies that might arise under existing requirements and provide the consumer with useful information as it relates to a PACE transaction.

Two consumer groups stated that the disclosure should provide more information than proposed, such as a statement that consumers will need to make adjustments to their budgets to pay the increased property payment and a statement indicating whether State or local law prohibits partial payments for tax payments.

The CFPB is not adopting this recommendation. PACE consumers are best served with a statement directing the consumer to contact the mortgage servicer or tax collector for the partial payment policy pertaining to their particular circumstance. Certain of the commenters' recommended additions are not closely related to information about partial payments, and other suggested disclosures could be misleading or not useful for PACE consumers.

1026.38(u)(6) Escrow Account

TILA section 129D(h) and 129D(j) is currently implemented in part by § 1026.38(l)(7), which requires a statement of whether an escrow account will be established for the transaction,

as well as detailed information about the effects of having or not having an escrow account, under the subheading “Escrow Account.” For similar reasons as discussed in the section-by-section analysis for § 1026.37(p)(1) with respect to exempting escrow-related information from the projected payments table on the Loan Estimate for PACE transactions, and because certain elements of the disclosure under § 1026.38(l)(7) could be inaccurate for some PACE borrowers, the CFPB proposed § 1026.38(u)(6) to exempt creditors in PACE transactions from the requirement to disclose on the Closing Disclosure the information otherwise required under § 1026.38(l)(7).

Two consumer groups supported specifically addressing to the proposed exemption of the Escrow Account disclosure under § 1026.38(u)(6). The CFPB is finalizing § 1026.38(u)(6) as proposed.

1026.38(u)(7) Liability After Foreclosure or Tax Sale

TILA section 129C(g)(2) and 129C(g)(3) is currently implemented in part by § 1026.38(p)(3), which requires the creditor to disclose certain information about the consumer's potential liability after foreclosure. It requires, under the subheading “Liability after Foreclosure,” a brief statement of whether, and the conditions under which, the consumer may remain responsible for any deficiency after foreclosure under applicable State law, a brief statement that certain protections may be lost if the consumer refinances or incurs additional debt on the property, and a statement that the consumer should consult an attorney for additional information.

In general, this disclosure provides useful information for consumers who may have State-law protections against deficiency. However, it may not be applicable in the same way, or at all, with respect to PACE transactions due to their unique nature. Thus, the CFPB proposed

under § 1026.38(u)(7) to provide that the creditor shall not disclose the liability-after-foreclosure disclosure described in § 1026.38(p)(3).[181] The CFPB proposed that, if the consumer may be responsible for any deficiency after foreclosure or tax sale under applicable State law, the creditor shall instead disclose a brief statement that the consumer may have such responsibility, a description of any applicable protections provided under State anti-deficiency laws, and a statement that the consumer should consult an attorney for additional information. The CFPB proposed to require the subheading "Liability after Foreclosure or Tax Sale." This proposed information was intended to be more useful for PACE borrowers than the existing disclosure required under § 1026.38(p)(3), thus helping to avoid the uninformed use of credit.

Two consumer groups supported the proposal to require the disclosure only if the consumer may be responsible for deficiency under State law but noted that tax foreclosure is not likely to result in a deficiency even if State law permits the liability.

The CFPB finalizes proposed § 1026.38(u)(7) with modifications. As finalized, § 1026.38(u)(7) requires that, if the consumer may be responsible for any deficiency after foreclosure or tax sale under applicable State law, the creditor shall disclose a brief statement that, if the property is sold through foreclosure or tax sale and the sale does not cover the amount owed on the PACE obligation, the consumer may be liable for some portion of the unpaid balance under State law, and a statement that the consumer may want to consult an attorney for additional information. This information will be disclosed under the subheading "Liability after Foreclosure or Tax Sale." The CFPB is not finalizing the proposed requirement for the creditor to disclose a description of any applicable protections provided under State anti-deficiency laws.

[181] As described in § 1026.37(m)(7), if the purpose of the credit transaction is to refinance an extension of credit as described in § 1026.37(a)(9)(ii), the Loan Estimate would be required to disclose information about the consumer's liability after foreclosure. The CFPB understands that this disclosure is unlikely to be required on a Loan Estimate for a PACE loan. Therefore, the final rule does not address such language on the Loan Estimate.

Consumers will be better served with a statement to consult an attorney to understand any applicable State protections rather than relying on a description from the creditor.

1026.38(u)(8) Contact Information

TILA section 128(a)(1) is currently implemented in part by § 1026.38(r), which generally requires certain information to be disclosed in a separate table, under the heading "Contact Information."[182] For transactions without a seller, § 1026.38(r) requires specified contact and licensing information for each creditor, mortgage broker, and settlement agent participating in the transaction. The CFPB proposed § 1026.38(u)(8) to require the same contact and licensing information for the PACE company if not otherwise disclosed pursuant to § 1026.38(r). As discussed in the section-by-section analysis of § 1026.37(p)(3), the PACE company may be a mortgage broker, in which case its information would be required under the existing requirements in § 1026.38(r); the CFPB proposed under § 1026.38(u)(8) not to require the disclosure of the PACE company a second time. As explained in the section-by-section analysis of § 1026.43(b)(14), given the important role that PACE companies play in PACE transactions, disclosing their contact information will be useful to consumers and will facilitate the informed use of credit.

Comments received relating to the substance of proposed § 1026.38(u)(8) are discussed in the section-by-section analysis of § 1026.37(p)(3). As discussed under § 1026.37(p)(3), the CFPB agrees with commenters that the PACE company's contact information should be disclosed under the PACE Company field on the Closing Disclosure for each PACE transaction and is finalizing this requirement.

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[182] Section 1026.38(r) also integrates the disclosure of certain information required under appendix A and appendix C to Regulation X.

1026.38(u)(9) Exceptions

1026.38(u)(i) Unit-Period

To permit creditors the flexibility to disclose the correct unit-period for each PACE transaction, the CFPB proposed under § 1026.38(u)(9)(i) that, wherever proposed form H–25(K) of appendix H uses "annual" to describe the frequency of any payments or the applicable unit-period, the creditor shall use the appropriate term to reflect the transaction's terms, such as semi-annual payments. The Closing Disclosure changes in proposed § 1026.38(u)(9)(i) would have paralleled the Loan Estimate changes in proposed § 1026.37(p)(7)(i), and the CFPB proposed § 1026.38(u)(9)(i) for the same reasons stated in the section-by-section analysis of § 1026.37(p)(7)(i). Proposed § 1026.38(u)(9)(i) was similar to existing § 1026.38(t)(5)(i), which permits changes wherever the Closing Disclosure or § 1026.38 uses "monthly" to describe the frequency of any payments or uses "month" to describe the applicable unit-period." [183]

Comments received related to unit-period are discussed in the section-by-section analysis of § 1026.37(p)(7)(i). The CFPB is finalizing § 1026.38(u)(9)(i) as proposed for the reasons discussed under § 1026.37(p)(7)(i).

1026.38(u)(9)(ii) PACE Nomenclature

The CFPB is finalizing § 1026.38(u)(9)(ii)(A) and (B) relating to certain terms used on the Closing Disclosure for PACE transactions.

The CFPB proposed § 1026.38(u)(9)(ii) to clarify that, wherever § 1026.38 requires disclosure of the term "PACE" or the proposed model form in appendix H–25(K) uses the term "PACE," the creditor may substitute the name of a specific PACE financing program that will be

[183] Comment 38(t)(5)-3 explains that, for purposes of § 1026.38, the term "unit-period" has the same meaning as in appendix J to Regulation Z.

recognizable to the consumer. The CFPB proposed in comment 38(u)(9)(ii)-1 an example of how a creditor may substitute the name of a specific PACE financing program that is recognizable to the consumer as PACE on the form. Comments received related to proposed § 1026.38(u)(9)(ii) are discussed in the section-by-section analysis of § 1026.37(p)(7)(ii). The CFPB is finalizing the proposal, renumbered as § 1026.38(u)(9)(ii)(A) and comment 38(u)(9)(ii)(A)-1, subject to the modification discussed in the section-by-section analysis of § 1026.37(p)(7)(ii). As modified, comment 38(u)(9)(ii)(A)-1 clarifies that the name of a specific PACE financing program will not be recognizable to the consumer unless it is used consistently in financing documents for the PACE transaction and any marketing materials provided to the consumer.

The CFPB is also adding § 1026.38(u)(9)(ii)(B), which requires creditors of PACE transactions to use the term "PACE contract documents" on the Closing Disclosure to refer to the appropriate loan document and security instrument required to be disclosed under § 1026.38(p)(2). This terminology will improve the precision of this disclosure for PACE transactions, as suggested in comments.

1026.41 Periodic Statements

1026.41(e) Exemptions

1026.41(e)(7) PACE Transactions

TILA section 128(f) generally requires periodic statements for residential mortgage loans.[184] Section 1026.41 implements this requirement by requiring creditors, servicers, or assignees, as applicable, to provide a statement for each billing cycle that contains information such as the amount due, past payment breakdown, transaction activity, contact information, and

[184] 15 U.S.C. 1638(f).

delinquency information.[185] The CFPB proposed to exempt PACE transactions from this periodic statement requirement. After considering the comments, the CFPB is finalizing the proposed exemption for the reasons discussed in this section.

Several commenters addressed the proposed exemption. A government sponsor of PACE programs expressed support for the exemption. A State agency did not object to the exemption, noting that many consumers with PACE loans would already have mortgages, and that PACE transactions would often be for relatively small dollar amounts.

Two consumer groups and a credit union trade association opposed exempting PACE transactions from the periodic statement requirement in § 1026.41. These commenters recommended requiring simplified periodic statement disclosures that would provide consumers with information that would enable them to track loan performance, verify correct payment application, and monitor whether the loans incur improper fees. The consumer groups stated that consumers currently lack such information. They stated that simplified periodic statements would not be confusing for consumers despite the intermingling of PACE payments and property tax payments, and that any possible confusion could be addressed through explanatory text on the statements. Consumer group commenters also stated that providing periodic statements would not create undue burden, as local tax collectors and authorities already provide payment reports and other information to PACE creditors or their contractors that could be used to prepare an annual statement.

The consumer groups and credit union trade association also recommended adjusting the Regulation Z timing requirements for their suggested simplified PACE periodic statements. The

[185] For purposes of § 1026.41, the term "servicer" includes the creditor, assignee, or servicer of the loan, as applicable. 12 CFR 1026.41(a)(2).

credit union trade association suggested requiring such statements either annually or tied to particular intervals in the loan term. The consumer groups suggested requiring an annual statement.

Providing simplified information on periodic statements and including explanatory text as some commenters suggested could help mitigate to some degree the risk of consumer confusion as to the content of the forms but would not address risks associated with receiving two sets of disclosures. Were periodic statement requirements applied to PACE transactions, consumers would receive two separate notices about overlapping but different obligations, likely provided by different parties, both containing information about the PACE loan: The local taxing authority would provide a property tax bill, and Regulation Z would require the creditor, servicer, or assignee to provide periodic statements.[186] This risks consumer confusion – for example, about whether fields in the periodic statement include details of the PACE financing, property taxes, or both, or why the figures in the periodic statement do not align with those in their property tax statements. This could also cause consumers to ignore information from the separate disclosures given that some of the content would have similar subject matter.

Adjusting the timing requirements for provision of periodic statements for PACE loans, as some commenters suggested, would not adequately resolve these concerns. The CFPB acknowledges, as some commenters asserted, that, in certain circumstances, the parties who would be responsible for providing periodic statements may already have access to some of the information needed to fill out the periodic statements, including information about loan performance and delinquency. However, even in such circumstances, that responsible parties have such access would not resolve the other concerns supporting the exemption from TILA and

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[186] *See* 12 CFR 1026.41(a)(2).

Regulation Z's periodic statement requirement at § 1026.41 or mean that a periodic statement requirement would not impose a meaningful burden.

Even with the exemption in § 1026.41(e)(7), consumers will still have access to some of the information commenters recommended requiring in a simplified periodic statement. For example, consumers will receive information regarding payments and delinquency from their property tax collectors and mortgage servicers if the consumers have a mortgage with an escrow account, as well as other entities such as third-party assessment administrators. Consumers will also be able to obtain information about the PACE loan by requesting payoff statements pursuant to § 1026.36(c)(3). Although the CFPB recognizes, as consumer group commenters noted, that these sources of information do not contain as much information as periodic statements and some will not be provided on a regular cadence, they do provide at least some information to help the consumer track the PACE loan. The CFPB will continue to monitor the market for consumer harm.

In addition to proposing an exemption from the periodic statement requirement under § 1026.41, the CFPB requested comment on whether the final rule should address any other mortgage servicing requirements in Regulation Z or Regulation X. A trade association for State housing agencies requested that the CFPB ensure that having a PACE loan does not prohibit a consumer with a federally backed mortgage loan from having access to the same loss mitigation options available to consumers without PACE loans. Regulation X, 12 CFR 1024.41, generally sets forth requirements governing the loss mitigation application process. The owner or assignee of the borrower's mortgage loan determines the availability of, or eligibility requirements for,

loss mitigation options such as loan modifications, short sales, or deeds-in-lieu of foreclosure.[187] The CFPB is not adjusting that framework in this final rule. The final rule is also not addressing any servicing requirements that apply only to "servicers" as defined in Regulation X, as there does not appear to be a "servicer" in typical PACE transactions.[188]

The CFPB finalizes the exemption of PACE transactions from the periodic statement requirement under § 1026.41(e)(7) using its authority under TILA section 105(a) and (f) and Dodd-Frank Act section 1405(b). The CFPB concludes that this exemption is necessary and proper under TILA section 105(a), for the reasons stated above, to effectuate TILA's purposes and to facilitate compliance with its requirements. Furthermore, the CFPB concludes, for the reasons stated above, that disclosure of the information specified in TILA section 128(f)(1) would not provide a meaningful benefit to PACE consumers, considering the factors in TILA section 105(f). This conclusion would be true regardless of the loan amount, borrower status (including related financial arrangements, financial sophistication, and the importance to the borrower of the loan), or whether the loan is secured by the consumer's principal residence. Consequently, the exemption will further the consumer protection objectives of the statute, and help to avoid complicating, hindering, or making more expensive the credit process. It is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

1026.43 Minimum Standards for Transactions Secured by a Dwelling

Section 1026.43 implements the requirement in TILA section 129C(a) that creditors must make a reasonable, good faith determination of a consumer's ability to repay a residential

[187] *See generally* Regulation X, 12 CFR 1024.41 (setting forth loss mitigation procedures); *see also* comment 41(c)(1)-2 (explaining that the regulatory term "loss mitigation options available to a borrower" refers to "those options offered by an owner or assignee of the borrower's mortgage loan").

[188] *See* PACE NPRM, 88 FR 30388, 30405 (explaining that there does not appear to be a "servicer" as defined in Regulation X in PACE transactions where the local government taxing authority—a governmental entity—receives the consumer's regular PACE payments as part of the consumer's larger property tax payment).

mortgage loan and defines the loans eligible to be "qualified mortgages," which obtain certain presumptions of compliance pursuant to TILA section 129C(b). The purpose of TILA section 129C is to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans. As discussed below, the CFPB proposed and is finalizing a number of amendments to § 1026.43 and its commentary to apply the ability-to-repay requirements to PACE transactions with certain PACE-specific adjustments. The comments the CFPB received are discussed below. The CFPB is finalizing the amendments to § 1026.43 as proposed.

1026.43(b) Definitions

Section 1026.43(b) sets forth certain definitions for purposes of § 1026.43. The CFPB is finalizing as proposed new definitions for the terms PACE company and PACE transaction in § 1026.43(b)(14) and (b)(15)[189] and an amendment to the commentary to § 1026.43(b)(8) regarding the definition of mortgage-related obligations.

1026.43(b)(8) Mortgage-Related Obligations

Section 1026.43(b)(8) defines "mortgage-related obligations" to include property taxes, among other things. In turn, § 1026.43(c)(2)(v) requires a creditor to consider the consumer's monthly payment for mortgage-related obligations in making the repayment ability determination required under § 1026.43(c)(1). The CFPB proposed to amend comment 43(b)(8)-2 to explicitly state that any payments for pre-existing PACE transactions are considered property taxes for purposes of § 1026.43(b)(8). The CFPB is finalizing as proposed the amendment to comment 43(b)(8)-2. This amendment clarifies that a creditor must consider

[189] Rather than add these definitions into § 1026.43(b) where they would fall alphabetically in the paragraph, the final rule maintains the numbering for these definitions from the proposal.

payments for pre-existing PACE transactions as mortgage-related obligations when determining the consumer's repayment ability.

Two consumer groups supported the proposed amendment to comment 43(b)(8)-2, stating that it would eliminate doubt as to whether payments on pre-existing PACE transactions should be included in a creditor's ability-to-repay determination under § 1026.43(c). The commenters suggested clarifying in comment 43(b)(8)-2 that a creditor that knows or has reason to know that a consumer has an existing PACE transaction does not comply with the requirement to consider the consumer's monthly payment for mortgage-related obligations under § 1026.43(c)(2)(v) by relying on information provided by a governmental organization if the information provided does not reflect the PACE transaction. The commenters stated that such a change would remind creditors of the need to diligently search for existing PACE loans on the property when conducting an ability-to-repay determination under § 1026.43(c).

The CFPB declines to make the suggested changes to comment 43(b)(8)-2. As discussed below, the CFPB is clarifying in comment 43(c)(3)-5 that a creditor that knows or has reason to know that a consumer has an existing PACE transaction does not comply with § 1026.43(c)(2)(v) by relying on information provided by a governmental organization, either directly or indirectly, if the information provided does not reflect the PACE transaction. Further, existing commentary to the definition of mortgage-related obligations contains a cross-reference to creditors' obligations to take into account any mortgage-related obligations under § 1026.43(c)(2)(v) for purposes of determining a consumer's ability to repay.[190]

1026.43(b)(14) PACE Company

[190] *See* comment 43(b)(8)-1 (referencing the commentary to § 1026.43(c)(2)(v)).

The CFPB proposed to add a definition of "PACE company" in § 1026.43(b)(14) to provide clarity and for ease of reference. The CFPB is adopting § 1026.43(b)(14) and comment 43(b)(14)-1 as proposed. Section 1026.43(b)(14) provides that PACE company means a person, other than a natural person or a government unit, that administers the program through which a consumer applies for or obtains a PACE transaction. Comment 43(b)(14)-1 provides that indicia of whether a person administers a PACE financing program for purposes of § 1026.43(b)(14) include, for example, marketing PACE financing to consumers, developing or implementing policies and procedures for the origination process, being substantially involved in making a credit decision, or extending an offer to the consumer.

The PACE company definition applies to the private companies involved in running the PACE programs. As discussed in part II.A, most local governments that engage in PACE financing rely on private companies to administer PACE programs through, for example, marketing PACE financing to consumers, administering originations, making decisions about whether to extend the loan, and enlisting home improvement contractors to help facilitate the originations and implement the home improvement projects.

Various commenters, including consumer groups and trade associations, supported the adoption of the proposed definition of PACE company. In general, they expressed that the proposed definition adequately captures the entities involved in administering a PACE financing program.

One consumer group suggested that the CFPB should expand the definition to include contractors, subcontractors, and others acting on behalf of the PACE provider or contractors acting as agents of the PACE company. They stated that this would improve enforcement and help avoid evasion of TILA, as it would make the PACE companies accountable for the

contractors or subcontractors. A State agency suggested that the CFPB amend the proposed definition of PACE company to include natural persons in the business of solicitation for sales or services associated with or reasonably contemplated to be financed by PACE loans.

A government sponsor of PACE financing stated that the CFPB should clarify the term “government unit” contained in the definition of a PACE company. The commenter stated that, under the proposed definition, it would not be clear whether certain State entities involved in PACE programs would be considered a government unit excluded from being a PACE company.

Two consumer groups supporting the proposal suggested that the CFPB include additional examples of what it means to administer a PACE program, such as, for example, accepting and processing loan applications and processing and finalizing the issuance of contractual assessments. They stated that doing so would help prevent possible evasion efforts that could occur if the rule lacks sufficient specificity as to what it means to administer a PACE program.

The CFPB concludes that the proposed definition of “PACE company” effectively describes the intended entities and accounts for the unique nature of PACE financing. The CFPB is not adopting commenters’ recommendations to expand the proposed definition to include natural persons or entities acting as agents of the PACE company. As described in § 1026.43(i), PACE companies that are substantially involved in making a credit decision will be subject to the ability-to-repay requirements and civil liability for violations thereof. The CFPB understands that home improvement contractors in the PACE context perform generally the same functions as in other forms of home improvement loans associated with door-to-door sales. The CFPB therefore declines to create a separate liability provision for home improvement contractors in the PACE context. The CFPB notes that the term “government unit” is already used in TILA and

Regulation Z, including as part of the definition of person.[191] The CFPB declines to define the term "government unit" in this rulemaking. The CFPB also declines to add to comment 43(b)(14)-1 examples suggested by some commenters because such indicia would expand the definition to cover entities not substantially involved in making the credit decision. Parties who merely accept applications, for example, do not administer these programs in a way that would warrant coverage or liability for the ability-to-repay requirements described in § 1026.43.

1026.43(b)(15) PACE Transaction

The CFPB proposed to add a definition for the term "PACE transaction" to Regulation Z that uses the language of the EGRRCPA section 307 definition of PACE financing.[192] The CFPB is adopting as proposed the definition of "PACE transaction" in § 1026.43(b)(15). Section 1026.43(b)(15) provides that a PACE transaction means financing to cover the costs of home improvements that results in a tax assessment on the real property of the consumer. This term is used in adjustments or exemptions the CFPB is finalizing in §§ 1026.35, 1026.37, 1026.38, 1026.41, and 1026.43 as well as appendix H to part 1026.

Various commenters, including consumer groups, trade associations, and State agencies, supported the adoption of the proposed definition of PACE transaction. These commenters said the proposed definition was clear and accurately captured the nature of PACE transactions.

Several other commenters addressed what the definition should cover. For example, a PACE government sponsor suggested that the definition should include financing to cover the costs of qualifying improvements that result in a tax assessment on the real property improved by the consumer, stating that PACE improvements may include projects other than those

[191] *See, e.g.*, 12 CFR 1026.2(a)(22).

[192] *See* 15 U.S.C. 1639c(b)(3)(C)(i).

customarily thought of as home improvements, including installation of generators, heat pumps, and solar arrays. Similarly, two consumer groups stated that the PACE transaction definition should also cover qualifying improvements under State law and local governmental authority resulting in a tax assessment on the real property of the consumer. They noted that some States have expanded PACE programs to include qualifying work extending beyond the structure of a building, such as certain fire hardening measures or the building of a sea wall. In addition, a PACE company suggested that the CFPB limit the definition of PACE transaction to cover only financing secured by a lien that takes priority over a pre-existing first-lien mortgage on the subject property and exclude from coverage PACE transactions secured by subordinate liens.

The CFPB finalizes the definition of PACE transaction as proposed, which uses the language of the EGRRCPA section 307 definition of PACE financing. The definition covers financing for improvements to residential property, including improvements to the land on which the structure sits. This definition of PACE transaction also accords with other CFPB regulations governing the home mortgage market.[193]

The CFPB declines to carve out transactions secured by subordinate liens, as suggested by one commenter. EGRRCPA section 307 directs the CFPB to prescribe regulations for "PACE financing," defined as voluntary financing to cover the costs of home improvements that results in a tax assessment on the real property of the consumer; it does not distinguish among transactions based on lien status.

1026.43(c) Repayment Ability

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[193] *See, e.g.*, 12 CFR 1003 comment 2(i)-2 (commentary to Regulation C definition of "home improvement loan" stating that such loans "include improvements both to a dwelling and to the real property on which the dwelling is located . . . .").

The existing ability-to-repay requirement in § 1026.43(c)(1) requires a creditor to make a reasonable and good faith determination of a consumer's ability to repay at or before consummation of a covered mortgage loan. Section 1026.43(c)(2) provides eight factors that a creditor must consider in making the repayment ability determination, while § 1026.43(c)(3) and (c)(4) generally requires a creditor to verify the information that the creditor relies on in determining a consumer's repayment ability using reasonably reliable third-party records. For the reasons explained in the proposal, the CFPB proposed to apply existing § 1026.43(c) to PACE transactions, with adjustments to the commentary to § 1026.43(c) and the addition of the provisions set out in § 1026.43(i). As discussed below, the CFPB concludes that the existing ability-to-repay framework set out in § 1026.43(c) effectively carries out the purposes of TILA's ability-to-repay provisions and is generally appropriate for PACE transactions, with adjustments to the commentary to § 1026.43(c) and the addition of § 1026.43(i).[194] For the reasons discussed below, the CFPB is finalizing the amendments to the commentary to § 1026.43(c) and new § 1026.43(i) as proposed.

Many commenters, including consumer groups, banking and credit union trade groups, and a State agency, supported the application of the existing ability-to-repay framework to PACE transactions. These commenters discussed the protections that the ability-to-repay framework would afford to consumers in light of the structure and risks of PACE financing, as well as the past perceived abuses in the PACE industry. For example, a consumer group asserted that requiring a creditor to conduct an ability-to-repay determination for a PACE transaction would protect borrowers from potential predatory lending practices that could heighten foreclosure risk.

[194] *See* 15 U.S.C. 1639c(b)(3)(C)(ii) (directing the CFPB to prescribe regulations that carry out the purposes of TILA's ability-to-repay provisions for residential mortgage loans with respect to PACE transactions).

A different consumer group stated that home equity lending is not a strong indicator of a consumer's ability to pay, and that the ability-to-repay requirements can better align project costs with the consumer's household finances. Consumer groups also asserted that TILA's ability-to-repay requirements would increase access to more sustainable financing.

One mortgage industry trade association stated that adopting ability-to-repay requirements for PACE lending would be consistent with the treatment of other mortgage financing. A credit union trade association suggested that the ability-to-repay requirements would help reduce risk to consumers and the financial system that may follow from expedited originations. One State agency encouraged the CFPB to apply ability-to-repay requirements to PACE transactions, so long as such requirements are not inconsistent with requirements under California's ability-to-pay regime for PACE transactions.[195]

Several commenters supporting the proposal to adopt TILA's ability-to-repay framework for PACE loans specifically addressed verification requirements. Consumer groups favored the application of income verification requirements in TILA to PACE transactions. Two stated that weakening these verification requirements or other ability-to-repay requirements would ignore both evidence and the CFPB's own data suggesting abuses.

Many PACE companies and PACE industry stakeholders, as well as a home improvement contractor, opposed the proposed application of TILA's ability-to-repay standards to PACE transactions. Several of these commenters, including two PACE companies and a home improvement contractor, pointed to the success of State laws in Florida and California in regulating industry practices. These commenters stated that, even if the CFPB imposes Federal ability-to-repay standards to PACE transactions, it should exempt transactions that are subject to

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[195] *See* 10 Cal. Code Regs sec.1620.01 *et seq.*

a State-level ability-to-repay regime. A government sponsor of PACE programs asserted that the proposed ability-to-repay requirements would likely decrease PACE lending by as much as 50 percent.

Multiple PACE companies and a PACE industry trade association asserted that the proposal did not adequately account for the unique nature of PACE financing. Several PACE companies asserted that the proposed requirements would not be appropriate given current industry practices and low delinquency rates on PACE loans. For example, one PACE company stated that employment verification was unnecessary given its current underwriting practices, which include verifying that applicants have managed their mortgage and property tax payments. One PACE company stated that the proposed ability-to-repay rules were modeled on stringent requirements applicable to purchase-money mortgage loans that are significantly larger than PACE loans. Another PACE company suggested tailoring the ability-to-repay requirements to make them less stringent in light of the fact that PACE loans are smaller and have smaller margins than other mortgage debt.

PACE companies also recommended that the CFPB account for a variety of other factors in finalizing ability-to-repay requirements, including concerns about economic costs to homeowners and the environment, the need for access to credit for consumers in need of swift financing, and characteristics of PACE transactions including that they are nonrecourse, no-acceleration, and have fixed interest rates.

Commenters diverged on the question of whether a creditor undertaking an ability-to-repay determination for a PACE transaction should be permitted to consider potential energy savings that would result from the home improvements financed by the PACE loan. A government sponsor suggested that the CFPB should permit, but not require, the consideration of

potential energy savings in an ability-to-repay determination. A number of consumer groups as well as mortgage-industry trade associations encouraged the CFPB not to permit a creditor to consider potential energy savings, asserting that such savings are speculative and may not ultimately materialize.

After considering the comments received, the CFPB is finalizing the proposal to apply existing § 1026.43(c) to PACE transactions. It is also finalizing as proposed the adjustments to the commentary to § 1026.43(c) and new § 1026.43(i), as described in more detail below. These aspects of the final rule implement the directive of EGRRCPA section 307 that the CFPB prescribe regulations that carry out the purposes of TILA section 129C(a) for residential mortgage loans with respect to PACE transactions. As explained in the proposal, the existing ability-to-repay framework will provide PACE creditors sufficient operational flexibility while still requiring compliance with the general requirement to make a reasonable and good faith determination at or before consummation that the consumer will have a reasonable ability to repay the loan according to its terms. This final rule adopts the existing statutory and regulatory regime governing residential mortgage loans, with adjustments to account for the unique nature of PACE financing.

The CFPB declines to exempt PACE transactions that are covered by State laws requiring an assessment of consumers' repayment ability as some commenters suggested. A uniform Federal standard is necessary to implement EGRRCPA section 307, which specifically directed the CFPB to prescribe regulations to carry out the purposes of TILA's ability-to-repay requirements for PACE loans. Although some States currently have protections in place that may resemble TILA's ability-to-repay rules in some ways, not all States with PACE-enabling legislation have such requirements, and no State requirements fully reflect the Federal

requirements as implemented by this final rule. This rule will ensure that consumers have as a baseline the protections of TILA's ability-to-repay requirements. This is consistent with TILA's treatment of other closed-end mortgage credit and the mandate of EGRRCPA section 307. As discussed in part VI.D below, the CFPB acknowledges that this final rule may affect PACE origination rates.

For similar reasons, the CFPB also declines to rely upon voluntary industry reforms or current underwriting practices in place of TILA's ability-to-repay requirements. Although commenters have indicated that industry stakeholders have made significant strides in improving consumer protections in recent years, new entrants may not share the same commitment to consumer protections and industry practices may change over time. Voluntary practices do not ensure the uniform applicability of Federal consumer protections inherent in TILA's ability-to-repay requirements. Moreover, the congressional mandate in EGRRCPA section 307 instructs the CFPB to carry out the purposes of TILA's ability-to-repay requirements with respect to PACE financing.

Further, the CFPB determines that TILA's ability-to-repay regime is appropriate for PACE loans notwithstanding certain characteristics of PACE financing or PACE programs discussed by commenters. Section 1026.43(a) applies broadly to consumer credit transactions secured by a dwelling.[196] As with other mortgage lending, the importance of assessing a consumer's ability to afford a PACE loan does not depend on whether the loan is a purchase-money mortgage or home improvement loan, the loan amount, or whether the interest rate is fixed or adjustable. These and other characteristics of PACE transactions cited by PACE

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[196] 12 CFR 1026.43(a). As provided in 12 CFR 1026.43(a)(1)-(3), certain residential mortgage loans are exempted from the ability-to-repay requirements.

companies are shared by other types of mortgages subject to TILA's ability-to-repay regime; they are not unique to PACE transactions. Applying ability-to-repay requirements to PACE loans will substantially benefit consumers given the structural risks deriving from the priority lien securing the loans, as described above.

Further, commenters' assertions regarding PACE companies' incentives and desire to be paid on schedule by the PACE consumer are not inconsistent with the requirements of § 1026.43 or unique to PACE creditors or companies. As required by the EGRRCPA, the CFPB has accounted for the unique characteristics of PACE transactions in other portions of this final rule, including, for example, the requirement in § 1026.43(i)(1) that the ability-to-repay determination for PACE transactions account for certain increases to escrow account payments on the consumer's other mortgage loan that are caused by the PACE transaction.

The CFPB also concludes that permitting the consideration of potential energy savings would not be consistent with the purposes of TILA section 129C. The CFPB agrees with commenters' observations that potential energy savings are too uncertain to reliably inform an ability-to-repay determination. Commenters supporting the consideration of potential energy savings did not provide specific recommendations to address this uncertainty, such as, for example, how to account for potential variability in consumer usage patterns, external energy prices, and technological developments.

1026.43(c)(2) Basis for Determination

1026.43(c)(2)(iv)

Section 1026.43(c)(2) sets forth factors creditors must consider when making the ability-to-repay determination required under § 1026.43(c)(1), and the accompanying commentary provides guidance regarding these factors. Section 1026.43(c)(2)(iv) provides that one factor a

creditor must consider is the consumer's payment obligation on any simultaneous loan that the creditor knows or has reason to know will be made at or before consummation of the covered transaction. The CFPB proposed to add new comment 43(c)(2)(iv)-4 to provide additional guidance to creditors originating PACE transactions. For the reasons described in the proposal and as discussed below, the CFPB is adopting as proposed comment 43(c)(2)(iv)-4.

Comment 43(c)(2)(iv)-4 provides that a creditor originating a PACE transaction knows or has reason to know of any simultaneous loans that are PACE transactions if the transactions are included in any existing database or registry of PACE transactions that includes the geographic area in which the property is located and to which the creditor has access.

Comment 43(c)(2)(iv)-4 helps address concerns about the prevalence of "loan splitting" and "loan stacking" in the PACE industry that were raised by consumer groups and other stakeholders in comments to the Advance Notice of Proposed Rulemaking. As described in those comments, loan splitting refers to the practice of a contractor dividing a loan for one consumer into more than one transaction to make each transaction appear more affordable, while loan stacking refers to contractors returning to a PACE borrower to offer additional PACE financing (often through different creditors). The CFPB's statistical analysis indicates that a little more than 13 percent of PACE borrowers between 2014 and 2019 received multiple PACE loans, with many of these transactions originated simultaneously or within a few months of each other, which could be indicative of loan splitting or stacking.[197] About one-fourth of PACE borrowers with multiple PACE loans consummated multiple loans in the same month, and about three-quarters of PACE borrowers with multiple PACE loans consummated more than one loan within

[197] *See* PACE Report, *supra* note 12, at 12, 24.

the same 6-month period.[198] In some cases, the creditor originating the second or successive PACE loan might not be aware of previous loans, due to delays in recording.

No commenters opposed the adoption of proposed comment 43(c)(2)(iv)-4. Several commenters, including several consumer groups and a State agency, supported the adoption of proposed comment 43(c)(2)(iv)-4. These commenters indicated that the comment could provide an effective means of addressing the prevalence of loan splitting and loan stacking in the PACE industry.

Several consumer groups supporting the proposed comment recommended further amendments. Two consumer groups recommended that the CFPB clarify further that a PACE company is obligated to search for other PACE loans on a property if the PACE company knows or has reason to know that a home improvement contractor has been involved in loan splitting or loan stacking, or if the relevant home improvement contract shows that the total cost of a PACE transaction exceeds the program's loan-to-value limit. These commenters also stated that the CFPB should amend the definition of "simultaneous loan" in existing § 1026.43(b)(12) to include simultaneous unsecured loans that the PACE company has made or will make at or before consummation of the PACE transaction. These commenters reasoned that this amendment would be appropriate because many PACE companies market unsecured home improvement loans in tandem with PACE loans. Several other consumer groups stated that the CFPB should require additional due diligence beyond that in proposed comment 43(c)(2)(iv)-4 to ensure there are no other PACE liens associated with a property and included a credit check as one example.

The CFPB declines to adopt these recommended changes. Finalizing comment 43(c)(2)(iv)-4 as proposed, in concert with existing comment 43(c)(2)(iv)-2, which elaborates on

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[198] *See id.* at 24.

the circumstances in which a creditor knows or has reason to know of simultaneous loans, protects against the practices of loan splitting and loan stacking. Comment 43(c)(2)(iv)-2 helps clarify, for example, that a creditor may comply with the requirements of § 1026.43(c)(2)(iv) by "follow[ing] policies and procedures that are designed to determine whether at or before consummation the same consumer has applied for another credit transaction secured by the same dwelling." The CFPB also declines to adopt commenters' suggestion to expand the definition of simultaneous loan to include simultaneous unsecured loans[199] and notes that § 1026.43(c)(2)(vi) requires consideration of a consumer's current debt obligations, to include unsecured loan products.

1026.43(c)(3) Verification Using Third-Party Records

In general, a creditor must verify the information that the creditor relies on in determining a consumer's repayment ability under § 1026.43(c)(2) using reasonably reliable third-party records. The CFPB proposed to amend comment 43(c)(3)-5 to clarify how this requirement applies to consumers with existing PACE transactions.[200] Current comment 43(c)(3)-5 provides that, "[w]ith respect to the verification of mortgage-related obligations that are property taxes required to be considered under § 1026.43(c)(2)(v), a record is reasonably reliable if the information in the record was provided by a governmental organization, such as a taxing authority or local government." Additionally, the comment provides that the creditor complies with § 1026.43(c)(2)(v) by relying on property taxes referenced in the title report if the source of

[199] Section 1026.43(c)(2)(iv) refers to a "simultaneous loan," and § 1026.43(b)(12) defines simultaneous loan as "another covered transaction or home equity line of credit subject to § 1026.40 that will be secured by the same dwelling and made to the same consumer at or before consummation of the covered transaction or, if to be made after consummation, will cover closing costs of the first covered transaction."

[200] As discussed above, the CFPB is finalizing its proposal to clarify that payments for pre-existing PACE transactions are considered a property tax and therefore mortgage-related obligations under § 1026.43(b)(8). *See* discussion of comment 43(b)(8)-2 in the section-by-section analysis of § 1026.43(b)(8), *supra.*

the property tax information was a local taxing authority. The CFPB proposed to amend comment 43(c)(3)-5 to clarify that a creditor that knows or has reason to know that a consumer has an existing PACE transaction does not comply with § 1026.43(c)(2)(v) by relying on information provided by a governmental organization, either directly or indirectly, if the information provided does not reflect the PACE transaction. For example, if a consumer informs the creditor of an existing PACE transaction during the application process, the creditor does not comply with § 1026.43(c)(2)(v) by verifying the consumer's property taxes solely using property tax records or property tax information in a title report that do not include the existing PACE transaction.

The CFPB received limited comments on this aspect of the proposal. Commenters who addressed the proposed amendment to comment 43(c)(3)-5, including a few consumer groups and a State agency, were supportive of the proposed amendment. The CFPB finalizes as proposed the amendment to comment 43(c)(3)-5.

1026.43(i) PACE Transactions

1026.43(i)(1)

Many consumers who obtain PACE transactions have pre-existing mortgages that require the payment of property taxes through an escrow account.[201] Consumers with such pre-existing mortgages will typically also make their PACE transaction payments through their existing escrow account. Under certain circumstances, the addition of payments for a PACE transaction can result in a sharp increase in the consumer's escrow payments. The PACE Report finds that, on average, a consumer's total property taxes likely increased by almost 88 percent as a result of

[201] Regulation X provides that an escrow account is any account established or controlled by a servicer on behalf of a borrower to pay taxes, insurance premiums, or other charges with respect to a federally related mortgage loan, including those charges that the servicer and borrower agreed to have the servicer collect and pay. 12 CFR 1024.17(b).

the PACE loan payment, and more than a quarter of PACE borrowers' property tax payments likely increased by double or more.[202] This increase is relevant to the consumer's ability to repay the PACE transaction. The CFPB proposed to add new § 1026.43(i)(1) to require that a creditor making the repayment ability determination under § 1026.43(c)(1) and (2) also consider any monthly payments the consumer will have to pay into the consumer's escrow account as a result of the PACE transaction that are in excess of the monthly payment amount considered under § 1026.43(c)(2)(iii). For the reasons described below, the CFPB is finalizing § 1026.43(i)(1) as proposed.

Section 1026.43(i)(1) requires the ability-to-repay determination for PACE loans to consider, in addition to the factors in § 1026.43(c)(2)(i) through (viii), any monthly payments that the creditor knows or has reason to know the consumer will have to pay into an escrow account as a result of the PACE transaction that are in excess of the monthly payment amount considered under § 1026.43(c)(2)(viii).

Section 1026.43(i)(1)(i) and (ii) provides additional detail on the factors creditors must take into account when considering any monthly payments that the creditor knows or has reason to know the consumer will have to pay into the consumer's escrow account as a result of the PACE transaction that are in excess of the monthly payment amount considered under § 1026.43(c)(2)(iii). Under the escrow requirements in Regulation X, servicers are permitted to charge an additional amount to maintain a cushion of no greater than one-sixth (1/6) of the estimated total annual payments from the escrow account,[203] and as explained in the proposal, the CFPB understands that servicers frequently charge the full allowable amount of this cushion.

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[202] *See* PACE Report, *supra* note 12, at 13.

[203] 12 CFR 1024.17(c)(1).

Accordingly, § 1026.43(i)(1)(i) provides that, in making the consideration required by § 1026.43(i)(1), creditors must take into account the cushion of one-sixth (1/6) of the estimated total annual payments attributable to the PACE transaction from the escrow account that the servicer may charge under Regulation X, § 1024.17(c)(1), unless the creditor reasonably expects that no such cushion will be required, or unless the creditor reasonably expects that a different cushion amount will be required, in which case the creditor must use that amount.

Section 1026.43(i)(1)(ii) addresses the payment spike that can result from a delay in incorporating the PACE transaction into the consumer's escrow payments. PACE transactions are distinct from non-PACE mortgage loans in many respects, including the timing of when the first PACE payment is due and their annual or semi-annual repayment schedule. Consumers who are required to make their PACE payments through their existing escrow account only begin repaying their PACE transaction once their mortgage servicer conducts an escrow account analysis and adjusts their monthly payment to reflect the addition of the PACE transaction to their property tax bill.[204] The CFPB understands that the timing of this analysis—and whether the servicer knows of the PACE transaction at the time of the first analysis following consummation—can have a significant impact on the amount of the consumer's initial escrow payments once adjusted to incorporate the PACE transaction. Accordingly, § 1026.43(i)(1)(ii) requires that, in considering the amount specified by § 1026.43(i)(1), if the timing for when the servicer is expected to learn of the PACE transaction is likely to result in a shortage or deficiency in the consumer's escrow account, the creditor must take into account the expected effect of any

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[204] A servicer must conduct an escrow account analysis every 12 months but may, and in some cases must, do so more frequently. *See generally* 12 CFR 1024.17(c)(3) (discussing annual escrow account analyses).

such shortage or deficiency on the monthly payment that the consumer will be required to pay into the consumer's escrow account.

Numerous commenters, including consumer groups, a State agency, and a mortgage-industry trade association, supported the adoption of proposed § 1026.43(i)(1). These commenters discussed the possibility of large escrow payment increases resulting from PACE transactions and the associated lack of transparency for consumers seeking to understand the effect of a PACE transaction on their future payments. For example, consumer groups stated that the annual escrow analysis is often conducted before the upcoming year's tax bills are issued, meaning that the escrow payment calculation does not reflect the actual amount owed. They expressed that, if there is a large, unanticipated increase in the property tax bill, such as from the addition of a PACE loan, the servicer will advance the full amount owed and the escrow account will carry a deficiency forward. These commenters stated that, at the next annual escrow account analysis, the servicer will calculate the new escrow payment by adding to the base payment a reserve cushion of up to one-sixth (1/6) of the annual property charges, an amount sufficient to cover the prior year's PACE payment, and an amount to cover the upcoming year's PACE payment that was not accounted for in the prior year's escrow analysis. They asserted that the resulting adjustment to the escrow account causes consumers to experience a sharp increase in their escrow payment many months—or even over a year—after the PACE transaction was originated.

These consumer groups stated that the way PACE programs currently address the interaction between PACE transactions and escrow accounts is inadequate to address this predictable payment spike. They expressed that, for example, PACE companies do not provide consumers information on the estimated effect of the PACE transaction on their existing escrow

account or help PACE consumers communicate with their mortgage servicer regarding their escrow account. They stated further that consumer advocates have found in many cases that PACE borrowers experience severe payment shocks when a mortgage servicer ultimately incorporates a PACE loan into a consumer's escrow account.

Consumer groups supporting the proposal recommended that the CFPB require consideration of the borrower's most recent escrow account statement and the expected timing of the first tax bill following the consummation of the PACE transaction. These commenters also suggested that the CFPB amend § 1026.43(c)(5)(ii) to include PACE transactions. Section 1026.43(c)(5)(ii) sets forth special rules for the calculation of the monthly payment for loans with a balloon payment, interest-only loans, and negative amortization loans,[205] and the commenters suggested that the CFPB provide for similar treatment for PACE transactions.

Several commenters, including mortgage-industry trade associations, consumer groups, and a PACE company, stated that the CFPB should require notification to a consumer's pre-existing mortgage servicer when a PACE transaction is originated, to protect consumers with mortgage escrows from payment spikes. Two consumer groups expressed that this approach would be beneficial because the mortgage servicer is more likely than the consumer to have the necessary information and understanding of escrow mechanics to anticipate escrow shocks. Mortgage-industry trade associations stated that such notification would promptly educate consumers on the true consequences of the PACE transaction and promote servicers' awareness of a potential priority lien. One PACE company stated that the CFPB should require mortgage servicers to timely update escrow account payments following the PACE transaction origination.

[205] *See* 12 CFR 1026.43(c)(5)(ii).

Several PACE industry stakeholders opposed the adoption of proposed § 1026.43(i)(1). Two PACE companies asserted that evidence of escrow payment spikes is limited, and that, where payment shocks do occur, the cause is untimely escrow account analyses by mortgage servicers. One PACE company stated that escrow spikes cannot be foreseeable to a PACE company because it might not be able to ascertain when the consumer's mortgage servicer will conduct its next analysis. This commenter recommended that the CFPB substitute a servicer notification requirement in place of proposed § 1026.43(i)(1)(ii) because it stated that a notification requirement is adequate to alleviate escrow payment spikes. Another PACE company stated that, in California, existing PACE contracts direct the consumer to inform their servicer of their annual PACE payment and that Florida law requires consumers to notify their mortgage servicer of the consumer's intent to enter into a financing agreement along with the maximum principal amount to be financed.

Having considered the comments received, the CFPB is finalizing § 1026.43(i)(1) as proposed. Requiring PACE creditors to consider foreseeable changes to escrow payments caused by the repayment of the PACE loan is entirely consistent with the statutory mandate. If, as some commenters to the proposal noted, the servicer analyzes the escrow account before property tax bills are issued, the servicer will advance the full property tax amount, including the amount owed on the PACE transaction. The escrow account is then likely to carry a negative balance (a deficiency) due to the prior year's PACE payment. As part of the next escrow account analysis, the servicer will add the upcoming year's PACE payment that was not accounted for in the prior year's escrow analysis to the anticipated disbursements, which will likely cause the anticipated escrow account balance to fall short of the target required by the servicer to pay all escrow disbursements for the coming year (an escrow shortage). The servicer may then require the

borrower to pay additional monthly deposits to the account to eliminate the deficiency, the shortage, or both, and adjust the reserve cushion to account for the PACE loan, causing the required escrow payment to increase. While the initial increase in the escrow payment would not last for the entire remaining duration of the PACE transaction, it could last for a year or longer and thus have a direct bearing on the consumer's ability to afford their PACE transaction during the timeframe in which this higher amount is owed.

The CFPB acknowledges one PACE company's concern that creditors may not know the exact timing of when the servicer will conduct its next escrow account analysis, which could impact the amount of any escrow spike. However, PACE creditors can comply with § 1026.43(i)(1) using information that is available to them at the time of the ability-to-repay determination. Additionally, PACE creditors have the option to meet the requirement in § 1026.43(i)(1)(ii) regarding expected escrow shortages or deficiencies by promptly notifying the servicer about the new PACE transaction. Where a creditor provides prompt notification to the servicer, the CFPB concludes that it is reasonable for the creditor to assume that the time at which the servicer learns of the PACE transaction will likely not result in a shortage or deficiency in the consumer's escrow account for the purposes of § 1026.43(i)(1)(ii). More generally, while § 1026.43(i)(1)(ii) does require creditors to take into account the possibility of an escrow shortage, it does not require creditors to accurately predict the exact amount of a shortage or deficiency on the monthly payment that the consumer will be required to pay into the consumer's escrow account.

With regard to commenters' suggestion to amend § 1026.43(c)(5)(ii) to include PACE transactions, the CFPB concludes that § 1026.43(i)(1) is sufficient to address the risks of increased escrow payments. The CFPB also declines to require creditors to consider the

consumer's most recent escrow account statement and the expected timing of the first tax bill following the consummation of the PACE transaction. PACE creditors have flexibility to determine on a case-by-case basis how best to ensure that consumers have the ability to repay their PACE loans in light of escrow delays. In exercising that flexibility, the CFPB expects that many creditors will find it helpful to review the consumer's most recent escrow account statement and the expected timing of the first tax bill following consummation. The CFPB is not finalizing any servicer notification requirements, but PACE creditors voluntarily may notify a consumer's servicer of the PACE transaction and doing so could aid creditors in ensuring affordability and making the ability-to-repay determination, as discussed above.

1026.43(i)(2)

EGRRCPA section 307 requires the CFPB to prescribe regulations that carry out the purposes of TILA section 129C(a) with respect to PACE transactions. The CFPB proposed in § 1026.43(i)(2) to apply the Regulation Z ability-to-repay framework to PACE transactions without providing for a qualified mortgage presumption of compliance for PACE transactions. For the reasons provided below, the CFPB is finalizing § 1026.43(i)(2) as proposed. Section 1026.43(i)(2) provides that, notwithstanding § 1026.43(e)(2), (e)(5), (e)(7), or (f), a PACE transaction is not a qualified mortgage as defined in § 1026.43. This provision excludes PACE transactions from eligibility for each of these qualified mortgage categories in § 1026.43, General Qualified Mortgage, Small Creditor Qualified Mortgage, Seasoned Qualified Mortgage, and Balloon-Payment Qualified Mortgage.[206] The CFPB concludes that it would be inappropriate to provide PACE transactions eligibility for a presumption of compliance with the ability-to-

[206] The CFPB also appreciates that, as a consequence of this final rule, PACE transactions will not be permitted to include prepayment penalties. 15 U.S.C. 1639c(c); 12 CFR 1026.43(g). The CFPB understands that, in general, PACE transactions currently do not include these penalties.

repay requirements, particularly given the risk that PACE loans are not affordable and the lack of creditor incentives to consider repayment ability in this market.

A purpose of the qualified mortgage provisions in TILA section 129C is to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive, or abusive.[207] TILA section 129C(b)(3)(B)(i) authorizes the CFPB to prescribe regulations that revise, add to, or subtract from the criteria that define a qualified mortgage upon a finding that such regulations are necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of TILA section 129C; or are necessary and appropriate to effectuate the purposes of TILA sections 129B and 129C, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections.[208]

The CFPB finds that the nature of PACE transactions raises serious risks that make it unreasonable to presume creditor compliance with the ability-to-repay requirements. First, certain aspects of PACE financing can result in unaffordable payments that can lead to delinquency, late fees, tax defaults, and foreclosure actions. Second, creditors originating PACE transactions bear minimal risk of loss related to the transaction due to PACE's structure and lien position and therefore have reduced incentives to assure that the mortgages made are affordable, as required by the statute. Further, the pricing model and risk structure associated with PACE transactions may make any price-based criterion—including the pricing thresholds set forth for the General Qualified Mortgage category in § 1026.43(e)(2)(vi) and any PACE-specific

[207] 15 U.S.C. 1639b(a)(2).

[208] 15 U.S.C. 1639c(b)(3)(B)(i).

thresholds the CFPB might develop—an inappropriate measure of a consumer's repayment ability at consummation.

A variety of commenters, including several consumer groups, a State agency, and mortgage industry stakeholders, expressed support for the CFPB's proposal to exclude PACE transactions from qualified mortgage eligibility. Some of these commenters asserted that no qualified mortgage eligibility would be appropriate because PACE lending carries certain risks for consumers. A State agency stated that the risks of PACE lending are not yet fully understood. One mortgage industry stakeholder stated that mortgage market safeguards are absent in the PACE industry.

Multiple PACE companies opposed the CFPB's proposal and articulated several reasons why PACE transactions should be eligible for qualified mortgage status. As discussed in more detail in the section-by-section analysis of § 1026.2(a)(14), these commenters challenged the CFPB's reliance on the PACE Report and stated that State legislation and industry-led reforms have improved outcomes for PACE consumers. One PACE company stated that the CFPB should reconsider the exclusion of PACE transactions from qualified mortgage status because local governmental entities oversee the PACE industry and could address consumer protection concerns through their revocation processes.

A few PACE companies disagreed with the CFPB's determination that PACE creditors may lack incentive to ensure repayment ability. One PACE company stated that ensuring low delinquency and default rates among properties with PACE loans is important for bond ratings. Another asserted that it is most cost effective to be repaid on schedule by PACE consumers rather than collecting payments through other means. This commenter also expressed that, if

PACE consumers are not regularly repaying their PACE loans, PACE companies could suffer reputational risks and other negative effects in the secondary market.

PACE companies also asserted that the exclusion of PACE transactions from qualified mortgage status would have an adverse impact on the availability of PACE credit and could lead consumers to rely on less regulated and more expensive products. These commenters stated that the CFPB failed to adequately weigh access-to-credit concerns in conducting its evaluation of the proposal's costs and benefits. One PACE company asserted that the proposal's exclusion of PACE transactions from qualified mortgage status runs contrary to the purposes of TILA 129C because it threatens to constrict the availability of PACE credit. It added that regulatory safe harbors such as the application of qualified mortgage status may facilitate industry compliance and help to minimize litigation associated with uncertain compliance obligations. This commenter asserted that the CFPB's proposal would impose an ability-to-repay regime that would be more onerous than that applicable to mortgage loans, which it stated are typically significantly larger than PACE transactions.

One PACE company recommended that, in lieu of excluding PACE loans from qualified mortgage eligibility, the CFPB could provide a qualified mortgage status for PACE transactions that would impose other guardrails for these loans. This commenter pointed to protections put into place for Government-Sponsored Enterprise Patch Qualified Mortgage loans[209] and suggested that a qualified mortgage for PACE could include certain property-based underwriting

[209] *See generally* 78 FR 6408 (Jan. 30, 2013). In the January 2013 Final Rule, the CFPB established a temporary category of qualified mortgage loans consisting of mortgages that (1) comply with the same loan-feature prohibitions and points-and-fees limits as General Qualified Mortgage loans and (2) are eligible to be purchased or guaranteed by Fannie Mae or Freddie Mac while under the conservatorship of the FHFA. The provision that created this loan category is commonly known as the GSE Patch. Unlike for General Qualified Mortgage loans, the January 2013 Final Rule did not prescribe a DTI limit for Temporary GSE Qualified Mortgage loans. The Temporary GSE Qualified Mortgage loan definition has expired.

requirements, such as no existing liens on the property and no recent property tax delinquencies, in addition to prohibiting certain loan characteristics, such as negative amortization, balloon payments, or prepayment penalties. One PACE company disagreed with the CFPB's proposed rationale for not making PACE loans eligible for the Small Creditor Qualified Mortgage category. This commenter asserted that the role cities and counties play in authorizing PACE programs with PACE companies serves to increase PACE companies' community focus. It stated further that local governments expect PACE companies to focus on the communities they serve and that they work together to provide timely services to constituents.

Finally, one PACE company asserted that Congress evinced no intent to single out PACE transactions as categorically ineligible for qualified mortgage status in the EGRRCPA. This commenter stated that, while EGRRCPA section 307 does not mention TILA section 129C(b)—it requires ability-to-repay regulations under TILA section 129C(a), whereas 129C(b) is the subsection providing for qualified mortgage—EGRRCPA section 307 itself is an insert into subsection 129C(b). The commenter stated further that TILA subsection 129C(b) describes a way to comply with TILA subsection 129C(a) and that TILA elsewhere refers only to 129C(a) in cases where subsection 129C(b) is relevant.

After considering the comments received, the CFPB is finalizing § 1026.43(i)(2) as proposed. The CFPB determines that it is inappropriate to provide PACE transactions eligibility for a presumption of compliance with the ability-to-repay requirements for the reasons discussed below. As the CFPB explained in the proposal, certain aspects of PACE financing create risks for consumers and can result in unaffordable payment spikes that can lead to delinquency, late fees, tax defaults, and foreclosure actions. PACE consumers who make their payments through an existing escrow account may face large and unpredictable payment spikes that make it

difficult for them to repay their PACE obligation. For consumers who do not have an existing escrow account, the annual or semi-annual payment cadence of payments, due simultaneously with large property tax payments, may render PACE loans unaffordable.

Available data that show the broader effect that PACE loans have on consumers' finances highlight affordability risks inherent in PACE financing. The PACE Report finds clear evidence that PACE transactions increase non-PACE mortgage delinquency rates.[210] For consumers with a pre-existing non-PACE mortgage, getting a PACE loan increased the probability of a 60-day delinquency on their non-PACE mortgage by 2.5 percentage points over a two-year period as compared to consumers who applied and were approved for, but did not obtain, a PACE loan.[211] For comparison, the average two-year non-PACE mortgage delinquency rate for originated borrowers was 7.1 percent prior to obtaining their PACE loan.[212] This means that for the average consumer with a pre-existing non-PACE mortgage who obtains a PACE loan, their probability of delinquency on their non-PACE mortgage increases 35 percent relative to a scenario in which the consumer does not obtain PACE financing.[213] The PACE Report finds that consumers in lower credit score tiers are most negatively affected by their PACE transaction, with consumers with sub-prime credit scores experiencing an increase in non-PACE mortgage delinquency almost two-and-a-half times the average effect, and more than 20 times the effect on

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[210] A large majority of PACE consumers have a primary mortgage at the time of the PACE origination. For consumers with a mortgage, difficulty in paying the cost of a PACE loan will generally manifest in the data as a mortgage delinquency. Payments on PACE transactions are made with property tax payments, and many consumers pay their property taxes through their monthly mortgage payment. *See* PACE Report, *supra* note 12, at 3.

[211] *Id.* at 26-27. As in the CFPB's analysis in its 2020 final rule (General Qualified Mortgage Final Rule), the PACE Report uses delinquencies of at least 60 days as the outcome of interest, to focus on sustained periods of delinquency that may indicate financial distress, rather than isolated incidents or late payments.

[212] *Id.* at 27.

[213] *Id.*

consumers with super-prime credit scores.[214] In addition, the PACE Report finds that a PACE loan increases the probability of both foreclosure and bankruptcy by about 0.5 percentage points over a two-year period.[215] The CFPB acknowledges, as industry commenters have noted, that lending practices and State law have evolved since the origination of the PACE loans reflected in the PACE Report. In spite of these improvements, however, the structural risks of PACE loans remain, and future industry participants may not have the same commitment to consumer protections as those that have made the recent improvements. Also, PACE programs could expand to new States that may not have consumer protection laws for PACE loans. Further, the local government oversight and the revocation process cited by one commenter do not alleviate the inherent affordability risks associated with PACE transactions or affect the CFPB's statutory obligations to assure that mortgage lending is both responsible and affordable.

The lien status of PACE loans also heightens the risk of negative outcomes for consumers and weakens incentives for PACE creditors and PACE companies to ensure that consumers have the ability to repay. As noted, under most PACE-enabling statutes, the liens securing PACE loans take the priority of a property tax lien, which is superior to other liens on the property, such as mortgages, even if the other liens predated the PACE lien.[216] In the event of foreclosure, any amount owed on the PACE loan is paid by the foreclosure sale proceeds before any proceeds will flow to other debt. This, combined with relatively low average loan amounts, appears to significantly limit the economic risk faced by creditors originating PACE transactions. Further, as described in the PACE Report and in part VI.A, mortgage servicers will often pay a property tax delinquency on behalf of a consumer regardless of whether the consumer had a pre-existing

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[214] *Id.* at 36-37.

[215] *Id.* at 33.

[216] *See, e.g.*, Cal. Sts. & Hwys. Code sec. 5898.30; Fla. Stat. sec. 163.081(7).

escrow account. This means that, for the more than 70 percent of PACE consumers with a pre-existing non-PACE mortgage, it is unlikely that the PACE transaction would ever cause a loss to the PACE creditor.[217] In addition, the PACE transaction repayment obligation generally remains with the property when ownership transfers through foreclosure or otherwise. Thus, any balance that remains on the PACE transaction following a foreclosure sale will generally remain as a lien on the property for future homeowners to repay, further reducing the risk of loss to the creditor.

Although certain market pressures may provide some incentive to ensure low delinquency and default rates as PACE companies asserted—including pressures from the secondary market for PACE securities—the structure of PACE transactions significantly limits creditors' economic incentives to determine repayment ability and raises risks of consumer harm. A qualified mortgage category with the guardrails for PACE loans suggested by one commenter would not address these risks inherent to the structure of PACE. TILA specifically excludes from the qualified mortgage definition loans with certain risky features and lending practices that are well known to present significant risks to consumers, including loans with negative amortization or interest-only features and (for the most part) balloon loans.[218] PACE transactions likewise have features that create significant risks to consumers; the CFPB finds that a presumption of compliance for PACE financing is not warranted.

The CFPB also concludes that the rationales for the existing qualified mortgage categories do not apply for PACE transactions. In its 2020 final rule (General Qualified

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[217] PACE Report, *supra* note 12, at 18.

[218] In the January 2013 Final Rule, the CFPB observed that the clear intent of Congress was to ensure that loans with qualified mortgage status have safer features and terms than other loans. *See, e.g.*,78 FR 6407, 6426 (Jan. 30, 2013) (discussing "Congress's clear intent to ensure that qualified mortgages are products with limited fees and more safe features"); *id.* at 6524 (discussing "Congress's apparent intent to provide incentives to creditors to make qualified mortgages, since they have less risky features and terms").

Mortgage Final Rule),[219] the CFPB noted that loan pricing for non-PACE mortgages reflects credit risk based on many factors, including DTI ratios and other factors that may also be relevant to determining ability to repay, such as credit scores, cash reserves, or residual income, and may be a more holistic indicator of ability to repay than DTI ratios alone.[220] However, the pricing for PACE loans has some notable differences from the non-PACE mortgage market.[221] The available data on PACE financing demonstrates that the pricing for such transactions is tightly bunched, with about half of PACE transactions analyzed by the CFPB having APRs between 8.2 and 9 percent.[222] For reference, the average prime offer rate for primary mortgage loans was around 3.5 percent during the timeframe covered by the PACE Report, varying somewhat over time and by loan term.[223] The CFPB's available data indicate that pricing of PACE loans is primarily correlated with State and property type and does not appear to be an indicator of a consumer's ability to repay. The PACE Report confirms that PACE loans are generally not priced based on traditional measures of credit risk; it notes that APRs for PACE transactions are uncorrelated or very weakly correlated with traditional measures of risk such as loan balance, loan-to-value (LTV) ratio, or credit score.[224]

Further, while the CFPB's research indicates some differences in delinquency rates on non-PACE mortgages correlated to PACE rate spreads, it is not clear that the pricing thresholds for the General Qualified Mortgage category would be predictive of early delinquency and could be used as a proxy for measuring whether a consumer had a reasonable ability to repay at the

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[219] 85 FR 86308 (Dec. 29, 2020).

[220] *Id*. at 86361.

[221] *See generally* part VI.A.

[222] PACE Report, *supra* note 12, at table 2.

[223] *Id*. at 13.

[224] *Id*. at 22-23.

time the PACE transaction was consummated.[225] According to the CFPB's research, PACE transactions with rate spreads above 3.5 percentage points and between 2.25 and 3.49 percentage points increase delinquency rates on a consumer's non-PACE mortgage by an estimated 2.8 and a 1.4 percentage points, respectively, and PACE transactions with rate spreads below 2.25 percentage points have almost zero effect on non-PACE mortgage delinquency.[226] Nonetheless, the CFPB concludes that this limited data would not be sufficient to provide a basis for applying the current General Qualified Mortgage pricing thresholds to PACE transactions even if a qualified mortgage were not otherwise inappropriate for the reasons discussed above. As discussed in the PACE Report, it is not clear what drives variation in the pricing of PACE loans, but it does not appear to be a function of traditional measures of credit risk.[227] Rather, in this context it is more plausible that the larger rate spreads contributed to the increased credit risk. As a result, even though the PACE Report finds that PACE transactions with low rate spreads had relatively better delinquency outcomes on the associated mortgages, the CFPB concludes that it is not reasonable to presume that a creditor that offers a PACE transaction with a low APR and meets the other factors required for a General Qualified Mortgage has made a reasonable and good faith determination of the individual consumer's ability to repay.[228]

[225] Pursuant to the General Qualified Mortgage Final Rule, a loan generally meets the General Qualified Mortgage loan definition in § 1026.43(e)(2) only if the APR exceeds the APOR for a comparable transaction by less than 2.25, 3.5, or 6.5 percentage points, respectively, depending upon the loan amount, whether the loan is a first or subordinate lien, and whether the loan is secured by a manufactured home. Most PACE transactions would qualify for the highest pricing threshold for General Qualified Mortgages, 6.5 percent, which generally applies to transactions with loan amounts of less than $66,156 (indexed for inflation). 12 CFR 1026.43(e)(2)(vi)(A)-(F).

[226] PACE Report, *supra* note 12, at 40.

[227] *Id*. at 23.

[228] The CFPB is also skeptical that defining a category of qualified mortgages for PACE transactions based on a specific DTI threshold would be suitable for PACE. Additionally, given the risk factors described above, the statutory requirements for qualified mortgage may not be satisfied by defining a category of qualified mortgages for low-DTI PACE transactions. Moreover, the CFPB's available evidence does not demonstrate a correlation between a PACE consumer's DTI and non-PACE mortgage outcomes. The CFPB estimates that the effect of a PACE

The Small Creditor Qualified Mortgage category in § 1026.43(e)(5) extends qualified mortgage status to covered transactions that are originated by creditors that meet certain size criteria and that satisfy certain other requirements. The CFPB created the Small Creditor Qualified Mortgage category based on its determination that the characteristics of a small creditor—its small size, community-based focus, and commitment to relationship lending—and the incentives associated with portfolio lending together justify extending qualified mortgage status to loans that meet the criteria in § 1026.43(e)(5), including that the creditor consider and verify the consumer's DTI or residual income.[229]

The CFPB concludes that this reasoning does not apply in the context of PACE transactions. PACE financing is primarily administered by several large PACE companies that administer programs on behalf of government creditors in each State where residential PACE is active. Although local governments authorize PACE programs and may work closely with PACE companies in their communities, the PACE companies' role in the transaction eliminates the community-based focus or relationship-lending features that in part justified treating certain small creditors differently for purposes of the Small Creditor Qualified Mortgage. In contrast to the CFPB's findings with respect to many small creditors, the CFPB is not persuaded that PACE companies have a more comprehensive understanding of the financial circumstances of their customers or of the economic and other circumstances of a community when they administer a

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transaction on a consumer's non-PACE mortgage is essentially the same for consumers with DTI ratios above and below 43 percent, a threshold commonly used in the mortgage market and, prior to the General Qualified Mortgage Final Rule, a criterion for the General Qualified Mortgage category. *Id.* at 48-49. Even assuming that the data revealed a DTI threshold that was sufficiently predictive of early delinquency to serve as a proxy for whether a consumer had a reasonable ability to repay at the time of consummation, the CFPB doubts that a presumption of compliance would be appropriate given the unique characteristics of PACE transactions discussed above.

[229] 78 FR 35430, 35485 (June 12, 2013) ("The Bureau believes that § 1026.43(e)(5) will preserve consumers' access to credit and, because of the characteristics of small creditors and portfolio lending described above, the credit provided generally will be responsible and affordable.").

program.[230] Moreover, as discussed above, the incentives for creditors are different for PACE financing than they are for other loans, limiting the effect that holding loans in portfolio has on underwriting practices. Even if a loan is held in portfolio, creditors and PACE companies bear little risk associated with PACE financing, making it likely these entities will be repaid even in the event of foreclosure or other borrower distress.

Similarly, the reasoning for the Seasoned Qualified Mortgage loan category set out in § 1026.43(e)(7) would not apply to PACE transactions. In 2020, the CFPB created the Seasoned Qualified Mortgage category for loans that meet certain performance requirements, are held in portfolio by the originating creditor or first purchaser for a 36-month period, comply with general restrictions on product features and points and fees, and meet certain underwriting requirements. As discussed above, the effect that holding loans in portfolio has on underwriting practices is limited for PACE transactions, so the portfolio lending requirement would provide only a limited incentive to make affordable loans. Additionally, and as noted above, mortgage servicers will often pay a property tax delinquency on behalf of a consumer who has both a PACE mortgage and a non-PACE mortgage regardless of whether the borrower had a pre-existing escrow account. For these borrowers, the payment of their property taxes may have no connection to their actual ability to repay their PACE transaction, let alone to a creditor's good faith and reasonable determination of a borrower's ability to repay at consummation. Given this, the CFPB determines that it is not appropriate to extend the presumption of compliance to these circumstances.

Moreover, in the context of PACE financing, successful loan performance over a seasoning period of 36 months would not give sufficient certainty to presume that loans were

[230] *See* 80 FR 59947 (Oct. 2, 2015).

originated in compliance with the ability-to-repay requirements at consummation. While a non-PACE mortgage would typically have 36 payments due in the seasoning period, thus demonstrating that the loan payments were affordable to the consumer on an ongoing basis, a PACE transaction would have no more than three or six payments because PACE transactions are paid annually or semi-annually. Evidence of successful performance over only three or six payments is not sufficiently probative of the creditor's compliance with the ability-to-repay requirements at consummation for PACE transactions to create a presumption of compliance.

Similar concerns apply to the Balloon-Payment Qualified Mortgage category in § 1026.43(f). Section 1026.43(f) permits balloon-payment loans originated by small creditors that operate in rural or underserved areas to qualify for qualified mortgage status, even though balloon-payment loans are generally not eligible for General Qualified Mortgage status. In addition to the general reasons discussed above for not having a qualified mortgage definition for PACE, the same specific concerns noted above with respect to the Small Creditor Qualified Mortgage —namely, that the involvement of nationwide PACE companies limits the applicability of any special features of small creditors relevant to the Small Creditor Qualified Mortgage —are equally applicable to the Balloon-Payment Qualified Mortgage criteria. Moreover, the CFPB is not currently aware of PACE financing with balloon payments.

This determination is consistent with EGRRCPA section 307. EGRRCPA section 307 makes no mention of PACE loans qualifying for a presumption of compliance with the ability-to-repay requirements it directed the CFPB adopt for PACE financing. Rather, it provides in relevant part that the CFPB must prescribe regulations that (1) "carry out the purposes of subsection (a)"— *i.e.*, that no creditor may make a residential mortgage loan unless the creditor makes a reasonable and good faith determination based on verified and documented information

that, at the time the loan is consummated, the consumer has a reasonable ability to repay the loan according to its terms—and (2) apply TILA section 130 with respect to "violations under subsection (a)" to such financing. Nowhere does EGRRCPA section 307 mention TILA section 129C(b) (the provisions governing qualified mortgages) or otherwise indicate that the CFPB's adoption of ability-to-repay requirements specific to PACE loans should make further allowance for any presumption of compliance with those requirements. Instead, by requiring that the CFPB "account for the unique nature" of PACE financing, the CFPB understands that Congress concluded that elements of the existing ability-to-repay regime for residential mortgage loans—including the qualified mortgage provisions—may not be appropriate in the case of PACE financing.

This determination is also consistent with the relevant statutory authority under TILA sections 129C(b)(3)(C)(ii), 129C(b)(3)(B)(i), and 105(a). TILA section 129C(b)(3)(A) directs the CFPB to prescribe regulations to carry out the purposes of section 129C and TILA section 129C(b)(3)(B)(i) in turn authorizes the CFPB to prescribe regulations that revise, add to, or subtract from the criteria that define a qualified mortgage upon a finding that such regulations are necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of this section, are necessary and appropriate to effectuate the purposes of this section and section 129B, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections. TILA section 105(a) likewise provides that regulations implementing TILA may contain such additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions, as in the judgment of the CFPB are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to

facilitate compliance therewith. Consistent with those authorities, after taking into account the purposes of the ability-to-repay and qualified mortgage provisions and the unique nature of PACE financing, the CFPB concludes that there is ample reason not to extend a presumption of compliance with the ability-to-repay requirements to PACE transactions.

The CFPB recognizes that § 1026.43(i)(2) may impact the availability of PACE credit. The CFPB finds that any credit access impacts must be justified against the consumer protection risks of extending qualified mortgage status to PACE transactions. TILA section 129C authorizes the CFPB to modify the qualified mortgage criteria where necessary to ensure the availability of responsible, affordable mortgage credit.[231] The above analysis and the PACE Report call into question the extent to which the availability of PACE transactions increases the supply of such credit.

1026.43(i)(3)

EGRRCPA section 307 requires the CFPB to "prescribe regulations that carry out the purposes of [TILA's ATR requirements] and apply [TILA] section 130 with respect to violations [of TILA's ATR requirements] with respect to [PACE] financing, which shall account for the unique nature of [PACE] financing." Section 1026.43 currently applies to the creditor of any transaction that is subject to § 1026.43's ability-to-repay requirement. The CFPB proposed § 1026.43(i)(3) to also apply the requirements of § 1026.43 to any PACE company that is substantially involved in making the credit decision for a PACE transaction. The CFPB is finalizing § 1026.43(i)(3) as proposed. Section 1026.43(i)(3) clarifies that a PACE company is "substantially involved" in making the credit decision if it makes the credit decision, makes a recommendation as to whether to extend credit, or applies criteria used in making the credit

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[231] 15 U.S.C. 1639c(b)(3)(B)(i).

decision. Section 1026.43(i)(3) also applies TILA section 130[232] to covered PACE companies that fail to comply with § 1026.43.

Several consumer groups supported extending ability-to-repay requirements to PACE companies in addition to PACE creditors. Two stated that defining "creditor" to include PACE companies for purposes of § 1026.43 would implement EGRRCPA section 307's mandate to consider the unique characteristics of PACE. One consumer group, as discussed under § 1026.43(b)(14), supported including home improvement contractors or subcontractors under the definition of "PACE company" to expand the parties who would be subject to the ability-to-repay requirements.

A number of consumer groups, a mortgage-industry trade association, a State agency, and an individual commenter also supported applying TILA civil liability for violations of the PACE ability-to-repay rules. They stated, for example, that the civil liability provisions could deter predatory behavior, mitigate unaffordable PACE lending, reduce default and foreclosure risk for borrowers, and afford consumers remedies in the face of TILA violations.

Certain of these consumer groups, as well as a State agency, specifically supported making PACE companies subject to civil liability under TILA. Two consumer groups stated that defining "creditor" to include PACE companies for purposes of TILA section 130 would carry out the mandate in EGRRCPA section 307 to consider the unique characteristics of PACE. They also asserted that such coverage would be appropriate because PACE government sponsors delegate origination and underwriting processes to PACE companies, and that PACE consumers perceive the PACE companies as creditors. They also stated that PACE companies assert defenses in litigation that ordinarily apply only to government entities, on the theory that the

[232] 15 U.S.C. 1640.

association with a government sponsor cloaks the PACE company with the same defenses and insulates them from liability. They and other consumer groups stated that applying the ability-to-repay and civil liability requirements to PACE companies would ensure that State assessment laws do not preclude consumers from obtaining relief for TILA violations.

Several consumer group commenters suggested extending ability-to-repay or civil liability requirements further, to include home improvement contractors who sell PACE financing in the course of selling their home improvement products and help originate the loans.

Several PACE companies opposed the application of TILA section 130 to PACE companies for violations of § 1026.43. One PACE company asserted that the CFPB lacks authority to subject PACE companies to ability-to-repay requirements or civil liability under TILA. It stated that the fact that government creditors are insulated from liability authority under TILA section 113(b) means that Congress did not intend liability under TILA section 130 to extend to PACE companies.[233]

As discussed in the analysis of § 1026.2(a)(14) above, a number of commenters opposed covering government entities as creditors under TILA or treating PACE loans as TILA credit. One PACE company stated in support of this position that it would be incongruous to apply the proposed TILA requirements to local government entities acting as PACE creditors along with the protections afforded to them under section TILA section 113(b). A government sponsor of PACE programs raised sovereign immunity objections to the application of TILA liability. It also asserted that PACE companies may opt to leave the PACE market if subject to civil liability under TILA.

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[233] TILA section 113(b) provides that "[n]o civil or criminal penalty provided under this subsection for any violation thereof may be imposed upon . . . any State or political subdivision thereof, or any agency of any State or political subdivision."

The CFPB is finalizing § 1026.43(i)(3) as proposed. PACE companies play an extensive role in PACE financing programs, as described in part II.A. In exchange, PACE companies typically receive part of the profit from PACE financing. Given the role that PACE companies play in PACE financing, the incentive structure of PACE lending, and the fact that PACE companies will often be the parties implementing any ability-to-repay requirements, the CFPB concludes that application of § 1026.43 to PACE companies that are substantially involved in making the credit decision, in addition to creditors, is appropriate and consistent with the Congressional mandate in EGRRCPA section 307 to implement regulations that carry out the purposes of TILA's ability-to-repay provisions. A PACE company that makes the credit decision, makes a recommendation as to whether to extend credit, or applies criteria used in making the credit decision is "substantially involved" in making the credit decision. A PACE company is not substantially involved in making the credit decision for purposes of § 1026.43(i)(3) if it merely solicits applications, collects application information, or performs administrative tasks. Applying section 130 to covered PACE companies will extend the economic incentive to comply to a party that bears substantial responsibility for the credit decision and that is likely to profit from the transaction.

The application of TILA section 130 to covered PACE companies will also enhance consumers' ability to obtain remedies for violation of the ability-to-repay rules. TILA section 113(b)[234] provides that no civil or criminal penalties may be imposed under TILA upon any State or political subdivision thereof, or any agency of any State or political subdivision. PACE creditors are generally government entities that would be subject to section 113(b)'s protections. Therefore, without application of section 130 to PACE companies, PACE consumers could be

[234] 15 U.S.C. 1612(b).

limited in their ability to obtain remedies for violations of the ability-to-repay requirements, frustrating the purposes of TILA and EGRRCPA section 307 by potentially allowing for circumvention or evasion of the ability-to-repay requirements. Moreover, Congress specifically directed the CFPB to apply section 130's liability provisions to PACE.

The CFPB declines to extend liability under TILA to home improvement contractors who sell PACE financing to the consumer or assist in the origination process if they are not PACE companies substantially involved in making the credit decision or otherwise liable under TILA. Finalizing § 1026.43(i)(3) as proposed provides adequate protections and remedies for consumers in the PACE marketplace. Additionally, the CFPB understands that home improvement contractors are not currently substantially involved in credit decisions for PACE transactions. The CFPB is only extending liability to parties who are PACE companies as defined in § 1026.43(b)(14) that are substantially involved in making the credit decision for a PACE transaction.

Regarding a government sponsor's comment that § 1026.43(i)(3) could result in PACE companies exiting the market, while the CFPB acknowledges that some PACE companies may decide to exit the industry rather than be liable for the obligation to make good-faith determinations of consumers' ability to repay their PACE loans, EGRRCPA section 307 mandates the extension of liability in circumstances where PACE loans are made without consideration of ability to repay.

The CFPB uses its authority under EGRRCPA section 307 to apply the requirements of § 1026.43 to PACE companies and to apply section 130 of TILA to PACE companies for violations of § 1026.43.

Appendix H–Closed-End Model Forms and Clauses

The CFPB is finalizing forms H–24(H), H–25(K), H–28(K), and H–28(L) to appendix H to Regulation Z. Forms H–24(H) and H–25(K) provide blank model forms for the Loan Estimate and Closing Disclosure illustrating the inclusion or exclusion of the information as required, prohibited, or applicable under §§ 1026.37 and 1026.38 for PACE transactions. Forms H–24(H) and H–25(K) are generally based on existing forms H–24(G), Mortgage Loan Transaction Loan Estimate – Modification to Loan Estimate for Transaction Not Involving Seller, and H–25(J), Mortgage Loan Transaction Closing Disclosure – Modification to Closing Disclosure for Transaction Not Involving Seller.

The CFPB stated in the proposal that it planned to publish translations of forms H–24(H) and H–25(K) if it finalized the proposed additions to appendix H. As discussed above, consumer advocates have expressed concerns that the PACE market lacks adequate consumer protections, including concerns that PACE financing is disproportionately targeted at consumers with limited English proficiency. Generally, CFPB stakeholders have underscored the importance of language access as a way of ensuring fair and competitive access to financial services and products. The CFPB believes that competitive, transparent, and fair markets are supported by providing translations of key material in the customer's preferred language, along with the corresponding English-language material. Accordingly, the CFPB is making available forms H–28(K) and H–28(L), which are Spanish translations of forms H–24(H) and H–25(K), for PACE creditors that wish to use them. Use of these translations is not required under the final rule, but the CFPB is providing them as an implementation resource for PACE lenders.[235]

[235] *See* 12 CFR 1026.37(o)(5)(ii) and 1026.38(t)(5)(viii).

Two consumer groups noted in comments that the proposed model form for the Loan Estimate omitted the appraisal disclosure required under § 1026.37(m)(1) and recommended its inclusion because appraisals play a key role in PACE underwriting. The CFPB is finalizing the model forms to include the appraisal disclosure.

The CFPB is also finalizing several additional pages for the Loan Estimates and Closing Disclosures, to reflect variations in the information required or permitted to be disclosed.

V. Effective and Compliance Date

Consistent with TILA section 105(d), the CFPB proposed that the final rule would take effect at least one year after publication in the *Federal Register* but no earlier than the October 1 which follows by at least six months the date of promulgation. For the reasons discussed below, the CFPB is finalizing an effective date of March 1, 2026.

A PACE company submitted comment to the proposal recommending an effective date of at least 30 months from the publication of this final rule. The commenter asserted that an extended period to come into compliance is warranted by the breadth and complexity of the proposal. It stated that the proposal would impact all aspects of its business, requiring substantial updates to software, systems, and policies and procedures. It also stated that coming into compliance would require collaboration with other industry stakeholders, including government sponsors and home improvement contractors, and that the CFPB should allow industry participants adequate time to work with consultants and legal professionals to understand the various requirements. The PACE company stated that the CFPB provided the mortgage industry nearly two years to come into compliance with the 2013 TILA-RESPA Rule, citing the significant cost and system and software changes, and that the changes in this proposed rule would be more significant than those in the 2013 TILA-RESPA Rule.

The CFPB determines that an effective date of March 1, 2026, provides sufficient time for covered parties to come into compliance. The ability-to-repay and TILA-RESPA integrated disclosure requirements have been in place since 2013, albeit with certain adjustments over time. Many of the operational and regulatory complexities have been resolved in that time.

VI. CFPA Section 1022(b) Analysis

A. Overview

In developing this final rule, the CFPB has considered the rule's potential benefits, costs, and impacts in accordance with section 1022(b)(2)(A) of the CFPA.[236] The CFPB requested comment on the preliminary analysis presented in the proposed rule and submissions of additional data that could inform the CFPB's analysis of the benefits, costs, and impacts, and the discussion below reflects comments received. In developing the final rule and the proposed rule, the CFPB consulted with the appropriate prudential regulators and other Federal agencies, including regarding consistency with any prudential, market, or systemic objectives administered by these agencies.[237] As discussed in part II.B above, the CFPB also has consulted with State and local governments and bond-issuing authorities, in accordance with EGRRCPA section 307.[238]

One consumer advocate stated generally that the CFPB's 1022(b) analysis in the proposal was appropriate and satisfied the CFPB's burden to consider costs, benefits and impacts.

Provisions to be Analyzed

Although the final rule has several parts, for purposes of this 1022(b)(2)(A) analysis, the CFPB's discussion groups the provisions into two broad categories. The provisions in each category would likely have similar or related impacts on consumers and covered persons. The

[236] 12 U.S.C. 5512(b)(2)(A).

[237] 12 U.S.C. 5512(b)(2)(B).

[238] 15 U.S.C. 1639c(b)(3)(C)(iii)(II).

categories of provisions are: (1) the provision to apply the ability-to-repay requirements of § 1026.43 to PACE transactions, with certain adjustments to account for the unique nature of PACE, including denying eligibility for any qualified mortgage categories; and (2) the provision to clarify that only involuntary tax liens and involuntary tax assessments are not credit for purposes of TILA, such that voluntary tax liens and voluntary tax assessments that otherwise meet the definition of credit, such as PACE transactions, are credit for purposes of TILA.

Economic Framework

Before discussing the potential benefits, costs, and impacts specific to this final rule, in the proposal the CFPB provided an overview of its economic framework for analyzing the impact and importance of creditors and PACE companies considering a consumer's ability to repay prior to an extension of credit. The CFPB has previously discussed the general economics of ability-to-repay determinations in the January 2013 Final Rule and elsewhere,[239] and focused in the proposal on economic forces specific to PACE.

In normal lending markets, such as the non-PACE mortgage market, creditors generally have an intrinsic profit motive to set loan pricing based in part on ability to repay and in turn have an economic incentive to determine ability to repay. Indeed, in the January 2013 Final Rule, the CFPB noted that, even prior to the then-new ability-to-repay requirements of Regulation Z, most mortgage lenders voluntarily collected income information as part of their normal business practices, even as the January 2013 Final Rule was adopted to prevent lenders who did not follow this practice from harming consumers and the financial system. Economic theory says that, to be profitable, a lender must apply high enough interest rates to its loans such that the average *ex ante* expected value of the loans in its portfolio is positive. The higher the likelihood

[239] *See, e.g.*, 78 FR 35430, 35492-97 (June 12, 2013).

of nonpayment, the higher the interest rate must be to make a profit.[240] Lenders may price based on the average ability to repay in the population, or may price on individual risk after making an effort to determine ability to repay, but they cannot typically remain profitable in a competitive market if they set interest rates while ignoring ability to repay entirely.[241]

The market for PACE financing has some notable differences from the typical non-PACE mortgage market, and these differences dampen or eliminate the economic incentive for PACE companies to price based on ability to repay. Those who stand to receive revenues from PACE transactions are shielded from losses in ways that are not common in the mortgage market. First, for the more than 70 percent of PACE borrowers with a pre-existing non-PACE mortgage,[242] it is unlikely that the PACE transaction would ever cause a loss to the PACE company or its investors because mortgage servicers for the non-PACE mortgage will often pay a property tax delinquency on behalf of a borrower. Second, PACE companies generally will be made whole in the event of foreclosure, whether that foreclosure is initiated by the taxing authority or a non-PACE mortgage holder, because PACE transactions are structured as tax liens and will typically take precedence over any non-tax liens, such as those securing pre-existing mortgage loans. Third, PACE companies may be made whole even if the foreclosure proceeds are insufficient.

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[240] This holds empirically as well. In the General Qualified Mortgage Final Rule, the CFPB noted that loan pricing for non-PACE mortgages is correlated both with credit risk, as measured by credit score, and with early delinquency, as a proxy for affordability. *See* 85 FR 86308, 86317 (Dec. 29, 2020).

[241] A lender that conducts an ability-to-repay analysis will have a more precise measurement of the risk of non-payment, and can thus profitably price loans to consumers with high ability to repay at a low interest rate, being reasonably assured of repayment, while pricing riskier loans at a higher rate to compensate for the higher risk of default. A lender that does not conduct an ability-to-repay analysis must price loans consistent with the average risk of default in the population in order to make a profit. This pooled risk rate will involve an interest rate higher than the low rates that could otherwise be profitably offered to low-risk consumers. Note that this logic applies even if loans are ultimately sold on the secondary market and securitized. A rational investor will not pay market rate for an asset-backed security where the component mortgages are priced at levels consistent with low risk if the lender cannot verify that the loans are actually low risk.

[242] PACE Report, *supra* note 12, at 18.

Because PACE transactions are structured as obligations attached to the real property, rather than to the consumer, any remaining amounts owed on the PACE loan that are not paid through foreclosure proceeds generally will not be extinguished and will instead remain on the property for subsequent owners to pay.

The empirical evidence on PACE transactions is consistent with the unusual protection from loss that the structure of PACE transactions provides for the parties receiving revenue from the loans. The PACE Report shows that PACE companies largely did not collect income information from applicants when they were not required to by State law, consistent with the lack of an economic incentive to verify ability to repay.[243] Moreover, the PACE Report finds that PACE transactions are not priced based on individual risk.[244] The PACE Report notes that estimated APRs for PACE transactions are tightly bunched, with about half of estimated PACE APRs between 8.2 and 9 percent.[245] The Report also notes the PACE APRs are at best weakly correlated with credit score, with an average difference of less than five basis points between loans made to consumers with deep subprime credit scores and consumers with super-prime credit scores.[246]

In response to the proposal, one PACE company disagreed with the above analysis, stating that PACE companies do have an intrinsic incentive to consider ability to repay due to the importance of bond ratings. According to the commenter, PACE companies' business models depend on being able to securitize and sell bonds backed by PACE loans, and a high delinquency rate would impact the ratings of those bonds, affecting PACE companies' profits.

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[243] *Id.* at Table 1.

[244] *Id.* at 23.

[245] *Id.* at Table 2.

[246] *Id.* at 23.

With respect to the commenter's assertion that default rates of PACE loans affect bond ratings, and thus provide an incentive to ensure ability to repay, the CFPB makes two responses. First, as noted above, consumers with a non-PACE mortgage generally will not default on a PACE loan directly even if they cannot afford the PACE loan, as any property tax delinquency will be paid by a mortgage servicer. The CFPB found in the PACE Report that at least 70 percent of PACE borrowers have a non-PACE mortgage, although PACE industry commenters stated this was an undercount, and that a fraction closer to 90 percent of PACE borrowers had a non-PACE mortgage. This creates an artificially low default rate that would be observed by bond investors and would tend to reduce the incentives of PACE companies to ensure that PACE loans are affordable for consumers. Second, the commenter's assertion that PACE companies have an incentive to ensure ability to repay is belied by the conduct of PACE companies to date. The CFPB understands that PACE companies generally have not undertaken ability-to-repay analyses with attributes similar to the TILA requirements where they have not been required to by applicable law. For example, PACE companies did not generally collect or verify income of PACE borrowers in California until they were required to by the 2018 California PACE Reforms. Similarly, PACE companies generally did not collect income information in Florida until its recent law change in 2024, despite having developed systems to capture income information to comply with applicable requirements in California. Accordingly, the CFPB concludes that PACE companies lack the incentive to ensure their borrowers' ability to repay absent legal requirement to do so.

B. Baseline for Analysis

In evaluating the final rule's benefits, costs, and impacts, the CFPB considers the impacts against a baseline in which the CFPB takes no action. This baseline includes existing regulations,

State laws, and the current state of the market. In particular, the baseline assumes no change in the current State laws and regulations around PACE financing. Also, notwithstanding the clarification in this final rule that only involuntary tax liens and involuntary tax assessments are excluded from being credit under Regulation Z (such that the commentary does not exclude PACE transactions), the baseline assumes that the current practices of PACE industry stakeholders are not consistent with treating PACE financing as TILA credit.

The CFPB notes that, since the publication of the proposal, the baseline has shifted due to changes in State laws. Florida has passed legislation that requires verification of consumers' household income among other consumer protections.[247]

The CFPB did not receive comments regarding its choice of baseline.

C. Data Limitations and Quantification of Benefits, Costs, and Impacts

The discussion below relies on information that the CFPB has obtained from industry, other regulatory agencies, and publicly available sources, including reports published by the CFPB. These sources form the basis for the CFPB's consideration of the likely impacts of this final rule. The CFPB provides estimates, to the extent possible, of the potential benefits and costs to consumers and covered persons of this rule, given available data.

Among other sources, this discussion relies on the CFPB's PACE Report, as described in part II.B.4 above. The Report utilizes data on applications for PACE transactions initiated between July 1, 2014, and December 31, 2019, linked to de-identified credit record information through June 2022. As described above, the Report estimates the effect of PACE transactions on consumers by comparing approved PACE applicants who had an originated PACE transaction ("Originated Consumers") to those who were approved but did not have an originated transaction

[247] *See* Fla. Stat. sec. 163.081(3)(a)(12).

("Application-Only Consumers"). The Report uses a difference-in-differences regression methodology, essentially comparing the changes in outcomes like mortgage delinquency for Originated Consumers before and after their PACE transactions were originated to the same changes for Application-Only Consumers. In this discussion of the benefits, costs, and impacts of the final rule, the CFPB focuses on results from what the Report refers to as its "Static Model" which considers outcomes over the period between zero to two years prior to the PACE transaction and the period between one to three years after.[248] The Report also estimates the effect of the 2018 California PACE Reforms on PACE lending in that State, using Florida as a comparison group in a difference-in-differences methodology.[249]

The CFPB also relies on publicly available data on PACE from State agencies and PACE trade associations, as well as on public comments in response to the Advance Notice of Proposed Rulemaking.

The CFPB acknowledges several important limitations that prevent a full determination of benefits, costs, and impacts. The CFPB relies on the PACE Report for many parts of this discussion, but as discussed in the PACE Report itself, the data underlying the Report have limitations.[250] The data used in the Report to evaluate consumer impacts are restricted primarily to consumers with a credit record. Further, the comparison groups used in the difference-in-differences analysis are reasonable but imperfect. In addition, while the 2018 California PACE Reforms are informative to the CFPB's consideration of the impacts of this final rule on

[248] During the year immediately after consummation of a PACE transaction, PACE payments generally have not been included in a consumer's property tax bill. As discussed further below, it would not be appropriate to include this period in an analysis of the affordability of PACE loans.

[249] Florida's recent State law requiring consideration of a borrower's income was enacted in 2024, after the period studied in the PACE report.

[250] *Id.* at 52.

consumers and covered persons, this final rule has different requirements from the State laws that made up the 2018 California PACE Reforms, such that the potential impacts may differ.

In light of these data limitations, the analysis below provides quantitative estimates where possible and a qualitative discussion of the final rule's benefits, costs, and impacts. General economic principles and the CFPB's expertise, together with the available data, provide insight into these benefits, costs, and impacts. In the proposal, the CFPB requested additional data or studies that could help quantify the benefits and costs to consumers and covered persons of the rule. Commenters largely did not provide such information, except as described below.

PACE industry stakeholders raised a number of concerns regarding the PACE Report's methodology.

A PACE company took issue with the fact that the data request only allowed PACE companies to submit information for a single property owner, and the fact that if a property was owned by multiple consumers, the CFPB's contractor received identifying information on just one of the consumers for matching purposes. The commenter stated that, based on its own records, 50 percent of properties with PACE loans are jointly owned and thus had multiple PACE loan applicants on a single loan. The commenter asserted that, by excluding from the analysis outcomes for these other applicants, the PACE Report cannot reliably make conclusions on the impact of PACE loans on consumer outcomes.

The CFPB acknowledges that its data collection only sent information on one consumer per PACE loan to the CFPB's contractor for matching. While this means that some consumers who have PACE loans were not included in the PACE Report's analysis, the CFPB does not agree that this aspect of the data collection biased the results of the PACE Report substantively. Where a PACE loan borrower has a joint non-PACE mortgage with another person, the non-

PACE mortgage will appear on both consumers' credit records, such that the analysis in the PACE Report would still track whether that household had difficulty paying their non-PACE mortgage. Thus, on balance, the CFPB finds that tracking the outcomes of one consumer per PACE loan is sufficiently informative of the household's financial outcomes.

Two PACE companies and an industry trade association stated that the PACE Report did not identify all PACE borrowers who had a pre-existing non-PACE mortgage. The PACE Report finds that 70 percent of PACE borrowers had a non-PACE mortgage prior to receiving a PACE loan; commenters stated that this fraction is closer to 90 percent. The commenters asserted that by failing to identify all those with a mortgage in the sample, the CFPB did not accurately capture the impact of PACE borrowing.

The CFPB acknowledges that the true share of PACE borrowers with a pre-existing non-PACE mortgage is likely higher than the 70 percent identified in the PACE Report. In cases where the non-PACE mortgage is in the name of only one member of a household while the PACE loan is in the name of another member, the methodology used by the CFPB's contractor to extract the data used in the PACE Report would omit the non-PACE mortgage. However, the CFPB does not agree that this limitation biases or undermines the results of the Report. There is no evidence to suggest that PACE consumers whom the CFPB might have incorrectly categorized as not having a non-PACE mortgage had better outcomes than those who were correctly categorized.

One PACE company stated that it was not appropriate for the PACE Report to analyze credit card balances, as homeowners with and without PACE loans use credit cards differently, and increased credit card balances cannot be attributed to having a PACE loan. The commenter asserted that homeowners who financed some projects through a PACE loan may be undertaking

additional home improvement projects on their homes and paying for these using credit cards if the additional projects are not PACE-eligible. In addition, two PACE companies stated that the PACE Report shows that the analysis for credit card balances did not meet the required assumptions for a valid difference-in-differences analysis, as it showed balances for Originated Consumers increasing relative to Application-Only Consumers prior to the PACE loan application.

The CFPB agrees that homeowners with and without PACE loans may use credit cards differently. The results in the PACE Report describing the impact of PACE loans on credit card balances are not relied upon for the final rule. The CFPB primarily relies on the mortgage estimates included in the PACE Report for this 1022(b) analysis, as described further below.

A PACE company and an industry trade association stated that the methodology used in the PACE Report was invalid because it did not distinguish between the general impact of taking out new credit and the specific features of PACE loans such as paying through property tax bills. The commenters suggested that any resulting negative impacts found in the PACE Report as resulting from a PACE loan are just the result of consumers taking on more debt of any kind, rather than being specific to PACE financing. One of the commenters noted that increased spending and higher debt amounts negatively impact credit score. They stated that because credit score is treated as an outcome in the PACE Report, consumers with a PACE loan will necessarily perform worse.

The CFPB acknowledges that the estimates in the PACE Report evaluating the impact of a PACE loan include the impact of additional debt in general, as well as the specific features of PACE loans that differ from other forms of credit. However, the CFPB views this as the correct way to evaluate the costs of PACE loans for consumers and thus the potential benefits of the rule

in preventing such loans. PACE loans have a variety of features that are relevant to whether consumers can repay, including but not limited to the structure of the obligations, the way they are marketed by home improvement contractors and PACE companies, the potential that consumers would take on a home improvement contract that might not otherwise occur, and the infrequent payment cycle relative to non-PACE mortgages, as well as imposing additional debt on the consumer. But for the purposes of this rule, to determine whether consumers have difficulties affording PACE loans, the CFPB must determine the impact of all of these features collectively. That is, regardless of whether it is true, as the commenters assert, that it is not feasible to disentangle the impact on consumers of the various features of PACE loans, the CFPB maintains that this would not answer the relevant question. The overall impact of PACE loans on consumers is the relevant quantity for this analysis.

One public PACE provider and its associated local government expressed concern that the CFPB did not use data provided by Sonoma County, California. The commenters stated that government-run PACE programs such as the program in Sonoma County are unique, since they are entirely administered by the local government and not a PACE company. They asserted that the tax delinquency rate on loans in the Sonoma County PACE program are low, around 0.5 percent, similar to the annual delinquency rate for all secured parcels in the county. The commenters noted that, in the Sonoma County program, property owners have a minimum of five years to cure delinquencies before the property is subject to sale through a tax defaulted auction.

While Sonoma County provided data, it was not sufficiently detailed to be used in the PACE Report. The Report's main analyses rely on comparing consumers with PACE loans to those who were approved for a PACE loan but did not end up getting one. Sonoma County

provided information on about 400 originated PACE loans but did not provide information on applications that did not result in a loan. Given the CFPB's methodology in the PACE Report, it would not have been possible to analyze the outcomes of Sonoma County's government-run program separate from those of privately-run PACE programs considered in the Report.

Several PACE companies stated that the control group of Application-Only Consumers used in the PACE Report is not comparable to Originated Consumers, and that this undermines the results of the Report. One commenter asserted that the comparison is invalid because the CFPB did not check that the two groups were comparable on loan-to-value ratio of the underlying mortgage, unemployment, income stability over time, variability in mortgage payments, negative equity in property, or income verification procedures used by the lender. Another commenter asserted that the PACE Report characterizes the two groups as having largely similar credit characteristics prior to their PACE application dates but disagreed with this characterization, stating that the PACE Report shows that Originated Consumers were somewhat more likely to have a mortgage, student loan payments, and auto loans than Application-Only Consumers. Additionally, the commenter noted that Originated Consumers had higher average monthly mortgage payments, higher credit card balances, lower credit card limits, and lower incomes than Application-Only Consumers.

On balance, the CFPB finds the Application-Only Consumers to be a reasonable control group for the effect of PACE loans on consumer outcomes. As discussed in more detail below, although small differences exist between Application-Only Consumers and Originated Consumers on some observable characteristics, Application-Only Consumers are much more similar to Originated Consumers than alternate control groups suggested by commenters or considered in the PACE Report. Contrary to the views of the commenters, the PACE Report

includes extensive analysis to substantiate the similarity of the primary control group of Application-Only Consumers to Originated Consumers. Appendix B of the PACE Report includes several robustness checks exploring alternate control groups, all of which are consistent with the results based on the main control group of Application-Only Consumers. For example, the PACE Report includes an analysis where consumers whose applications for a PACE loan were denied are included in the control group. We would expect that this comparison would dampen the negative impact of PACE loans since these denied consumers likely would have worse financial outcomes compared to Application-Only Consumers. The PACE Report instead finds that including these denied consumers in the control group along with approved Application-Only Consumers increases the magnitude of the impact of PACE loans on mortgage delinquency, and using only denied consumers as the control group increases the magnitude more.

Two PACE companies and an industry trade association stated that the analysis in the PACE Report overstates any negative effects of PACE loans on consumers because it excludes the period immediately after each PACE loan was originated. Commenters noted that consumers may be receiving benefits from the home improvement funded by a PACE loan during this period while not making loan payments yet.

The CFPB disagrees with the assertion of some commenters that the CFPB should have considered the effect of PACE loans on consumer outcomes between the date of loan origination and the date the first payment was due. Consumers cannot be delinquent or have difficulty making payments before their loan payments are due, so there is no basis to evaluate affordability during this period.

One PACE company stated that the PACE Report does not correctly handle consumers with multiple PACE loans, resulting in inflated non-PACE mortgage delinquency rates. The commenter asserted that if a consumer has multiple PACE loans, they may have multiple properties with multiple mortgages, and thus have more opportunity to be delinquent on any non-PACE mortgage even if only one of their PACE loans is delinquent.

The CFPB does not agree with certain commenters that the PACE Report's inclusion of consumers with multiple PACE loans inflated the Report's estimates of delinquency outcomes. The CFPB notes that the PACE Report includes a version of its analysis that excluded consumers with multiple PACE loans entirely, and this analysis found substantively the same result as the main analysis that included consumers with multiple loans.[251]

One PACE company stated that the PACE Report incorrectly states that the CFPB requested data for consumers who applied for PACE loans through June 2020, an error that was repeated in the proposal. The commenter noted that the CFPB in fact requested and received data on PACE applications through December 31, 2019. The commenter asserted that the error was significant for the data analysis in the PACE Report because data from 2020 and later would be more reflective of current market conditions.

The CFPB acknowledges that the body of the PACE Report incorrectly states that the CFPB requested PACE loans originated and PACE applications submitted through June 2020, when in fact it requested data through December 2019. It is also true that this error was repeated in the proposal. The PACE Report includes the original data request in Appendix C, which includes the correct dates. However, this is not a material error. The Report is clear that all estimates include only loans where it was possible to follow a consumer for three years after

[251] *See* PACE Report at 64-65.

origination. This effectively excludes any loan originated in late 2019 or after. Any loans originated in 2020 or later would not have been usable for the main analysis of the PACE Report, even if they were requested and provided by the PACE companies.

Two commenters asserted that the 1022(b) analysis did not appropriately incorporate recent changes in the PACE industry. One PACE company asserted that the analysis included in the PACE Report is no longer relevant because PACE financing has changed since the period covered by the Report. The PACE Report includes data on PACE applications through 2019. The commenter stated that, in 2021, the industry imposed self-regulatory measures to address many of the PACE Report's concerns. The commenter further stated, as noted in the CFPB's proposal, consumer complaints have declined in recent years. The commenter asserted that more recent data would better reflect this improvement. Similarly, an industry trade association suggested that since they believe that the proposed 1022(b) analysis focused on the change in mortgage delinquency over a sample period that is unlike the current PACE environment, the CFPB should have primarily relied on estimates from the PACE Report that are specific to the time period after the 2018 California PACE Reforms. The commenter asserted that the current environment includes the 2018 California PACE Reforms, and that relying on the overall estimate overstated the present costs and benefits of the proposal.

The CFPB does not agree with the commenter's assertion that it was inappropriate to focus on PACE loans originated during the period covered by the PACE Report. The PACE Report covers the period spanning the implementation of 2018 California PACE Reforms and presents results separately for loans originated before and after these Reforms became law. The PACE Report finds that PACE loans still increase primary mortgage delinquency in California during the post-Reform period. The CFPB acknowledges that the benefits of the rule may be

lower than the estimates discussed below if some State laws provide protections covered by the rule. The CFPB does not believe this undermines its analysis of benefits, costs and impacts, and discusses how this affects its choice of baseline above.

A State-level chamber of congress, eight Members of the U.S. Congress, and a State government unit stated that the proposal seemed to be targeting Florida and would impose costs on Florida entities specifically. The commenters stated that the proposed rule highlighted some Florida-specific impacts of the rule, such as an expected decrease in applications in that State, and stated that home improvement contractors and government entities in Florida would experience additional costs. The commenters expressed concern that the proposed rule would have a disproportionate impact on Floridians who have limited financial means or limited access to credit.

The rule will apply to covered parties and covered transactions nationwide, not only those in Florida. PACE companies have chosen to operate PACE programs in just Florida, California, and Missouri currently, and this rule will apply equally in all States. Additionally, there are multiple other States with legislation enabling PACE financing. The rule will apply equally to covered parties who begin to operate PACE programs in other States as well.

One PACE company criticized the CFPB for various aspects of the limitations of the data used in the proposed rule and enumerated the number of times that the CFPB stated that it lacked information on costs relevant to the proposal. The commenter stated that some of this missing information was crucial, and that the proposal lacked insight into costs for PACE companies and home improvement contractors to comply with the rule, or costs for consumers to undertake appraisals.

The CFPB used all data that were available and requested comment and data from the public both generally and on specific areas where the CFPB lacked information to quantify potential costs and benefits. As noted below, the CFPB largely did not receive any specific information from commenters regarding the impact analysis topics on which it sought comment.

The same PACE company also stated that the data in the PACE Report are flawed because not all consumers were matched to credit records from the consumer reporting agency that served as the CFPB's contractor as described in part II.B. The commenter particularly disputed the CFPB's assertion, in the PACE Report, that 99 percent of PACE borrowers had sufficient credit histories to have a credit score. The commenter stated that the 99 percent figure ignores the 22 percent of consumers that were not matched to credit record data. They stated further that omitting this 22 percent of PACE applicants is problematic for many of the Report's conclusions, including the assumption that PACE customers have access to other credit.

The CFPB does not agree with the commenters' assertion that the match rate of the data used in the PACE Report was problematic. As discussed in the PACE Report, while some PACE consumers who did not match to credit report data were likely credit invisible (consumers who do not appear in credit record data), others may have been unmatched due to data issues from either the PACE companies or the credit reporting company. The matching in the Report was based only on name and address, due in part to concerns by the PACE companies about sharing more identifying information. While this matching was largely successful, an imperfect match rate is unsurprising given that addresses could be out of date, or names could include spelling errors. Essentially all PACE consumers who matched to credit record data had other credit available, meaning that at least 77 percent of PACE consumers had other credit options, supporting the CFPB's conclusion that PACE consumers had other credit options.

One PACE company asserted that, since the CFPB made methodological decisions that trimmed the sample used in the PACE Report, the resulting sample was unrepresentative. The commenter asserted that the main analysis in the PACE Report omits consumers who were not matched to credit bureau data or who did not have mortgage payments due prior to the PACE loan origination date. The commenter also asserted that consumers who were not matched to the credit record data likely were credit invisible.[252] The commenter asserted that the population of consumers who were not in the data of the CFPB's contractor would have benefitted from a PACE loan because of their lack of access to other credit products, and that it was a mistake to assume in the PACE Report that the unmatched consumers would perform the same as the matched consumers. The commenter also asserted that, for some of the analyses in the PACE Report that focus on mortgage outcomes, requiring the consumers in the sample to have had a mortgage in the credit bureau data excluded new homeowners. The commenter also took issue with limiting the sample used in the static difference-in-differences model to those who have two years of credit bureau data before their PACE loan origination date and three years following.

The CFPB also does not agree with commenters that estimates of the PACE Report were biased by the consumers who were not able to be matched to credit record data. It is possible that these unmatched consumers were credit invisible, but this seems unlikely to be true in the vast majority of cases since PACE borrowers must be homeowners and most home purchases are funded by mortgages.[253] Even mortgages that are paid in full will remain on a consumer's credit

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[252] This commenter seemed to conflate consumers with thin credit files—those with insufficient information on their credit reports to generate a credit score—with consumers who do not appear in credit record databases at all. The PACE Report data includes all consumers for whom the CFPB's contractor could successfully match, regardless of whether that consumer had sufficient credit history to be scored. To avoid confusion, the CFPB characterizes the comment as being in reference to consumers who do not have a credit record.

[253] *See* Nat'l Assoc. of Realtors, *Highlights from the Profile of Home Buyers and Sellers*, https://www.nar.realtor/research-and-statistics/research-reports/highlights-from-the-profile-of-home-buyers-and-sellers (showing 80% of home purchases funded by a mortgage in 2023).

report, potentially indefinitely, and thus would provide a potential match for the CFPB's contractor, even if the consumer otherwise had no active credit accounts. Moreover, while the CFPB does not have data indicating what share of PACE consumers are credit invisible, it is reasonable to expect that the share of consumers who are credit invisible is proportional to the share who are visible but have credit files too thin to calculate a credit score. As noted above, 99 percent of PACE consumers that the CFPB's contractor was able to match were also scored, compared to about 90 percent of the U.S. population overall.[254] This suggests that PACE consumers are if anything less likely to be credit invisible than the average U.S. consumer. Thus, the most reasonable conclusion is that most of the individuals who were not matched were not matched due to mismatches in addresses or names between the PACE company data and the credit reporting company data.

The CFPB acknowledges that, as some commenters asserted, the Static model in the PACE Report, which was cited for the main estimates in the proposal's 1022(b) analysis and again below, omits consumers who do not have sufficient data before and after their PACE loans were originated. Although this inevitably reduces the sample size somewhat,[255] there is no reason to believe that the consumers who were excluded due to a lack of sufficient data before or after the PACE origination are dissimilar to those who were included. In particular, the Dynamic model from the PACE Report generally includes all consumers regardless of whether they have full data before and after the PACE origination and finds substantively similar estimates to the Static model.

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[254] *See e.g.*, FICO, *More than 232 Million U.S. Consumers Can Be Scored by the FICO Score Suite*, FICO Blog (Aug. 2021), https://www.fico.com/blogs/more-232-million-us-consumers-can-be-scored-fico-score-suite.

[255] *See* PACE Report, *supra* note 12 at 53.

A PACE company commenter criticized the fact that the CFPB's data request asked for a single application approval date for the PACE loan. The commenter stated that this date definition was ambiguous because it could be the date the financing agreement was executed or the date the contractor and property owner received the notice to proceed, among other possibilities. The commenter asserted that PACE companies interpreted this date in inconsistent ways, and that the PACE Report may have incorrectly counted some applications as not going forward when the recorded assessment may just be missing.

The CFPB acknowledges the challenges that commenters raised with defining relevant dates in its PACE data collection but disagrees that this undermines the conclusions of the PACE Report. The CFPB consulted at length with PACE companies, including the commenter who expressed concerns with the date specifications, prior to issuing its data request. Given the inherent challenges of issuing a single, standardized data request to multiple private companies, the CFPB's voluntary data collection was reasonably specific with respect to identifying date specifications. Further, the PACE Report includes robustness analysis using alternate date definitions, which yielded substantively similar results.

One PACE company asserted that the PACE Report's treatment of the date when PACE payments are due was improper, making the findings of the Report invalid. In the PACE Report, the CFPB described that the "treatment" by a PACE loan occurs when the first PACE payment was due or would have been due. The commenter stated that, because Application-Only Consumers did not obtain PACE financing, the CFPB should not refer to the period after the first PACE payment would have been due for these consumers as the post-treatment period, because they did not receive a PACE loan and thus experienced no "treatment." The commenter further stated that any delinquencies associated with non-PACE alternative financing for Application-

Only consumers would be included in the pre-treatment period, biasing the PACE Report's estimates of the effect of PACE loans on consumer financial outcomes towards zero.

The CFPB does not agree with some commenters' assertion that the imprecision in the dates used in the PACE Report invalidates the results of the Report. If anything, measurement error of this nature would increase the likelihood of finding no impact of PACE loans on consumer financial outcomes. In general, measurement error in a regression analysis such as the one in the PACE Report would tend to bias results towards zero, that is, toward finding that PACE loans have no impact on consumer financial outcomes. This is not what is found in the PACE Report.

One PACE company expressed concern that the PACE Report includes PACE loans with a performance window during the COVID-19 pandemic. The commenter asserted that the pandemic impacted credit performance outcomes for many Americans. The commenter also asserted that, during this time, mortgages and student loans were subject to forbearance programs, and that forbearance was also available for some property tax payments. The commenter also stated that there is not a methodological strategy that would have allowed the authors of the PACE Report to disentangle the impact of the pandemic from the impact of PACE loans on consumers' financial outcomes.

The CFPB does not agree with commenters that the use of information during the COVID-19 pandemic undermines the conclusions of the Report that were relied on in the proposal and in this final rule. Despite widespread economic disruption during the pandemic, mortgage delinquency rates fell during the early days of the pandemic and remained low for

years.[256] This was due in part to assistance and forbearance programs such as those issued under the CARES Act enacted by Congress in March 2020.[257] With mortgage delinquency rates suppressed generally for all consumers during the pandemic, if anything, the CFPB would expect the gap in mortgage delinquency rates between PACE consumers and Application-Only Consumers to be compressed during this period, leading to a smaller estimated effect of PACE on primary mortgage delinquency during the study period compared to pre-pandemic, independent of the true average impact of PACE loans on consumers' finances. Indeed, although the PACE Report documents that PACE loans had a smaller impact on mortgage delinquency for loans originated after 2018, a point cited by several industry commenters, it is precisely these loans that were potentially impacted by the COVID-19 pandemic. The reduced impact of PACE loans on mortgage delinquency during this period may be due in part to the overall reduction in mortgage delinquency due to pandemic assistance and forbearance programs.

Commenters generally did not provide additional data or studies about the benefits and costs of the proposed rule, with one notable exception. A PACE industry trade association obtained the same data as was used in the PACE Report from the consumer reporting agency that

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[256] *See e.g.*, Ryan Sandler & Judith Ricks, *The Early Effects of the COVID-19 Pandemic on Consumer Credit*, Off. of Rsch. Issue Brief, CFPB (Aug. 2020), https://files.consumerfinance.gov/f/documents/cfpb_early-effects-covid-19-consumer-credit_issue-brief.pdf (showing the reported rate of new delinquencies on mortgage loan accounts fell between March 2020 and June 2020, after being flat or increasing gradually for the year prior.); Lisa J. Dettling & Lauren Lambie-Hanson, *Why is the Default Rate So Low? How Economic Conditions and Public Policies Have Shaped Mortgage and Auto Delinquencies During the COVID-19 Pandemic*, FEDS Notes, Bd. of Governors of the Fed. Rsrv. Sys. (Mar. 4, 2021), https://doi.org/10.17016/2380-7172.2854 (showing mortgage delinquencies fell throughout the pandemic); Ryan Sandler, *Delinquencies on Credit Accounts Continue to be Low Despite the Pandemic*, CFPB (June 16, 2021), https://www.consumerfinance.gov/about-us/blog/delinquencies-on-credit-accounts-continue-to-be-low-despite-the-pandemic/ (showing new delinquencies on mortgages remained low from July 2020 through April 2021); Ctr. for Microeconomic Data, *Quarterly Report on Household Debt and Credit 2024*, Fed. Rsrv. Bank of NY Rsch. & Stat. Grp. (Nov. 2024), https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/pdf/HHDC_2024Q3 (showing that transitions into serious delinquency for mortgages were historically low compared to 2009 through early 2024, nationally and in Texas and California).

[257] *See Coronavirus Aid, Relief, and Economic Security Act*, Pub. L. 116-136 (Mar. 27, 2020) https://www.congress.gov/bill/116th-congress/house-bill/748/text (CARES Act).

served as the CFPB's contractor. The trade association conducted analysis of the data. The results of this analysis are described in a comment from the trade association itself, as well as in comments from individual PACE companies. The CFPB refers to the data and analysis in these comments collectively as "the Trade Group Analysis." The Trade Group Analysis did not include a formal regression analysis to control for other factors, such as a difference-in-differences analysis as used in the PACE Report and did not report any measures of statistical precision. Instead, the Trade Group Analysis claims to compare the raw average rates of non-PACE mortgage delinquency across different groups, using different comparison groups and sample choices than were used in the PACE Report, as described below.

The Trade Group Analysis compared outcomes between Originated Consumers (nominally as defined in the PACE Report) and an alternate control group, a subset of Application-Only Consumers who took out a secured loan after applying for the PACE loan and whose non-PACE mortgage payment increased by at least $1,000 after applying for the PACE loan.[258] The analysis was further limited to applications for both groups that were received between July 2018 and December 2018. The proposed control group consisted of 312 homeowners. The Trade Group Analysis found that homeowners who received PACE financing had better outcomes than the control group. For example, three years after the expected loan origination date, the 90-day mortgage delinquency rate was 5.3 percentage points higher for the alternate control group than for Originated Consumers.

The Trade Group Analysis also presented results based on a control group it refers to as "Standard Financing" consumers, which it described as a group of consumers who resided in the

[258] The Trade Group Analysis uses alternate terms for the relevant groups of PACE consumers than the terms Originated Consumers and Application-Only Consumers used in the PACE Report. To avoid confusion, the CFPB in this discussion refers to the groups that are comparable to those used in the PACE Report using the terms from the Report, and the alternate groups suggested by the commenters as alternate control groups.

same ZIP code as an Originated Consumer and took on between $15,000 and $40,000 of debt from a company that "typically provides home improvement financing," between July 2018 and June 2019. The types of debt for the control group included a mix of credit types, including credit cards, second mortgages, and home improvement loans. The comparison shows these Standard Financing consumers performing worse on several delinquency outcomes and on credit score compared to Originated Consumers and Application-Only Consumers.

The Trade Group Analysis includes data for the period after a PACE loan is originated but before payments become due. The Trade Group Analysis finds that including this window shows improved credit performance for Originated Consumers compared to Application-Only Consumers. Commenters note that consumers may be receiving benefits from the PACE home improvement during this period even though they are not yet making PACE loan payments. One commenter asserted that omitting repayment data from the year following the PACE loan origination date accounts for about half of the difference in the mortgage delinquency rate between the PACE homeowners and the Application-Only homeowners.

Finally, the Trade Group Analysis reported data on consumer credit scores. The Trade Group Analysis found that the average credit score for Originated Consumers who applied for a PACE loan from the second half of June 2019 through June 2020 increased 1.25 points more than the average for Application-Only Consumers over a three-year period. A PACE company stated that the improving trend in outcomes over time deserved additional analysis and that relying on earlier data is misleading. The commenter stated that the improvement in credit scores from 2019 to 2020 should be examined further to confirm that the trend continued through 2021 and into the future. As with the analysis of delinquency outcomes, the Trade Group Analysis does not conduct any statistical analysis to account for variation in other factors, but rather

simply compares averages for the different groups, without reporting sample sizes or measures of statistical precision.

The CFPB does not agree that the alternate control groups suggested in the Trade Group Analysis are informative about the effect of PACE loans on consumer financial outcomes. At the outset, the CFPB notes that the goal for choosing a control group for a difference-in-differences analysis is to find a group that will capture the counterfactual. That is, the control group should capture how outcomes would have changed for the treated group had they not been treated. It is reasonable to expect that Application-Only Consumers would capture that counterfactual trend for Originated Consumers—consumers in both groups were approached by a home improvement contractor marketing the PACE loan, agreed to apply for a PACE loan, and were approved for a PACE loan. The PACE Report includes analysis supporting the assumption that these two groups had similar trends in their financial outcomes prior to applying for a PACE loan. In addition, the CFPB reiterates that the relevant quantity for purposes of this rule is the overall effect of PACE loans, including the way they are marketed and the fact that they may induce consumers into undertaking a home improvement project in the first place, or into financing a project that they might otherwise pay cash for.

Additionally, the CFPB notes that the alternate control groups suggested by the Trade Group Analysis are aimed at limiting attention to consumers who have chosen to finance a home improvement project. While in principle this might be an appropriate strategy to disentangle the effects of PACE marketing from the unique features of the loans, that will not identify the overall impact of PACE loans on consumer financial outcomes, which is the relevant issue for the CFPB.

With respect to the Trade Group Analysis's approach to use only Application-Only consumers whose mortgage payments increased significantly, the CFPB notes that this subsample is small and highly selected. As the commenter notes, this control group contains only 312 consumers—compared to 46,906 in the full Application-Only group. This suggested control group is too small to have statistical power necessary to draw conclusions about the effect of PACE on consumer financial outcomes, even if the commenter had conducted a full regression analysis.[259] Furthermore, again, this alternate control group would not capture the overall effect of PACE transactions on consumers' financial outcomes, which the CFPB finds to be the relevant issue here.

The "standard financing" control group is also problematic. The statistics provided by the commenters show that this control group was very different from Originated Consumers along several key dimensions, including credit score and delinquency rate prior to origination. For instance, within the subsample of PACE applications that the Trade Group Analysis chose to focus on, the average non-PACE mortgage delinquency rates for Originated Consumers and Application-Only Consumers prior to their PACE application was about 7 percent for both groups. The "standard financing" group had a delinquency rate of just 0.61 percent.[260] The Trade

[259] Although the commenter did not supply confidence bands or other measures of statistical precision, some arithmetic shows that there was no reasonable expectation that a sample size of 312 would be sufficient. For example, the PACE Report estimates that PACE loans increased non-PACE mortgage delinquency by 2.5 percentage points, with a standard error of 0.00234. A 95 percent confidence interval includes values within about 2 standard errors above and below the central estimate. The PACE Report's estimates were based on 46,906 observations in the control group, 150 times larger than the alternate group offered by the commenter. Standard errors scale with the square root of sample size, such that, as a first approximation, we would expect standard errors about 12 times larger for the commenter's estimate compared to those in the PACE Report, and a 95 percent confidence interval for a sample size of 312 would likely cover more than 6 percentage points on either side of a central estimate.

[260] The delinquency rates for the "standard financing" group are so low, in fact, that the CFPB questions whether they were calculated in a way that is comparable to the rates for PACE applicants. The Trade Group Analysis describes that data on the "standard financing" group as aggregated statistics provided by the credit reporting company, rather than account-level information as in the data obtained by the CFPB and nominally used for the other groups in the Trade Group Analysis. It is not clear from the comments whether the credit reporting company

Group Analysis even notes that this control group had much higher credit scores than PACE borrowers. The commenters asserted that this is to be expected given that standard financing companies primarily market to higher-credit score individuals; however, this is precisely why the standard financing group is not a reasonable control group.

The CFPB notes that the PACE Report does analyze the effect of PACE loans in more recent years and continued to find that PACE loans increase non-mortgage delinquency. The CFPB also notes that due to the payment structure of PACE loans, it is impossible to fully evaluate affordability without a lag of several years. As discussed above, PACE loans may have a delay of up to a year and a half between origination and the due date of the first property tax bill that includes the PACE transaction. Because property taxes are typically billed annually or semi-annually, it is difficult to evaluate affordability without considering a period of at least two years after payments begin, as even a period of this length includes only two or possibly four payments. As a result, a methodology similar to what was done in the Static Model of the PACE Report—requiring three years of non-PACE mortgage payment information after the origination of the PACE loan—is necessary. This means that even if the CFPB could gather and analyze additional data on more recent PACE loans with no delay, it would not be feasible to study the affordability of PACE loans originated after around 2021. Given that gathering and analyzing data is not an instantaneous process, the data considered in the PACE Report, including PACE loans originated through 2019, is as timely as is reasonably feasible.

For the reasons described above, the CFPB continues to rely on the PACE Report, among other sources, as the basis for the CFPB's consideration of the likely impacts of this final rule.

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necessarily calculated aggregated delinquency rates in the same way as in the PACE Report, or the same way as the Trade Group Analysis did for other groups.

D. Potential Benefits and Costs to Consumers and Covered Persons

This section discusses the benefits and costs to consumers and covered persons of the two main groups of provisions discussed above: the ability-to-repay provisions, and the clarification that only involuntary tax liens and involuntary tax assessments are excluded from being treated as credit under TILA.

Potential Benefits and Costs to Consumers and Covered Persons from the Ability-to-Repay Provisions

The final rule amends § 1026.43, which generally requires an ability-to-repay analysis before originating a mortgage loan, to explicitly include PACE transactions, with several adjustments for the unique nature of PACE. The rule also provides that a PACE transaction is not a qualified mortgage as defined in § 1026.43.

Although the CFPB uses the overall estimates of the effect of PACE loans on consumer financial outcomes from the PACE Report to illustrate possible aggregate benefits and costs of the ability-to-repay provisions of the rule, the CFPB notes that both benefits and costs may differ due to the changes in State laws in recent years. Both California and Florida now require PACE companies to verify income before making a PACE loan, such that this final rule may have less impact than might be expected in a world where PACE companies did not always verify prospective borrowers' income, as was the case prior to 2018 in California and prior to 2024 in Florida. It is unclear to what extent the impacts of these State laws replicate the impacts of the protections included in this rule. In particular, Florida's recent statute only requires that annual PACE loan payments be less than 10 percent of annual household income.[261] Data from the PACE Report suggests that PACE loans with payments above this threshold are rare, such that

[261] *See* Fla. Stat. sec. 163.081(3)(a)(12).

consumers would rarely have an application for a PACE loan denied due to Florida's income requirement.[262] However, merely verifying income may have benefits and costs. The final rule generally will not create benefits or costs related to verifying income, as this is now required at baseline under State laws in States where PACE is most active.

Potential Benefits and Costs to Consumers of the Ability-to-Repay Provisions

Benefits of Reducing Non-PACE Mortgage Delinquency Caused by Unaffordable PACE Transactions

Under the final rule, consumers who are not found to have a reasonable ability to repay the loan would not be able to obtain a PACE loan. In general, the CFPB expects that consumers who will be denied PACE transactions due to the required ability-to-repay determination would otherwise struggle to repay the cost of the PACE transaction. These consumers generally will benefit from the rule.

The evidence in the PACE Report helps to partially quantify the potential benefits to consumers who cannot afford a PACE transaction. The difference-in-differences estimation in the Report finds that, for consumers with a pre-existing non-PACE mortgage, entering into a PACE transaction increases the probability of becoming 60-days delinquent on the pre-existing mortgage by 2.5 percentage points in the two years following the first due date for a tax bill including the PACE transaction.[263]

Two PACE companies characterized the estimated effect of a PACE loan on non-PACE mortgage delinquency from the PACE Report as small. These commenters also stated that the

[262] *See* PACE Report, *supra* note 12, at Table 2 (showing that 75% of PACE loans had annual payments of less than $3,300, while 75% of PACE borrowers with reported income had annual income above $54,000, such that even a relatively high payment for a relatively low-income PACE loan borrower would be well under 10% of income).

[263] *Id.*

CFPB's estimate was not meaningful, because the PACE Report shows the effect of PACE loans on non-PACE mortgage delinquency was short-lived, with non-PACE delinquency increasing immediately after PACE payments become due, and gradually returning to normal over the subsequent 24 months.

The CFPB does not agree with the commenter's characterization of the effect of a PACE transaction on mortgage delinquency being small. The PACE Report shows that the baseline rate of mortgage delinquency among PACE borrowers in the two years prior to receiving a PACE loan was 7.2 percent, such that the PACE loan increased the risk of delinquency by 35 percent relative to that baseline. With respect to the PACE Report finding impacts of PACE loans on delinquency primarily early in the term of the loans, the CFPB notes that delinquency early in the term of a loan is a more direct signal of the affordability of the loan than later delinquency.[264]

PACE industry stakeholders also expressed skepticism about the CFPB's estimated effect of PACE loans on non-PACE mortgage delinquency generally, citing instead data on property tax delinquencies. Specifically, a PACE company cited a report by a bond rating agency suggesting a delinquency rate of 3 to 4 percent on PACE loans, while a special assessment administrator stated that properties with PACE loans it managed experienced a property tax delinquency rate of 2 to 3 percent.

Industry commenters' characterization of property tax delinquency rates of PACE borrowers is problematic. As discussed above, property tax payments are paid by mortgage servicers for consumers who have a mortgage with an escrow account, and even for mortgages without a pre-existing escrow account, servicers will generally establish an escrow account to pay an otherwise delinquent property tax bill. As a result, a property tax delinquency would

[264] *See* 85 FR 86308, 86317 (Dec. 29, 2020).

generally only manifest in the data cited by commenters if the borrower does not have a mortgage. This means that the true share of consumers who are unable to afford a PACE loan is likely significantly higher than the 2 to 4 percent property tax delinquency rate cited by the commenters. Moreover, a local government commenter that runs its own PACE program asserted that its loans had a tax delinquency rate of around 0.5 percent, suggesting that privately-run PACE programs have significantly higher tax delinquency rates than could be explained by unrelated shocks to consumers' income or expenses.

Additional evidence from the PACE Report indicates that requiring an ability-to-repay analysis could improve outcomes specifically for consumers who would otherwise struggle to repay the PACE transaction. The PACE Report finds that the effect of a PACE transaction on mortgage delinquency is higher for consumers with lower credit scores. The average effect of a 2.5 percentage point increase in the rate of non-PACE mortgage delinquency over a two-year period is composed of a 0.3 percentage point increase for consumers with super-prime credit scores (11.1 percent of all PACE borrowers), a 1.7 percentage point increase for consumers with prime credit scores (42 percent of all PACE borrowers), a 3.8 percentage point increase for consumers with near-prime credit scores (23.4 percent of all PACE borrowers), and a 6.2 percentage point increase for consumers with subprime credit scores (20.4 percent of all PACE borrowers).[265] The consumers with subprime credit scores would be the most likely to be excluded by the ability-to-repay analysis that the final rule requires. Credit score tends to be correlated with income. Moreover, credit scores are based on credit history, and the ability-to-repay requirements in the final rule require consideration of credit history.

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[265] *Id.* at Figure 10.

A PACE company stated that the PACE Report's finding of larger impacts for borrowers with sub-prime credit scores had no bearing on the affordability of PACE loans. The commenter asserted that consumers with sub-prime credit scores are inherently more likely to default on a non-PACE mortgage, regardless of whether they take up a PACE loan, such that larger increases in delinquency for this group are not related to the specific effect of PACE loans on that group.

The CFPB also does not agree that the higher delinquency risk of low-credit score individuals invalidates the results for that subgroup reported in the PACE Report. The subgroup analyses in the PACE Report were limited to members of each subgroup in both the Originated Consumers and Application-Only Consumer groups. This means that low-credit score individuals are compared to other low-credit score individuals, with a similarly high underlying risk of mortgage default. The fact that Originated Consumers with lower credit scores saw a larger increase in delinquency than Originated Consumers with higher credit scores is thus relevant to demonstrate that lower credit score individuals may be more negatively impacted by PACE transactions.

The evidence from the PACE Report also suggests that collecting income information from potential PACE borrowers can lead to better outcomes. The evidence is less direct on this point because PACE companies did not collect income information from a large majority of applicants during the period studied by the Report. For example, the Report indicates PACE companies collected income information from less than 24 percent of originated borrowers in California prior to April 2018, and a little more than 10 percent of originated borrowers in Florida during that time.[266] Income information was primarily available in the data used in the Report for consumers in California after April 2018. After this point, the Report finds that

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[266] *Id.* at Table 1.

essentially all originated borrowers in California had income information collected, likely because the 2018 California PACE Reforms required consideration of income by PACE companies as part of an analysis that considered consumers' ability to pay the PACE loan. As a result, the PACE Report's analysis of income is largely based on consumers whose PACE transactions were originated under requirements that resemble this final rule's ability-to-repay requirements in some respects.

The PACE Report finds that PACE transactions increase non-PACE mortgage delinquency less for consumers where the PACE company collected income information.[267] The Report also finds that PACE transactions increased non-PACE mortgage delinquency rates more for consumers in California before the 2018 California PACE Reforms, compared to consumers in California after 2018, with the effect falling by almost two-thirds after the 2018 California PACE Reforms required consideration of income by PACE companies, from a 3.9 percentage point increase to a 1.5 percentage point increase.[268] However, the Report also finds that the effect of PACE transactions on mortgage delinquency decreased somewhat in Florida as well around 2018, which suggests the change could be in part the result of other nationwide trends, rather than solely the requirements of the 2018 California PACE Reforms.[269] The PACE Report is inconclusive with respect to whether income or a calculation of DTI predicted negative effects of PACE transactions on financial outcomes, because income information was not available for enough consumers to draw statistically reliable conclusions about subgroups of the population with income information.[270]

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[267] *Id.*at 45.

[268] *Id.* at 46.

[269] *Id.* at 46-47.

[270] *Id.* at 47-48.

One PACE company took issue with the CFPB's finding in the 1022(b)(2)(A) analysis of the proposal that collecting income information from potential PACE borrowers could lead to better outcomes. The CFPB's discussion of this subject was based on the PACE Report's finding that PACE outcomes improved in California relative to borrowers in Florida after the implementation of the California PACE Reforms. The commenter stated that the PACE Report's analyses of the 2018 California PACE Reforms were not valid, as the Report considered only the first effective date of the statutes collectively referred to as "the 2018 California PACE Reforms," ignoring the effective dates of statutes that became effective later in 2018. The commenter also stated that the CFPB did not account for the fact that the 2018 California PACE Reforms were endogenous—that is, that the laws were not implemented in California by chance, such that other unrelated factors may have contributed to both the implementation of the 2018 California PACE Reforms and any subsequent changes in PACE lending in California.

The CFPB reiterates, as it said in the proposal and again in this final rule, that this analysis was suggestive rather than causal. The CFPB agrees that the 2018 California PACE Reforms may not constitute an exogenous, natural experiment, and that the measured changes in the effect of PACE loans in California on consumers following the implementation of those statutes may not reflect the causal impact of the laws. However, the PACE Report's use of the 2018 California PACE Reforms as a benchmark to inform the potential impact of requiring the collection of income information remains appropriate to inform the CFPB's analysis of benefits, costs and impacts of this final rule.

In addition, the CFPB does not agree that the variety of implementation dates of the 2018 California PACE Reforms was material to the analysis in the PACE Report. First, the difference is a matter of months, such that most PACE loans that were considered to be subject to the 2018

California PACE Reforms in the PACE Report were originated after all of the component statutes were in place. Further, by using the first implementation date as the date of "treatment" by the State laws, one would expect later laws contributing to the overall effect to bias the effect of the Reforms toward zero (as some loans originated in 2018 were in fact only partially treated, but were considered in the analysis to be fully treated, potentially lowering the estimated impact).

The facts documented by the PACE Report, described above, indicate that the ability-to-repay provisions in this final rule will likely prevent some consumers who cannot afford a PACE transaction from entering into a PACE transaction and suffering negative consequences as a result of that transaction.

Quantifying Aggregate Benefits of Preventing Unaffordable PACE Transactions

Consumers who become delinquent on their mortgages will, at a minimum, incur late fees on their payments. If a PACE transaction causes a borrower to be in delinquency for a longer period of time, the consequences could include foreclosure or a tax sale. Consumers' credit scores could also be affected, although the PACE Report finds only small impacts of PACE transactions on credit scores—perhaps in part because PACE borrowers tended to already have relatively low credit scores prior to the PACE transaction. The CFPB quantifies the individual and aggregate monetary benefits of avoiding these consumer harms below to the extent possible given the data available to the CFPB from the PACE Report, information provided by commenters, and other data sources. The CFPB uses the estimates from the PACE Report of the average effect of PACE transactions on consumer financial outcomes to estimate these benefits but notes that these estimates likely overstate aggregate benefits to the extent that State laws already protect consumers from some unaffordable PACE transactions.

The PACE Report finds that the average monthly mortgage payment for consumers with PACE transactions originated between 2014 and 2019 was $1,877.[271] Assuming a late fee of 5 percent, avoiding a PACE transaction would save the average PACE consumer who experiences a 60-day mortgage delinquency at least $188 over a two-year period. The average benefit to such consumers would likely be higher, as many would likely have more than a single 60-day mortgage delinquency caused by the PACE transaction.

Two PACE companies stated that the CFPB's estimate of late fee costs related to PACE loan-induced delinquencies in the proposal was not significant and that this generally indicated that the benefits to consumers of preventing non-PACE mortgage delinquencies due to PACE transactions were limited. However, the CFPB did not assert that this was the only cost of potentially unaffordable PACE loans, only that it was a cost that can be readily quantified. The CFPB discusses other potential costs, including from potential foreclosures, in the proposal and below in this final rule.

Foreclosure is extremely costly, both to the consumer who experiences foreclosure and to society at large. In its 2021 RESPA Mortgage Servicing Rule, the CFPB conservatively assumed the cost of a foreclosure was $30,100 in 2021 dollars, consisting of both the up-front cost to the foreclosed consumer and the resulting decrease in property values for their neighbors, but no other pecuniary or non-pecuniary costs.[272] The CFPB adopts the same assumption here with an adjustment for inflation, noting as it did in the 2021 rule that it is likely an underestimate of the average benefit to preventing foreclosure. Adjusting for inflation to 2024 dollars, the benefit of an avoided foreclosure is at least $35,538.

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[271] *Id.* at 16.

[272] *See* 86 FR 34889 (June 30, 2021).

The CFPB does not have data available to estimate the benefits to consumers of preventing a reduction in credit score but notes again that the PACE Report finds that PACE transactions only lower scores by an average of about one point.[273] This small effect on credit scores likely combines large reductions in scores for consumers who became delinquent on their non-PACE mortgages with zero or positive effects for consumers who are able to afford PACE loans; regardless, this suggests that the aggregate benefits from credit score changes would be negligible in magnitude.

Two PACE companies stated that credit score is a key measure of consumers' financial health, and further stated because the PACE Report does not find evidence of an effect of PACE loans on PACE borrowers' credit scores, this means that PACE loans are not harmful, or else that the methodology of the PACE Report is flawed.

The CFPB does not agree with the assessment that credit score is the only outcome that matters for consumers, such that the lack of an average credit score impact means that PACE loans under the baseline impose no costs on consumers. Credit scores can be a useful measure of credit health but are not the only measure of potential impacts to consumers. The PACE Report documents impacts that lead to significant costs to consumers, such as mortgage delinquency, independent of any changes in average credit scores. Further, the PACE Report documents that PACE borrowers tended to have relatively low credit scores on average. The credit scores of individuals with lower scores are often relatively insensitive to marginal negative information such as an additional delinquency. The CFPB also does not agree that the lack of an effect on average credit scores combined with increased mortgage delinquency indicates a problem with the methodology of the PACE Report, as a commenter suggested. While the CFPB views the

[273] *See* PACE Report, *supra* note 12, at 41.

increase in non-PACE mortgage delinquency as significant and evidence that consumers have difficulty repaying PACE loans, the share of PACE consumers who experience negative credit outcomes is small enough in absolute size that the average change in credit score would be expected to be relatively small. Indeed, the estimated average effect of PACE loans on credit scores from the PACE Report is consistent with a large negative credit score effect for PACE consumers who became delinquent on a non-PACE mortgage due to the PACE loan. Specifically, the PACE Report estimates that a PACE loan reduces consumers' credit scores by an average of 1.65 points, with a 95 percent confidence interval spanning from 0.98 to 2.32 points. If this change in credit scores were concentrated in the 2.5 percent of Originated Consumers for whom PACE loans caused a 60-day mortgage delinquency, with no average effect on the credit scores of other consumers, that would mean the affected consumers would have credit scores reduced by an average of about 65 points. While the effect of a mortgage delinquency on credit scores depends on a number of factors, including the rest of the consumer's credit history, the CFPB finds this is a plausible effect size. As such, the small overall average effect of PACE loans on Originated Consumers' credit scores does not suggest problems with the methodology of the PACE Report.

In 2019, the last full year of data studied in the PACE Report, the four PACE companies whose data were included in the Report originated about 2,000 PACE transactions per month, for a total of about 24,000 per year.[274] For the 71.1 percent of such borrowers with a pre-existing non-PACE mortgage,[275] a 2.5 percentage point increase in mortgage delinquency would mean about 600 consumers per year struggling to pay the cost of their PACE transaction and incurring

[274] *Id.* at Figure 16.

[275] *Id.* at 18.

at least a 60-day delinquency. Most loans that become delinquent do not end with a foreclosure sale.[276] The PACE Report finds that PACE transactions increase the probability of a foreclosure by 0.5 percentage points over a two-year period.[277]

Assuming that 0.5 percent of consumers who engage in a PACE transaction will ultimately experience foreclosure as a result of the PACE transaction, this final rule could prevent about 120 foreclosures per year, for an aggregate annual benefit to consumers of about $4.2 million per year. If the rule were to prevent a minimum of two months of late fees for each of the 600 consumers who would otherwise become 60-days delinquent as a result of a PACE transaction, that would result in additional aggregate benefits of at least $112,000 per year.

Multiple PACE industry commenters disagreed with the CFPB's assessment of the potential impacts of the rule on prevented foreclosures. Two PACE companies stated that the data in the PACE Report only capture initiated foreclosures, while not all foreclosures are completed. These commenters also cited an academic study of PACE using data from early in California's PACE program, which found a completed foreclosure rate on PACE-encumbered

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[276] Because of generally favorable conditions in both the housing market and the non-PACE mortgage market in recent years, PACE borrowers may have been more able to avoid foreclosure by either selling or refinancing their homes, compared to the non-PACE mortgage borrowers studied in the CFPB's 2013 RESPA Servicing Rule Assessment Report using earlier data. Indeed, the PACE Report finds that PACE loans increased the probability of a consumer closing a mortgage (indicating some kind of prepayment), with no increase in new mortgages, suggesting a subset of PACE borrowers may have been induced to sell their homes. Although they would avoid the cost of foreclosure by doing so, moving is also expensive, with real estate agents' fees alone representing typically 5 to 6 percent of the home's value, in addition to other closing costs and the costs related to moving. *See* CFPB, *2013 RESPA Servicing Rule Assessment Report* (Jan. 2019), https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing-rule-assessment_report.pdf.

[277] *See* PACE Report, *supra* note 12, at 33. The PACE Report notes that the credit record data used in the PACE Report are limited with respect to measuring foreclosures. Nonetheless, the size of this effect relative to the Report's estimate of the effect of PACE transactions on 60-day delinquencies is consistent with prior CFPB research on the share of 60-day delinquencies that end in a foreclosure. The CFPB's 2013 RESPA Servicing Rule Assessment Report found that, for a range of loans that became 90-days delinquent from 2005 to 2014, approximately 18 to 35 percent ended in a foreclosure sale within three years of the initial delinquency. Focusing on loans that become 60-days delinquent, the same report found that, 18 months after an initial 60-day delinquency, between eight and 18 percent of loans had ended in foreclosure sale over the period 2001 to 2016. *See* CFPB, *2013 RESPA Servicing Rule Assessment Report* (Jan. 2019), https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing-rule-assessment_report.pdf.

properties of about 0.5 percent by 2015.[278] A PACE industry trade association stated that it would be impossible for the proposed rule to prevent 120 foreclosures per year as the proposed 1022(b) analysis projected, because in California there had only been seven foreclosures of PACE-encumbered properties since 2019; the commenter did not cite any source for this statistic. In addition, one PACE company stated that the statewide foreclosure rates for California and Florida were similar to the national average, demonstrating that PACE loans do not cause a large number of foreclosures. The same commenter also stated that the PACE Loss Reserve Program in California, established to compensate non-PACE mortgage holders for losses related to foreclosures on properties with PACE loans, had no claims between 2014 and 2020 and only two claims between 2020 and 2023. The commenter further stated that this meant that PACE loans do not contribute to default on non-PACE mortgages.

The CFPB acknowledged above and in the proposal that the credit record data used in the PACE Report cannot reliably distinguish between initiated and completed foreclosures but notes that this does not mean the data are limited to initiated foreclosures. Indeed, as discussed above, the ratio of the PACE Report's estimated effect on foreclosures to the estimated effect on 60-day delinquency is consistent with other evidence on the share of 60-day delinquent mortgages that end in a foreclosure sale. In addition, the CFPB notes that even an initiated foreclosure that is not ultimately completed imposes significant costs on consumers, including fees, time costs, and distress, even if these costs are more difficult to quantify.

The CFPB is not aware of the underlying data behind the statistic cited by the PACE industry trade association that there were only seven foreclosures in California on PACE-

[278] Laurie S. Goodman & Jun Zhu, *PACE Loans: Does Sale Value Reflect Improvements?*, 21 The Journal of Structured Fin., no. 4 (2016).

encumbered properties since 2019. However, it is not plausible that this is the total number of properties with a PACE loan that had a completed foreclosure in California since 2019. Even if PACE loans had no effect on the probability of foreclosure, a small percentage of consumers face foreclosure every year for reasons unrelated to PACE transactions, and this base rate alone should account for more than seven foreclosures. For instance, the PACE Report indicates that about 0.8 percent of Originated Consumers had at least one foreclosure in the two years prior to taking out a PACE loan.[279] Even allowing that not all of these foreclosures would ultimately have been completed, this translates to at least a few hundred foreclosures in total. Unless PACE loans drastically decreased the rate of foreclosure, which would be inconsistent with the PACE Report's other findings on non-PACE mortgage delinquency, it is unlikely that there have been only 7 completed foreclosures over the past 5 years.[280] It is possible that the commenter was referring to the number of completed tax foreclosures initiated by the taxing authority. A low rate of completed foreclosures initiated by the taxing authority would be consistent with other comments indicating that tax foreclosures are infrequent and take a considerable amount of time and the CFPB's conclusion discussed above that consumers struggling with paying a PACE loan will rarely default on the PACE loan payments themselves, but rather will become delinquent on their non-PACE mortgage. Because of this conclusion, the number of tax foreclosures does not reflect the potential benefits of the rule in preventing all types of foreclosures, nor does it reflect on the methodology of the PACE Report.

The CFPB does not find the average foreclosure rates in California and Florida relative to the national average to be a relevant consideration as some commenters suggested. Given the

[279] *See* PACE Report, *supra* note 12, at Table 9.

[280] The CFPB also notes that the period following 2019 is a difficult time to study foreclosures as an outcome, as mortgage forbearance required by the CARES Act in 2020 and 2021 prevented many foreclosures from proceeding.

relatively small scale of the PACE industry and the size of the effect of PACE loans on foreclosure estimated in the PACE Report, the CFPB would not expect PACE loans to measurably impact the foreclosure rate statewide. The CFPB also does not find the usage of the California PACE Loss Reserve Program to be a relevant consideration. Non-PACE mortgage-holders will only incur losses due to a PACE loan-related foreclosure if the foreclosed property has less equity than outstanding PACE payments at the foreclosure sale. The period from 2014 through the present represents a time of rising house prices in California, and moreover California State law imposed maximum combined loan-to-value ratios for PACE loans.[281] As a result, it is unsurprising that foreclosures in California related to PACE loans would not result in claims on the PACE Loss Reserve Program.

Other Benefits of Preventing Unaffordable PACE Loans

In the proposal, the CFPB discussed the benefits to consumers implied by the finding from the PACE Report that credit card balances increased significantly for PACE borrowers who did not have a pre-existing non-PACE mortgage, compared to the change in balances for PACE applicants who did not receive a PACE loan and also did not have a pre-existing non-PACE mortgage.[282] As discussed above, the CFPB agrees with commenters that this finding is, at best, merely suggestive, as the PACE Report shows that, unlike the Report's estimates for mortgage delinquency, the estimates for credit card balances did not meet the required assumptions for a valid difference-in-differences analysis. While it is plausible that consumers who do not have a non-PACE mortgage will incur credit card debt as a result of an unaffordable PACE loan, the

[281] Cal. Fin. Code sec. 22684(h).

[282] *See* PACE Report, *supra* note 12, at 41.

CFPB does not have a reliable estimate of whether or how much this will be prevented by this rule.

A PACE company opined that credit card delinquency would have been a more relevant outcome to study than non-PACE mortgage delinquency because consumers may prioritize mortgage payments over credit card payments. The commenter also noted that the PACE Report's analysis of credit card delinquency included more data than the analysis of mortgage delinquency, as the delinquency analysis for each type of credit studied in the Report was limited to consumers with the relevant type of credit prior to obtaining a PACE loan, and more consumers had credit cards than non-PACE mortgages. Separately, a PACE industry trade association stated that the CFPB's estimate of credit card interest savings was overstated because, if PACE loans were not available, consumers would pay for the same home improvement projects with a credit card instead, likely incurring significant interest charges as a result in the view of the commenter.

The CFPB does not agree that credit card delinquency is a better or more central outcome to study than non-PACE mortgage delinquency. As discussed above, for the substantial majority of consumers with a pre-existing non-PACE mortgage, failure to pay a PACE loan will manifest in the data as a mortgage delinquency. The PACE Report shows that PACE loans clearly increase non-PACE mortgage delinquency, with less clear effects on credit card delinquency. Also, the relative sample sizes of PACE borrowers who had credit cards compared to PACE borrowers with pre-existing non-PACE mortgages are irrelevant. The PACE Report shows that the sample of PACE borrowers with a pre-existing non-PACE mortgage was large enough that the resulting difference-in-differences estimates were precise, with reasonably small standard errors.

Credit card delinquency rates may be informative for consumers without a non-PACE mortgage, although the CFPB notes that industry commenters also held that many consumers in the PACE Report's data who appeared not to have a non-PACE mortgage likely in fact had a mortgage, such that we would not expect a strong effect on credit card delinquency or balances in this group. Indeed, if those comments are correct, the effect of PACE loans on consumers' credit card outcomes is probably more negative than what was estimated in the PACE Report.

With respect to the commenter's assertion that consumers will use credit cards if a PACE loan is not available, and thus incur additional interest charges, the CFPB finds this to be unlikely for multiple reasons. First, the PACE Report shows that, if anything, Originated Consumers tend to have higher credit card balances than Application-Only Consumers. While there are limitations to that finding, discussed above in part VI.C, it is clearly inconsistent with the notion that credit card usage will increase absent a PACE loan. In addition, the commenter presupposes that, absent a PACE loan, the consumer would necessarily engage in the home improvement project at all.

To the extent that some consumers continue to receive PACE transactions that they are not able to afford in contravention of the ability-to-repay requirements of this final rule, the rule will benefit those consumers by providing an avenue for obtaining relief under the civil liability provisions of TILA and Regulation Z. The CFPB does not have data indicating how often this would occur, although as noted below in its discussion of litigation costs to covered persons, the CFPB expects that this would be infrequent in the long run.

Costs of the Ability-to-Repay Provisions to Consumers

In the proposal, the CFPB discussed the possibility that consumers would face the time costs of gathering the required documentation for an ability-to-repay analysis, such as finding

and producing W-2s to document proof of income. The CFPB has previously noted in the context of non-PACE mortgages that the time required to produce pay stubs or tax records should not be a large burden on consumers. This may have been different in the past in the case of PACE transactions, as these transactions are typically marketed in conjunction with home improvement contracts, and consumers may not be prepared to produce income documentation at the point of sale for a home improvement. However, given recent changes in State law, the rule likely will not increase time costs in a meaningful way for PACE applicants because these consumers already must produce at least some documentation similar to what will be necessary for an ability-to-repay determination as part of a PACE application under the rule. Producing income information is also likely to be required by alternative financing options to a PACE transaction, as this is generally required for home improvement loans covered by TILA.

Consumers will also face costs under the rule due to losing access to PACE financing. This includes consumers whose PACE applications are denied due to failing the ability-to-repay determination, as well as consumers who do not apply for a PACE loan as a consequence of the rule.[283] For consumers who cannot, in fact, afford the cost of a PACE transaction, being denied is likely a benefit on net, as discussed above. However, some consumers who could, in fact, afford and benefit from a PACE transaction may be denied as a result of the rule.

To quantify the cost to consumers of having applications for PACE transactions denied, the CFPB would need to be able to calculate the number of consumers that could afford the cost of a PACE transaction and would benefit from it but would be denied as a result of the rule, and the cost to the average consumer of being denied. The CFPB can roughly quantify the number of

[283] Consumers might not apply for a PACE loan due to the effect of the rule if home improvement contractors who otherwise might have marketed PACE financing withdraw from that market, or if the consumers opt not to proceed with a PACE transaction as a consequence of the provisions of the rule.

consumers and discusses this below, but it does not have the data necessary to quantify the average cost, and thus its discussion is ultimately qualitative in nature.

The experience of California under the ability-to-pay regime of the 2018 California PACE Reforms provides a possible benchmark as to how the rule will affect PACE application approval rates. The PACE Report shows that approval rates dropped sharply in California following the effective date of the 2018 California PACE Reforms in April 2018, but then fully recovered in 2019. Initially, approval rates fell from around 55 percent to around 40 percent.[284] However, the Report finds that approval rates recovered over time, rising back to around 55 percent by the end of 2019. Using Florida as a comparison group, the Report finds that the 2018 California PACE Reforms lowered the approval rate for PACE applications in California by about 7 percentage points, although this average includes both the initial drop and the later recovery.[285] Although the provisions of the rule differ from the requirements of the 2018 California PACE Reforms, it is likely that the rule will have limited additional effect on PACE transaction approval rates in California. Instead, the rule will primarily reduce approval rates instates that have not adopted robust ability-to-repay provisions. While Florida now has a requirement for PACE companies to confirm consumers' income, the statute generally provides that the total financing cannot exceed 10 percent of the property owner's annual household income,[286] which, as discussed above, is a threshold unlikely to cause many consumers to be rejected.

The CFPB can calculate an upper bound on the number of PACE applicants who are likely to be denied due to the rule, using the change in approval rates discussed above, along

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[284] *See* PACE Report, *supra* note 12, at Figure 16.

[285] *Id.* at Table 13.

[286] Fla. Stat. sec. 163.081(3)(a)(12).

with the number of PACE loan applications received by PACE companies at the baseline. The PACE Report indicates that PACE companies received about 45,500 applications in Florida in 2019. As discussed further in the CFPB's analysis of benefits and costs to covered persons, the PACE Report shows that applications fell in California by more than half following the 2018 California PACE Reforms and did not recover over time. Assuming that the same has occurred in Florida since 2019 due to Florida's change in State law, this would mean that PACE companies currently receive around 22,750 applications annually for which they do not currently apply robust ability-to-repay standards as would be required by the rule. Assuming that approval rates fall by 7 percentage points due to the rule, that would mean at most about 1,600 consumers annually might have a PACE application that they could afford, and from which they may benefit, be denied. This is an overcount, as many of these consumers in fact would not be able to afford a PACE transaction, and, moreover, the PACE Report shows that approval rates recovered over time.

Some of the expected reduction in PACE applications may represent a cost to consumers as well, to the extent this arises from PACE financing being less available in general to consumers who could afford and benefit from it. However, as discussed below, one benefit of the rule will be that consumers will be less likely to misunderstand the nature of a PACE transaction, which will also reduce PACE applications. As also discussed below, a substantial fraction of PACE transactions are paid off early in the term of those transactions, which may be related to such misunderstandings. Although the CFPB expects the volume of PACE transactions in some States may decline as a result of this rule, it does not have data that would indicate how much of this decline will be a cost to consumers who miss out on a transaction they would prefer to engage in, and how much is a benefit to consumers who had no interest in participating in a

PACE transaction once they understood its true nature or would not have been able to afford the PACE transaction.

The CFPB can characterize qualitatively the consumer costs of not receiving a PACE transaction. The immediate impact to a consumer who might otherwise have agreed to a PACE transaction but is either denied or is not offered a PACE transaction due to the rule's provisions relating to ability-to-repay is that the consumer either must pay for the home improvement project in cash or with another financing product, or else the consumer must forgo the home improvement project.

Paying cash for a home improvement project is not likely to be costly to consumers who choose to do so. Although this involves a large, upfront expenditure, it is unlikely that consumers will frequently agree to pay cash for a home improvement project they cannot afford—they will generally forgo the project instead, the costs of which are discussed below, or find other means of financing. Moreover, even if a consumer's budget might be strained in the short term by the expenditure, the consumer would then save on the—potentially substantial—cost of interest and fees on a loan.

The impact on consumers, relative to the baseline, of using another credit product may be either a cost or a benefit depending on the cost of the other credit product. If the next best alternative has a lower APR than the relevant PACE transaction, consumers who may have received a PACE loan but do not due to the rule's provisions relating to ability-to-repay could be better off than they would be without the rule. Conversely, if the next best alternative for a consumer has a higher APR, those consumers would be worse off. The PACE Report shows that estimated APRs for PACE transactions originated between 2014 and 2019 averaged

8.5 percent.[287] Information provided by commenters, confirmed by data from bond rating agencies for PACE loan-backed securities, indicated that more recent PACE loans have interest rates of around 10 percent.[288] Given that the PACE Report finds that PACE loans had fees sufficient to raise the APR a full percentage point above the interest rate, it is reasonable to conclude that current APRs for PACE loans are about 11 percent. This is greater than typical rates for home equity lines of credit and much greater than the interest rate for a cash-out refinance, but less than typical rates for credit cards.[289] The interest rate on PACE transactions may be more or less than the cost of an unsecured loan for the same home improvement project, which can vary widely depending in part on the consumer's credit score.

The PACE Report suggests that under the final rule, many consumers who will not receive a PACE transaction will be able to obtain credit through another source, potentially at a better APR than the PACE transaction. The Report shows that the vast majority of PACE borrowers had other credit available. The Report shows that almost 99 percent of PACE borrowers between 2014 and 2019 had sufficient credit history to have a credit score, almost 90 percent of PACE borrowers had a credit card pre-PACE transaction, and on average PACE

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[287] *Id.* at Table 2.

[288] *See e.g.*, Morningstar, DBRS, *Rating U.S. Property Assessed Clean Energy (PACE) Securitizations* (Aug. 2024).

[289] Average credit card interest rates on accounts assessed interest were between 13 and 17 percent during the period studied by the PACE Report; the average as of 2024 is between 22 and 23 percent. *See* Fed. Rsrv. Econ. Data, Fed. Rsrv. Bank of St. Louis, *Commercial Bank Interest Rate on Credit Card Plans, Accounts Assessed Interest* (Oct. 2, 2024), https://fred.stlouisfed.org/series/TERMCBCCINTNS. Interest rates for personal loans averaged around 10 percent during the period studied by the PACE Report, and rose to about 12 percent in 2024. *See* Fed. Rsrv. Econ. Data, Fed. Rsrv. Bank of St. Louis, *Finance Rate on Personal Loans at Commercial Banks, 24 Month Loan* (Oct. 2, 2024), https://fred.stlouisfed.org/series/TERMCBPER24NS. The median interest rate on home equity lines of credit was 5.34 percent in 2019 based on HMDA data. *See* CFPB, *An Updated Review of the New and Revised Data Points in HMDA: Further Observations using the 2019 HMDA Data* (Aug. 2020), https://files.consumerfinance.gov/f/documents/cfpb_data-points_updated-review-hmda_report.pdf. In 2023, the most recent year available, the same data show a median rate of 7.99 percent. *See* CFPB, *HMDA Data Browser*, https://ffiec.cfpb.gov/data-browser/.

borrowers had more than seven unique credit accounts of any type pre-PACE transaction.[290] More than half of PACE borrowers had prime or super-prime credit scores at the time they entered into a PACE transaction.[291] However, as discussed above in part VI.C, this aspect of the PACE Report's analysis was limited to consumers for whom the CFPB's contractor was able to match to its credit record data. As discussed above, while most of these unmatched consumers likely have had a mismatch in name or address with the credit reporting company's database, likely at least some of these consumers had no credit report and were credit invisible. Credit invisible PACE consumers may not have ready access to credit other than PACE loans.

Two PACE companies disagreed with the CFPB's conclusion in the proposal that PACE loan borrowers who would not receive a PACE loan under the rule would have access to other forms of credit, potentially at lower cost, should they decide to proceed with the same home improvement project. The commenters stated that it was inappropriate for the CFPB to compare PACE loan APRs to APRs for home equity loans and HELOCs, as home equity loans and HELOCs typically have tighter credit standards than PACE loans. One of these commenters noted that the proposal cited interest rates from 2019 and earlier and stated that interest rates and APRs for home equity loans and HELOCs have risen substantially since 2021, along with interest rates throughout the economy. A PACE company stated that, if PACE loan borrowers had access to other forms of credit and chose to take out a PACE loan, PACE must have been especially appealing to those consumers.

With respect to comments asserting that the CFPB should have compared APRs on PACE loans to a different benchmark, as the CFPB discussed in the proposal and again in this

[290] *See* PACE Report, *supra* note 12, at Table 6.

[291] *See id.* at Figure 1.

final rule, it is not obvious what interest rate is most appropriate as a benchmark for PACE loans. Reasonable arguments can be made for comparing PACE loans to multiple products, each of which have significantly different average interest rates. Plausible comparisons include first-lien mortgages, home equity loans, home equity lines of credit, personal loans, home improvement loans, and credit cards. PACE loans have notably higher rates than some of these products but lower rates than credit cards. The CFPB notes that the information from the commenters was contradictory on this point. For instance, one PACE company suggested that, due to recent increases in interest rates for non-PACE mortgages, the average APR for PACE loans of 7.6 percent cited in the PACE Report and the proposal was now on par with interest rates for HELOCs. However, the same commenter also noted that its recently originated PACE loans have an average interest rate of 9.9 percent. This suggests that PACE loans continue to have interest rates several percentage points higher than non-PACE mortgages or HELOCs.

The CFPB does not agree with commenters' assertion that borrowers taking out PACE loans, despite having access to other forms of credit, is relevant to evaluating the benefits of PACE, or to the cost to consumers of making PACE loans less accessible. As PACE industry stakeholders themselves asserted in comments, point-of-sale origination is a key feature of PACE financing as it currently exists—home improvement contractors often present a PACE loan as a financing option in the course of marketing their services door-to-door. PACE industry and home improvement contractor commenters alike noted the importance of swift originations under the current business model for PACE loans. Among other concerns, commenters asserted that consumers and home improvement contractors would select other financing options if PACE originations were not swift. While swift originations may have advantages to industry stakeholders in particular, swift originations can impede consumers' ability to make an informed

decision about the transaction. In such situations, it can be more difficult to compare options for financing a home improvement contract, or even to compare options for the home improvement contract itself. As such, while a PACE loan could be the best choice for a particular consumer, the fact that the consumer had other options but chose a PACE loan says little about the appeal of the PACE loan relative to other options.

If the consumer does not opt to proceed with the home improvement project, the cost is the loss of the benefits of that project. The nature of these costs would depend on the type of project and the reasons the consumer was considering the project. For the types of home improvement projects that might be eligible for PACE financing, the benefit of the project is primarily the energy, water, or insurance savings the project would have delivered.[292] Other projects may be used to replace critical home equipment such as an HVAC system, without which the consumer would face the cost of not having that equipment. The CFPB does not have data available to estimate the average energy, water, or insurance savings actually obtained by PACE borrowers, nor is the CFPB aware of any research to estimate real-world savings from PACE transactions. One study the CFPB is aware of estimates aggregate energy savings from customers of one PACE company, but this is based on engineering estimates of the savings from each project.[293] The academic literature has found that engineering estimates can frequently

[292] Home values may also increase as a result of the home improvement projects, but generally this will be the consequence of capitalizing the value of future energy, water, or insurance savings already considered here. With respect to insurance savings, industry stakeholders and local government stakeholders in Florida have asserted to the CFPB that consumers may have difficulty obtaining homeowners' insurance for homes in Florida with roofs above a certain age. If a consumer cannot obtain homeowners' insurance on real property that secures a non-PACE mortgage, lenders may force-place insurance, generally at higher premiums than consumer-purchased insurance. PACE transactions may be used for roof replacements in Florida, and consumers may save on insurance costs if they utilize a PACE transaction for this purpose.

[293] Adam Rose & Dan Wei, *Impacts of Property Assessed Clean Energy (PACE) program on the economy of California,* 137 Energy Pol'y 111087 (2020).

overestimate real-world savings from energy efficiency programs.[294] Public comments from consumer advocacy groups in response to the Advance Notice of Proposed Rulemaking also cited instances where consumers received smaller energy savings than what was advertised to them.

Multiple PACE industry stakeholders stated that the home improvement projects funded by PACE loans have benefits to PACE loan borrowers and to society at large and stated that a cost of the proposed rule would be to remove those benefits. The commenters cited a variety of benefits, including reductions in energy use, reductions in homeowner's insurance costs, increased jobs, and increased home values. The commenters did not provide specific data on this point beyond the academic study based on engineering models that the CFPB cited in the proposal.[295]

The CFPB acknowledged in the proposal that, to the extent that PACE loans currently fund beneficial home improvement projects that would not occur without a PACE loan, the rule would impose costs by eliminating the benefits of those projects. However, as the CFPB also noted in the proposal, many projects funded by PACE loans would likely have been completed without PACE loans. This can be seen in the high frequency of pre-payment of PACE loans and the broad availability of other credit to PACE loans documented in the PACE Report. Other funding mechanisms might come at a higher or lower cost to consumers than a PACE loan (discussed further above), but in either event would deliver any benefits of the home improvement projects themselves.

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[294] *See e.g.*, Meredith Fowlie, Michael Greenstone & Catherine Wolfram, *Do Energy Efficient Investments Deliver? Evidence from the Weatherization Assistance Program*, 133 Q J of Econ. 3 (Aug. 2018).

[295] Adam Rose & Dan Wei, *Impacts of Property Assessed Clean Energy (PACE) program on the economy of California,* 137 Energy Pol'y 111087 (2020).

A mortgage industry trade association stated that the CFPB's proposed 1022(b) analysis omitted a potential benefit to consumers of the rule: avoiding a tax sale. The commenter stated that consumers who do not have a pre-existing non-PACE mortgage are at risk of a tax sale in the event that they fail to pay a PACE loan. The commenter stated that the CFPB should have considered the benefit to consumers of avoiding this risk as a potential benefit of the rule, to the extent that the rule prevents consumers from taking out unaffordable PACE loans.

The CFPB agrees with the comment that another potential negative outcome for consumers who cannot afford a PACE loan could occur if consumers lose their home through a property tax sale. The CFPB does not have data available to quantify this impact, nor did any commenter provide relevant data.

Industry commenters identified additional costs to consumers of not having access to affordable PACE loans beyond the costs discussed above, or otherwise criticized the CFPB's analysis of this issue.

A PACE company and several home improvement contractors stated that consumers often use PACE loans for emergency situations, such as a replacement of a failed air conditioner during times of high heat. The commenters stated that, in such situations, consumers cannot wait days for work to begin and would suffer potentially severe consequences if they cannot finance the emergency work. The PACE company cited statistics from the California Department of Financial Protection and Innovation that the commenter asserted demonstrated that an emergency exemption allowed under California State law was used frequently.

The CFPB notes that Regulation Z already has provisions for emergency exceptions to the waiting period requirements under the TILA-RESPA integrated disclosure rules.[296] If a consumer determines that an extension of credit is needed to meet a bona fide personal financial emergency, the consumer will be permitted to modify or waive the mandatory waiting periods and receive the PACE loan early. The CFPB also notes that, although data from the California Department of Financial Protection and Innovation indicates some PACE loans in that State have taken advantage of the emergency provisions in California State law, the number of these loans is quite small, and most of the emergency loans were not related to HVAC projects as asserted by commenters. For instance, in 2021, there were about 5,700 PACE loans in California, but only 42 that used the emergency provision, and of these only three involved an HVAC replacement; the remaining projects were related to energy efficiency improvements.[297]

One PACE company and a PACE industry trade association stated that the CFPB failed to sufficiently consider the costs to disadvantaged groups, such as seniors and minority borrowers, of losing access to PACE loans. A PACE company also stated that, because PACE companies do not determine eligibility based on credit history, the product is inherently non-discriminatory. The commenter cited the finding from the PACE Report that PACE loans similarly impact consumers in majority Hispanic census tracts, compared to consumers in majority white census tracts. The commenter also cited the finding from the PACE Report that older borrowers were affected similarly to younger borrowers. The commenter stated that these findings meant that Black, Hispanic, and older borrowers specifically benefit from PACE loans.

[296] *See* 12 CFR 1026.19(e)(1)(v), (f)(1)(iv) (providing for the modification or waiver of applicable waiting periods if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency and provides the creditor a dated written statement).

[297] *See* Cal. Dep't of Fin. Prot. & Innovation, *Annual Report of Operation of Finance Lenders, Brokers, and PACE Administrators Licensed Under the California Financing Law,* at table 18 and table 35 (Aug. 2023). https://dfpi.ca.gov/wp-content/uploads/sites/337/2024/01/2022-Annual-Report-CFL-Aggregated.pdf.

The CFPB does not agree with the commenters asserting that it failed to consider costs of the proposal to older borrowers or to Black or Hispanic borrowers. As the commenters note, the PACE Report includes separate estimates of the effect of PACE loans on mortgage delinquency by demographic characteristics. The PACE Report finds similar impacts on consumers residing in majority-minority census tracts as on consumers in majority-white census tracts, and also finds similar effects on younger and older borrowers. However, the findings of the PACE Report do not provide evidence that older borrowers benefit from PACE loans more than younger borrowers, nor that minority borrowers benefit more than white borrowers. Rather, PACE loans seem to be equally affordable to consumers from each group. There is no evidence, including in the PACE Report, that indicates that Black or Hispanic consumers or older consumers are uniquely harmed or benefited by PACE loans at baseline, and so the CFPB did not discuss this finding in the proposal.

Finally, a PACE industry trade association stated that losing access to PACE loans would result in consumers losing PACE companies' oversight of home improvement contractors. This commenter stated that home improvement contractors in general frequently engage in deceptive marketing and other problematic business practices, but contractors acting as solicitors for PACE companies are held to a higher standard. The commenter stated that reducing access to PACE loans would increase consumers' exposure to non-PACE-affiliated contractors.

The CFPB acknowledges, as the commenters suggest, that reduced access to PACE financing could also change the behavior of the average home improvement contractor that consumers encounter—contractors no longer marketing PACE loans may no longer need to adhere to certain practices that PACE industry participants have put in place to help protect consumers, for example. The CFPB does not have data available to quantify these potential

effects. However, even to the extent that this final rule reduces the use of PACE loans, the CFPB does not expect the rule to generally worsen the conduct of home improvement contractors on average as home improvement contractors who currently market PACE loans make up a small fraction of home improvement contractors in the States where they operate (see part VII for further discussion).

Potential Benefits and Costs to Covered Persons of the Ability-to-Repay Provisions

The ability-to-repay provisions would primarily affect PACE companies. Although the CFPB understands that local government sponsors are generally the creditor, as defined in TILA, for PACE transactions, the CFPB expects that the required ability-to-repay determination, and in practice the liability for any failures to make that determination, would fall on the PACE companies that run PACE programs.[298] Although the PACE Report provides some information on potential impacts of the ability-to-repay provisions on PACE companies, many of the potential benefits and costs to PACE companies are outside the scope of the Report. The CFPB discusses these benefits and costs qualitatively here.

PACE companies may benefit from legal clarity provided by the ability-to-repay provisions. As described above in part II.A, some PACE companies have been targets of legal actions from consumers and regulators. Some PACE companies have exited the industry citing

[298] The CFPB is aware that there may be programs authorized or administered by government entities that are not commonly understood as PACE, but that nonetheless meet the definition of PACE financing established in EGRRCPA section 307 and implemented under 12 CFR 1026.43(b)(15). Data on such programs is dispersed, and so the CFPB does not have sufficient information to reliably estimate how many such programs exist or to assess their current practices in providing financing. The CFPB understands these programs to operate independently of one another, under differing laws and practices. Consequently, the CFPB is unable to quantify (1) the number of such programs; (2) how many of those programs are operated by covered entities; or (3) the effects the rule will have on each such covered entity. Any such program's additional costs under the ability-to-repay provisions would depend on its current procedures. Although some commenters—who were not themselves operating or affiliated with such programs—cited examples of programs of this nature, commenters did not provide information regarding any of the quantities noted above.

such actions as at least a partial cause.[299] These legal actions were not necessarily related to PACE companies' consideration of consumers' ability to repay—many related to conduct by home improvement contractors who marketed the PACE transactions. However, the required TILA-RESPA integrated disclosures (discussed in more detail below) may make it more likely that consumers correctly understand the nature of a PACE transaction, potentially preventing some legal actions. The CFPB does not have data on the frequency of lawsuits facing PACE companies currently, nor does it have data on the claims in those lawsuits that would allow the CFPB to determine what share might be prevented by following the ability-to-repay provisions.

By providing a Federal ability-to-repay standard, the rule may also encourage greater consistency across States. For example, the CFPB understands that PACE companies currently adhere to different processes for determining consumer eligibility for PACE transactions in California, involving some collection and verification of income and other documentation, than in Florida, where eligibility determinations generally involve less documentation. If the rule encourages more standardized processes across States, this could result in reduced operating cost for PACE companies, which may offset some of the costs described below.

More broadly, imposing a nationwide minimum ability-to-repay standard could make it easier for PACE companies to expand into additional States, leading to additional business. As noted above, many States have legislation authorizing PACE transactions,[300] but currently PACE companies are primarily active in just two States. Local governments in States with legislation authorizing PACE transactions may have a variety of reasons for opting not to engage with a PACE company to start a PACE program. However, the CFPB finds it plausible that

[299] *See, e.g.*, *Decl. of Shawn Stone, CEO of Renovate America, In Support of Chapter 11 Petitions and First Day Motion*s, Case No. 20-13172 (Bankr. D. Del. 2020).

[300] *See* part II.A.2, *supra.*

controversies and consumer protection concerns discussed in part II.A above may in part hold some government entities back from engaging in PACE. To the extent this is the case, the final rule may address those concerns and provide opportunities for PACE companies to grow, or for new PACE companies to enter the market. To the extent this occurs, the benefits could be considerable. The PACE Report documents that PACE origination volumes grew rapidly in both California and Florida when PACE companies entered those States.[301] However, rapid growth may not materialize to the same extent in other States if the rapid growth in California and Florida was premised on business practices that will be prohibited by the rule.

Although PACE companies will likely receive some of the benefits discussed above from the ability-to-repay provisions, PACE companies will also likely experience significant costs, including reduced lending volumes, one-time adjustment costs, and ongoing costs for training and compliance.

The PACE Report documents that, following the effective date of the 2018 California PACE Reforms, PACE applications and originations fell sharply in that State, with no corresponding decline in Florida around the same time.[302] Using Florida as a control group, the Report finds that PACE applications in California declined by more than 3,400 per month due to the provisions of the 2018 California PACE Reforms, from an average of over 5,300 per month in that State prior to the reforms.[303] The Report finds that the number of originated PACE transactions in California declined by about 1,000 per month due to the 2018 California PACE Reforms, representing about a 63 percent decrease from a pre-reform average of about 1,600

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[301] *See* PACE Report, *supra* note 12, at Figure 16.

[302] *Id.*

[303] *Id.* at Table 13.

originations per month in California.[304] The specific requirements of the 2018 California PACE Reforms differ from those of this final rule, even with respect to provisions having to do with the California ability-to-pay requirements and this rule's ability-to-repay requirements, but the CFPB expects that following ability-to-repay requirements in States without similarly robust ability-to-repay provisions will lead to a similar decline in originated loans for PACE in those States. However, the CFPB notes again that, in the specific case of Florida, the recent change in Florida State law has created some elements of an ability-to-repay regime at baseline. While that change in State law likely will lead to a reduction in originations, that decline is not an impact of this final rule. The CFPB does not expect that the ability-to-repay requirements in this rule will cause an additional reduction in PACE transactions in California due to the mechanisms discussed above.

In addition, the decline in PACE applications in California following the 2018 California PACE Reforms that is documented in the PACE Report may have been accentuated by adjustments to firms' behavior. That is, it is possible that PACE companies refocused marketing and other efforts on Florida following the implementation of the 2018 California PACE Reforms. This type of shifting would not occur for the same reasons in response to a Federal regulation that applies nationwide, such as this rule.

Multiple individual and industry commenters stated that the annual number of PACE loans might fall by half due to the rule. However, the commenters generally did not provide any additional data or analysis on this point, but rather cited the CFPB's estimate from the proposal.

The CFPB reaffirms its proposed estimate that PACE lending might fall by as much as half in states that did not previously require consideration of income, primarily due to reduced

[304] *Id.*

application volume, as opposed to long-term reductions in approvals of submitted applications. However, the CFPB notes that, since the proposal was issued in May 2023, Florida has begun requiring PACE companies to verify income information. To the extent that the requirement to collect income information was responsible for reductions in PACE lending in California (for instance, because home improvement contractors are reluctant to do so and respond by ceasing to market PACE loans), the CFPB expects that such a reduction has already occurred or started to occur in Florida, such that the rule will not reduce PACE lending to the same extent as was estimated in the proposal.

PACE companies will also likely experience one-time adjustment costs to update their systems and processes to accept and consider income and other information related to the proposed ability-to-repay requirements. These costs may include software and development, training of both PACE company staff and home improvement contractor affiliates, and costs for legal and compliance review of the changes to ensure compliance with the regulations. The CFPB does not have data indicating the magnitude of these costs. However, the CFPB notes that some of these costs may be ameliorated by existing State requirements. The CFPB understands that all currently active PACE companies already have systems in place to allow for collection of income information and other documentation needed for the ability-to-repay determination the rule requires. The CFPB thus expects that costs related to software changes will be relatively small, and that costs for training would likely be less than if there were no existing ability-to-pay requirements for PACE in any jurisdiction. The CFPB acknowledges that legal and compliance review costs would likely apply in all States, as the specific requirements of the rule differ from the requirements of State laws and regulations. PACE industry stakeholders did not indicate that

one-time adjustment costs such as software changes would be significant, and generally did not call out legal and compliance review as major costs of the proposal.

PACE companies may also experience additional litigation costs due to alleged violations of the ability-to-repay provisions. As noted earlier in this analysis, the final rule applies civil liability in TILA section 130 to PACE companies that are substantially involved in making the credit decision. As the CFPB stated in the January 2013 Final Rule, even creditors making good faith compliance efforts when documenting, verifying, and underwriting a loan may still face some legal challenges from consumers. This could occur when a consumer proves unable to repay a PACE loan and wrongly believes (or chooses to assert) that the creditor failed to properly assess the consumer's ability to repay before making the loan. As discussed in the January 2013 Final Rule, this will likely result in some litigation expense, although the CFPB believes that, over time, that expense will likely diminish as experience with litigation yields a more precise understanding regarding what level of compliance is considered sufficient. After a body of case law develops, litigation expense will most likely result where compliance is insufficient or from limited novel sets of facts and circumstances where some ambiguity remains. Moreover, as the CFPB also stated in the January 2013 Final Rule, the CFPB believes that even without the benefit of any presumption of compliance, the actual increase in costs from the litigation risk associated with ability-to-repay requirements would be quite modest. This is a function of the relatively small number of potential claims, the relatively small size of those claims, and the relatively low likelihood of claims being filed and successfully prosecuted. The CFPB notes that litigation likely would arise only when a consumer in fact is unable to repay the loan (*i.e.*, is seriously delinquent or has defaulted), and even then only if the consumer elects to assert a claim and, in all likelihood, only if the consumer is able to secure a lawyer to provide representation;

the consumer can prevail only upon proving that the creditor failed to make a reasonable and good faith determination that the consumer did not have an ability to repay at or before consummation or failed to consider the enumerated factors in arriving at that determination.

Beyond PACE companies, the ability-to-repay provisions will impose some costs on local government entities and home improvement contractors.[305]

Some local government entities will experience costs due to the ability-to-repay provisions. The CFPB understands that local government entities receive some revenues from originated PACE transactions in the form of fees or a small percentage of the PACE payments collected through consumers' property tax payments. The CFPB does not have data indicating the average revenue that government entities receive from each PACE transaction, and commenters did not address this point. To the extent that the rule reduces the volume of PACE transactions, the CFPB expects that it will also reduce revenue to such government entities, in proportion to the revenue they currently receive from such transactions. If, as discussed above, the rule facilitates growth of PACE transactions in States that do not currently have active programs, local government entities in those State might benefit as a result.

In the proposal, the CFPB discussed the possibility that home improvement contractors involved in PACE transactions would experience costs under the proposal due to the additional staff time required to collect the required information for the proposed ability-to-repay determination. However, as Florida State law now requires PACE companies to verify consumers' income before consummating a PACE transaction, it is unlikely that the rule will significantly increase costs in this respect.

[305] Local government entities and home improvement contractors currently involved in PACE transactions may or may not be covered persons depending on the specific facts and circumstances of their involvement in PACE financing; to the extent they are not covered persons the CFPB exercises its discretion to consider benefits, costs and impacts to these entities.

A special assessment administrator noted that PACE loans represented more than 50 percent of its revenue and expressed concern about a decline in this revenue due to the proposal.

The CFPB acknowledges that the rule will likely impose costs on special assessment administrators who carry out the logistics of placing PACE transactions on county tax rolls, in proportion to the share of revenue they currently receive from PACE loans.

Potential Benefits and Costs to Consumers and Covered Persons of Clarifying that PACE Financing is Credit

The rule revises the official commentary for Regulation Z to clarify that PACE transactions are credit for purposes of TILA.[306] In practice, this imposes a number of new requirements on PACE companies and other covered persons. Some relevant provisions whose benefits and costs are discussed below include (1) a right of recission;[307] (2) disclosure requirements, including provision of relevant TILA-RESPA integrated disclosure forms and mandatory waiting periods between provision of the disclosures and consummation;[308] (3) requirements related to loan originators;[309] and (4) certain requirements for PACE transactions that meet the definitions of a high-cost mortgage or a higher-priced mortgage

[306] *See* section-by-section analysis of § 1026.2(a)(14), *supra*.

[307] Consumers have the right to rescind within three business days of consummation, delivery of the notice informing the consumer of the right to rescind, or delivery of all material disclosures, whichever occurs last. If the notice or disclosures are not delivered, the right to rescind expires three years after consummation, upon transfer of all of the consumer's interest in the property, or upon sale of the property, whichever occurs first. *See* 12 CFR 1026.23(a)(3)(i).

[308] *See, e.g.*, 12 CFR 1026.19(e)(1)(iii), (f)(1)(ii).

[309] *See, e.g.*, 12 CFR 1026.36(a)(1)(i), 1026.36(d)-(g).

loan.[310] The CFPB is not addressing in depth other provisions.[311] As with the ability-to-repay provisions discussed above, the CFPB expects that, in practice, most benefits and costs that derive from requirements for PACE creditors will ultimately be borne by PACE companies.

Benefits and Costs of the Right of Recission

The right of recission could benefit consumers and impose costs on covered persons to the extent that consumers decide a PACE transaction is not appropriate for them during the rescission period and exercise the right. A rescission period could give consumers more time to exercise such preferences. However, the CFPB does not have data indicating whether PACE borrowers typically realize such a preference during the three-day period following origination of a PACE transaction. In addition, PACE borrowers in California and Florida already have a three-day right to cancel under State law,[312] and PACE companies may currently voluntarily provide a recission option independent of these requirements. As a result, the CFPB expects the application of this provision of TILA to impose few benefits or costs on consumers and covered persons when the required TILA notice and material disclosures are provided.

TILA provides an extended rescission period of up to three years when the required TILA notice and material disclosures are not provided.[313] The CFPB does not have data that would

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[310] 12 CFR 1026.32, 1026.34.

[311] For instance, PACE companies would also be required to comply with the prohibition on prepayment penalties under 12 CFR 1026.43(g), but the CFPB does not expect this would create significant costs or benefits for consumers or covered persons, as the CFPB understands that PACE loans being made currently do not include these penalties. PACE contracts would also be prohibited from requiring the use of mandatory arbitration under 12 CFR 1026.36(h), but the CFPB does not have information sufficient to determine the extent to which PACE contracts currently include mandatory arbitration clauses. To the extent mandatory arbitration clauses are currently in use, consumers and covered persons could incur benefits and costs as a result of this prohibition.

[312] In California, consumers have the option to cancel within three business days after signing the agreement, receipt of the Financing Estimate and Disclosure, or receipt of the cancellation notice, whichever occurs last. *See* Cal. Sts. & Hwys. Code sec. 5898.16. In Florida, a property owner may generally cancel a financing agreement within three business days after signing without penalty. *See* Fla. Stat. sec. 163.081(6).

[313] 15 U.S.C. 1635(f); 12 CFR 1026.23(a)(3)(i).

allow it to estimate how often the extended rescission period would be available to PACE consumers.

Benefits and Costs of TILA-RESPA Integrated Disclosure Requirements

The disclosure requirements will likely benefit consumers by increasing their understanding of the terms of the PACE transaction and mandating a waiting period between disclosure and consummation. Mandating disclosures and a waiting period for PACE transactions conforming with TILA-RESPA integrated disclosure requirements will make it more likely that consumers understand the terms of their proposed PACE transactions. The TILA-RESPA integrated disclosure requirements will also help consumers comparison shop among financing options. Both the information in the disclosures and the waiting period will better enable consumers to compare the terms of a PACE loan to the terms of other credit options that may be available to them, particularly other credit products that are secured by the consumer's home. As discussed above, PACE loans have higher interest rates than other available credit products secured by the consumer's home. The disclosure requirements will also likely increase understanding of the fundamental nature of PACE transactions as financial obligations that must be repaid over time.

Commenters responding to the Advance Notice of Proposed Rulemaking, as well as media accounts, have indicated that some PACE borrowers do not realize they are committing to a long-term financial obligation when they agree to a PACE transaction. This may occur, for example, due to deceptive conduct on the part of a home improvement contractor marketing the PACE transaction, or due to the complexity and unfamiliarity of the PACE transaction itself. Whatever the cause, it is more likely that a consumer receives the required TILA-RESPA disclosures will realize that they are signing up for a loan that must be repaid over time. As such,

the rule may benefit consumers who would otherwise misunderstand the nature of a PACE transaction. Consumers who would not agree to a PACE transaction if they understood its nature as a financial obligation they would need to repay may be more likely to understand the nature of the transaction, and thus decline it. In addition, even consumers who would still agree to the transaction understanding its nature as a financial obligation would be more likely to prepare for the increase to their property tax bill caused by the PACE transaction.

For consumers who would not, with full understanding, have agreed to a PACE transaction, the potential benefits of the final rule would depend on whether the consumer would still agree to the home improvement contract the PACE transaction was intended to fund. For consumers who would have been willing to proceed with the home improvement project without a PACE transaction, the CFPB assumes that at least some would seek to pay off the PACE transaction after the first payment becomes due.[314] In this case, the benefit to the consumer would be saving the first year of interest on the PACE transaction, as well as up-front fees and any capitalized interest accrued prior to the first payment. The PACE Report finds that the average fee amount for PACE transactions made between 2014 through 2019 was $1,301, and the average capitalized interest was $1,412.[315] The average interest rate was 7.6 percent.[316] On the average original balance of $25,001,[317] this would result in interest payments of $1,900 in the first year. Thus, each consumer would save about $4,600 in interest and fees if they avoided a PACE transaction rather than repaying it after the first payment becomes due. Further, if the

[314] If the consumer did not realize they had agreed to a loan at origination, this would become clear when their next property tax bill became due. The PACE Report finds that on average a consumer's total property taxes likely increased by almost 88 percent as a result of the PACE loan payment. PACE Report, *supra* note 12, at 13.

[315] Capitalized interest is calculated using the APR, the fee amounts, and the term and interest rate of the PACE transactions provided in the PACE Report. *See id.* at Table 2.

[316] *Id.*

[317] *Id.*

consumer otherwise would not have agreed to the home improvement project (*i.e.*, the consumer only agreed to the project based on a misunderstanding about the financing), the benefit of preventing misunderstanding is greater still, depending on the value the consumer nonetheless receives from the project.[318]

The CFPB does not have data indicating how often consumers currently misunderstand the nature of a PACE transaction. To the extent that consumers currently misunderstand the nature of a PACE transaction, the CFPB does not have data indicating what those consumers might have done in the counterfactual, including what share might have proceeded with the PACE transaction, what share might have proceeded with the home improvement project with another financing option, or paying cash, and what share might have opted not to proceed with the home improvement project at all. The data used in the PACE Report do not capture when and whether PACE transactions were paid off. However, publicly available data for California indicate that a significant fraction of PACE transactions to date were paid off early in the term of the transaction. The California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) manages a loss reserve fund for California PACE programs and requires PACE companies to submit information on new PACE transactions semi-annually, and to report their overall portfolio size as of June 30th of each year.[319] CAEATFA reports aggregate statistics

[318] Generally, the economic loss to a consumer from being induced to purchase something they would not otherwise purchase is the difference between the price paid and the consumer's willingness to pay for the good or service. If the consumer is not willing to make the purchase, by definition their willingness to pay is less than the price. In the context of a PACE transaction for an otherwise unwanted project, the consumer's willingness to pay would be less than the price paid to the contractor, which in turn is less than the full original balance due to fees and capitalized interest. Potentially a consumer's willingness to pay for a project could be zero, or even negative (*i.e.*, the consumer would have to be paid to be willing to permit the project, had they understood). However, consumers may frequently have willingness to pay greater than zero for projects funded by PACE transactions, if only due to realized energy, water, or insurance savings.

[319] *See* Cal. State Treasurer, *Property Assessed Clean Energy (PACE) Loss Reserve Program*, https://www.treasurer.ca.gov/caeatfa/pace/activity.asp (last visited Oct. 22, 2024).

from this collection publicly on its website.[320] Using this information, the CFPB can calculate the number of PACE transactions paid off each year as the sum of the prior year's total portfolio and the current year's new transactions, less the current year's total portfolio. This is shown in Table 1 below.

According to the CAEATFA data, there were 17,401 PACE transactions outstanding in California as of June 30, 2014, and 218,549 new transactions originated after that through June 30, 2023. However, about 150,000 transactions were paid off during this time, based on the change in total outstanding portfolios, meaning that up to about 64 percent of PACE transactions may have been paid off early. This likely overstates somewhat the share of transactions that were paid early, and it very likely overstates the share of consumers who misunderstood the nature of the transactions. PACE transactions can have terms as short as five years, such that some transactions may have simply reached maturity. However, the PACE Report shows that only about 6 percent of PACE transactions have terms of five years.[321] PACE transactions may be paid off early for reasons other than misunderstanding the nature of the transaction, including if the consumer sells their home and is required by the buyer to pay off the PACE transaction.[322] Still, given the frequency of early repayments and the substantial potential benefits to individual consumers of preventing a misunderstanding about the nature of PACE as a financial obligation, the aggregate benefits could be substantial. For instance, if just 10 percent of early repayments on PACE transactions (*i.e.*, 6 percent of all PACE borrowers, or roughly 1,430 annually) were

[320] *Id.*; *see also* Cal. State Treasurer, *PACE Loss Reserve Program Enrollment Activity*, https://www.treasurer.ca.gov/caeatfa/pace/enrollment-activity.xlsx (last visited Oct. 22, 2024).

[321] *See* PACE Report, *supra* note 12, at Figure A1.

[322] The CFPB does not have data indicating how often homeowners are required to pay off a PACE transaction when selling their home. However, as noted in part II.A.4, some mortgage lenders or investors prohibit making a new loan on a property with an outstanding PACE transaction. *See supra* note 19.

due to a misunderstanding that the rule could address, the aggregate benefits would be over $6.6 million annually based on each consumer with a misunderstanding saving $4,600 in interest and fees.[323]

Table 1

Year	(a) Actual Total Outstanding Portfolio Through June 30th, Prior Year	(b) New Financings July 1st – December 31st, Prior Year	(c) New Financings January 1st – June 30th, Current Year	(d) Actual Total Outstanding Portfolio Through June 30th, Current Year	(e) Number Paid Off ((a) + (b) + (c) – (d))
2015	17,401	7,022	11,515	34,308	1,630
2016	34,308	23,206	32,743	83,904	6,353
2017	83,904	34,036	25,850	121,088	24,708
2018	121,088	25,764	15,482	146,397	13,925
2019	146,397	9,982	6,967	146,516	16,827
2020	146,516	5,541	4,793	131,195	25,659
2021	131,195	4,999	3,343	115,715	23,822
2022	115,715	2,443	1,969	96,772	23,355
2023	96,772	1,623	1,287	85,375	14,307
Total	N/A	114,607	103,942	N/A	150,575

Source: CAEATFA, https://www.treasurer.ca.gov/caeatfa/pace/activity.pdf.

Consumer groups echoed their comments from the Advance Notice of Proposed Rulemaking that consumers frequently misunderstand the nature of PACE loans. Conversely, PACE industry commenters disagreed with the proposal's assumption that a portion of consumers who pre-paid their PACE loans did so because they had misunderstood the nature of the product and would not have taken the loan had they understood. These commenters took issue with the CFPB's discussion in the proposal of the potential benefit of avoiding

[323] Similar to the discussion above regarding the benefits of avoiding unaffordable PACE transactions, this calculation may overstate the aggregate benefits to the extent that existing State law prevents consumers from misunderstanding the nature of PACE transactions. Given that the number of PACE transactions paid off each year remained high after the implementation of the 2018 California PACE Reforms, and given that the CFPB is being conservative in assuming for illustrative purposes that only 10 percent of early repayments were due to misunderstandings, the CFPB has determined that this estimate is, on balance, likely an underestimate.

misunderstandings of the nature of PACE loans. The commenters stated it was arbitrary and not based on data for the CFPB to assume that the 10 percent of PACE loans that were pre-paid were due to consumer misunderstanding. Some of these commenters further stated that pre-payments of PACE loan were partly or primarily due to consumers taking advantage of low interest rates to refinance their PACE loans.

The CFPB emphasizes that the calculation discussed above is intended to be illustrative, not definitive. The CFPB does not have specific data as to the share of consumers who misunderstand the nature of a PACE loan and would not take out a PACE loan had they understood. The calculation above is intended to provide a sense of scale for the potential benefits: If most pre-paid PACE loans are loans that the consumer understood the nature of or would have taken out with full understanding, but a small fraction are not, the benefits would be as stated above. If the rate of misunderstandings that are addressed by this final rule were larger or smaller, the benefit of the rule to consumers would be proportionately larger or smaller as well. In assuming for illustrative purposes that the vast majority of pre-payments were unrelated to consumers misunderstanding the nature of the debt obligations, the CFPB is erring toward being conservative in its estimate. The CFPB also notes that the commenters' explanation that refinances account for frequent repayments is at odds with the arguments offered by some PACE industry stakeholders that PACE borrowers generally do not have other credit options at a lower cost than a PACE loan.

By providing detailed information about the terms and payment amounts expected in a PACE transaction, TILA-RESPA integrated disclosures may also assist consumers in preparing for their first PACE payment, which can be a significant shock to their finances regardless of whether the consumer pays their property taxes directly or through a pre-existing mortgage

escrow account. The PACE Report finds that the average PACE consumer's property tax bill likely nearly doubles as a result of the PACE loan.[324] Particularly for consumers who do not pay property taxes through an escrow account, this can be a major expenditure shock. For consumers who do pay property taxes through an escrow account, the Report finds that mortgage payments increase substantially over the two years following the PACE transaction, indicating an expenditure shock as well.[325] Some of the disclosures on the modified TILA-RESPA integrated disclosure form for PACE transactions may prompt consumers with a pre-existing non-PACE mortgage to inform their mortgage servicer of the PACE transaction. This, in turn, could prompt the servicer to conduct an escrow analysis to account for the PACE payment sooner than it otherwise would have and thus create a smaller monthly payment increase for the consumer.

Several commenters took issue with the additional disclosures required by the rule. A PACE industry trade association stated that the "welcome calls" employed by its members served as a more effective disclosure than TILA-RESPA integrated disclosure forms delivered on paper. A PACE company noted that the proposal's requirement to provide TILA-RESPA integrated disclosure forms would be costly. The commenter noted that the disclosures would be duplicative in light of existing disclosures required by State law. In addition, the same commenter stated that requiring both Closing Disclosures and Loan Estimates would impose unnecessary costs, because there typically are not settlement services that consumers can shop for in between the initial loan estimate and closing. The result, in the stated view of the commenter, would be two nearly identical disclosures that would impose costs on PACE companies with no benefit to consumers. However, a different PACE company stated that the

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[324] *See* PACE Report, *supra* note 12, at 13.

[325] *Id.* at 18-20.

TILA-RESPA integrated disclosure forms would be costly because of the need for new disclosures when changes to the home improvement contract are made and stated that such changes were very common. Commenters did not provide specific figures as to the cost of the required disclosures.

The CFPB recognizes that the TILA-RESPA integrated disclosure forms required by the rule could result in consumers receiving multiple disclosures required by both Federal and State law as well as any other disclosures PACE companies provide voluntarily.[326] The CFPB also recognizes that TILA and Regulation Z may require redisclosure if certain aspects of the transaction change. Given the reports of consumer confusion as to the nature of PACE loans in the past, the CFPB determines that, on balance, consumers will benefit from the TILA and Regulation Z. The CFPB acknowledges that provision of the disclosures will be costly for PACE companies and may be costly for home improvement contractors as well, depending on how the disclosures are provided.

PACE companies will experience one-time adjustment costs related to the TILA-RESPA integrated disclosure. The CFPB understands that PACE companies generally provide some disclosures with similar information at the point of sale, but not in the format or with precisely the same information as the disclosure that will be required under the final rule. The CFPB expects that ongoing costs will be minimal relative to the baseline, since PACE companies already provide disclosures. To the extent that the TILA-RESPA integrated disclosures for PACE require that PACE companies gather information that they do not currently collect, they may face additional costs of gathering that information.

[326] *See supra* note 106.

A PACE company stated generally that it would be costly for PACE companies to comply with the requirements of Regulation Z that would follow if PACE financing is credit under TILA. The commenter stated that the average cost of documenting ability-to-repay and providing TILA-RESPA integrated disclosure forms was $8,600 per loan, citing a non-PACE mortgage industry estimate of the average cost of non-PACE mortgage originations. The commenter further suggested that the cost for PACE companies would be higher still, on the order of $13,000, in line with an estimate from the same source for small independent mortgage lenders.

While the CFPB acknowledges that PACE creditors or other covered parties may incur costs to comply with the requirements of Regulation Z, the CFPB notes that the commenter's estimate of $8,600 or more per loan is unlikely to be accurate. The commenter cited a Freddie Mac study that estimates $8,600 as the entire cost of originating a mortgage, including underwriting, recording, cost of funds, and more.[327] That study also states that refinance mortgages are cheaper to originate than this benchmark. Refinance mortgages are likely a better benchmark for the costs of originating a PACE loan, as some of the costs involved in facilitating a home purchase are not present in the case of a PACE loan.

The required seven-day waiting period between provision of the Loan Estimate and consummation may also impose costs on both PACE companies and the home improvement contractors who market PACE transactions. As discussed in part II.A, the CFPB understands that, currently, PACE transactions are frequently originated on the spot, on the same day as the home improvement contractor approaches the consumer about a potential project. PACE industry

[327] *See* Freddie Mac, *Cost to Originate Study: How Digital Offerings Impact Loan Production Costs* (Nov. 2021), https://web.archive.org/web/20230717225358/https://sf.freddiemac.com/docs/pdf/report/cost-to-originate.pdf.

stakeholders have expressed to the CFPB that this speed of origination is necessary to compete with unsecured financing options. It is possible that the seven-day waiting period will lead to a further reduction in PACE transaction volume due to reduced contractor participation if contractors prefer to offer only credit options that do not have such a waiting period. No States currently have a similar mandatory waiting period under State law as far as the CFPB is aware, so this aspect of the rule will likely affect PACE lending volumes in all States. The CFPB does not have data to indicate how large this effect might be.

PACE industry stakeholders, including PACE companies, home improvement contractors and a government sponsor, expressed concern that the required seven-day waiting period between provision of the Loan Estimate and consummation would be particularly costly for their business. Multiple PACE companies noted that this may be costly to consumers as well in cases where PACE loans are used to fund emergency repairs. A PACE industry trade association cited a survey of home improvement contractors which showed that 60 percent of homeowners choose a home improvement contractor in less than 72 hours. The commenter noted that PACE companies are competing with other forms of financing, such as unsecured home improvement loans, that are available immediately, such that a seven-day waiting period would put PACE loans at a competitive disadvantage.

As discussed above, the CFPB notes that TILA and Regulation Z already include an exception that would allow consumers to modify or waive applicable waiting periods between disclosure and consummation if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency.[328] As such, the CFPB does not believe the

[328] *See* 12 CFR 1026.19(e)(1)(v), (f)(1)(iv).

required waiting period will generally impose costs on consumers in the event of bona fide personal financial emergencies.

The CFPB acknowledges that the seven-day waiting period may delay the start date of projects that are financed by PACE loans but does not agree with the commenters that the delay is incompatible with the way that consumers choose contractors for home improvement work. While it may be the case that consumers prefer to choose a contractor quickly, work on a home improvement project frequently does not start immediately. For many projects funded by PACE loans, permits are required by State or local laws before work can begin, materials must be obtained, and the contractor may have a queue of other projects they must complete first. As such, it is unlikely that a delay of several days to finalize financing is inherently incompatible with a home improvement contractors' business model.

Benefits and Costs of Loan Originator Provisions

TILA and Regulation Z include a variety of provisions that apply to loan originators. With current PACE industry practices, the CFPB understands that these provisions will primarily apply to home improvement contractors under the final rule. If home improvement contractors continue in their current roles and act as loan originators for PACE transactions, both the individual contractors and related companies would face compliance costs, including costs relating to applicable State or Federal licensing and registration requirements.[329] The CFPB does not have data available to quantify the costs to home improvement contractors from complying with TILA as loan originators.

Home improvement contractor commenters generally noted that complying with the loan originator requirements of TILA and Regulation Z would be costly. Several home improvement

[329] 12 CFR 1026.36(f).

contractors stated this generally, but some commenters provided specific costs. A home improvement contractor trade association and one PACE company stated that becoming a loan originator in California would require 20 hours of training in addition to application, licensing, and testing fees. Commenters cited amounts between $400 and $800 as the total annual cost per contractor acting as a mortgage loan originator. Several home improvement contractors and other PACE industry stakeholders further stated that the applicable State requirements in California and Florida had other provisions for loan originators that are incompatible with PACE financing, including that loan originators must be employed by a licensed mortgage broker or lender. These commenters generally expressed that these types of requirements would severely limit or eliminate PACE lending because home improvement contractors would be unable or unwilling to satisfy them. One home improvement contractor noted that the costs to comply with Regulation Z were more affordable for non-PACE mortgage lenders than for small contractors.

With respect to the cost of home improvement contractors becoming loan originators under TILA or the SAFE Act, the CFPB finds the cost estimates offered by some commenters—on the order of $800 annually per contractor—to be a reasonable estimate. The CFPB does not believe these costs will, by themselves, generally lead home improvement contractors to exit the PACE loan market. Some home improvement contractor commenters stated that large fractions of their annual business are funded by PACE loans, citing figures as high as 80 percent. Against this amount of revenue, the increased fixed cost of licensing sales staff and estimators generally would not cause a contractor to become unprofitable. The CFPB also notes that projects funded by PACE transactions seem to be particularly profitable for contractors in some cases. Public data from California indicate that around a sixth of PACE loans made in that State in 2022 involved a payment from the contractor to the PACE company, whether as a buydown, seller's

points, or other payment.[330] The average such payment was over $6,000 in 2022. For this to be rational behavior, the underlying projects must have been more profitable, again suggesting that incurring the fixed costs of loan originator licensing and testing would be feasible for contractors.

With respect to conflicts between the requirements of Federal and State law, or additional Federal requirements where State law already imposes compliance obligations, the CFPB acknowledges that there may be some additional compliance burden on PACE companies and home improvement contractors, but the CFPB does not expect major disruptions to the PACE market due to these requirements in the long term. State law requirements vary, but depending on the requirements it may, for instance, be possible for home improvement contractors and PACE companies to satisfy a requirement for loan originator licensing by contactors and PACE companies registering as mortgage brokers and lenders respectively. PACE companies and home improvement contractors may incur one-time adjustment costs to make these changes, but this is unlikely to make it impossible for home improvement contractors to market PACE loans, as some commenters claimed. In addition, both California and Florida have in recent years made changes to their PACE financing laws to increase consumer protections for PACE transactions, while continuing extant PACE programs. Should any State's laws with respect to loan originators under the SAFE Act be truly incompatible with the current business model for PACE, the CFPB finds it likely that the States will make adjustments to their laws to allow PACE lending to continue.

[330] *See* Cal. Dep't of Fin. Prot. & Innovation, *Annual Report of Operation of Finance Lenders, Brokers, and PACE Administrators Licensed Under the California Financing Law*, at 41 (Aug. 2023), https://dfpi.ca.gov/wp-content/uploads/sites/337/2024/01/2022-Annual-Report-CFL-Aggregated.pdf.

It is possible that some home improvement contractors will opt not to bear the cost of complying with TILA provisions to the extent they apply and will instead exit the PACE market. The home improvement contractors themselves would incur costs in this case. The CFPB does not have data available to estimate these costs. The costs to home improvement contractors from exiting the PACE industry depend on what happens to prospective home improvement contracts for which PACE financing is no longer be an option. If contractors are able to make the sale of the home improvement contract based on a cash payment or another financial product, they generally would not experience any cost.[331] However, contractors could lose some sales due to the unavailability of a PACE transaction as a financing option. The CFPB does not have data that would indicate how frequently this will happen. It is also possible that, if the rule enables PACE financing to expand into additional States, home improvement contractors in those States will benefit from additional business. Again, the CFPB does not have data that would indicate how many contractors might benefit if this were to occur, or how much they would benefit.

It is also possible that PACE companies may shift their business practices so that home improvement contractors do not explicitly solicit consumers for PACE transactions, but instead provide referrals to a PACE company to apply for a PACE transaction with the PACE company directly. In this case, the costs of compliance with the requirements of TILA and Regulation Z relating to loan originators would fall on PACE companies, although home improvement contractors may still experience costs due to this change in business model. The CFPB does not have data available to quantify these costs, and commenters did not address this possibility.

[331] The CFPB's understanding is that home improvement contractors do not receive a commission from PACE companies for originating a PACE contract. To the extent that contractors do receive commissions, exiting the PACE market will cost them these commissions, although they might be replaced by commissions from an alternate financial product, if any. Conversely, to the extent that contractors currently make payments to PACE lenders as part of originating a PACE loan, as currently occurs for around one sixth of PACE loans in California, exiting the PACE market will save contractors that expense.

A PACE industry trade association and a PACE government sponsor expressed concern that small home improvement contractors would exit the PACE market but did not provide specific figures on this point. Several home improvement contractors stated that a large fraction of their business is financed by PACE loans, with estimates ranging from 35 percent to 80 percent.

Consumers may experience both costs and benefits due to the application of TILA's loan originator provisions to PACE. The costs and benefits to consumers of not being offered a PACE transaction are discussed above in this analysis; that discussion also applies to cases where consumers are not offered a PACE transaction because the home improvement contractor has exited the PACE market. To the extent that home improvement contractors opt to remain in the PACE market or PACE transactions are originated by PACE companies or local governments directly as a result of the rule, consumers may benefit from such changes to the way PACE transactions are marketed. Many consumer protection issues identified in the comments responding to the Advance Notice of Proposed Rulemaking and NPRM are related in large part to conduct by home improvement contractors. Either mandatory compliance with TILA's loan originator provisions by home improvement contractors, or a shift to originating PACE transactions directly by PACE companies or local governments could ameliorate some of these issues.

A PACE company criticized the CFPB's discussion of this issue in the proposal, stating that the CFPB had not specifically identified consumer protection issues that this aspect of the rule would solve, nor provided evidence that those problems exist. The CFPB discusses the consumer protection issues with PACE financing, including regarding the conduct of home improvement contractors above in part II.A. The CFPB acknowledges that its analysis of the

costs and benefits to consumers of having home improvement contractors treated as loan originators under Regulation Z is qualitative in nature. Commenters did not provide any specific costs or benefits of these provisions. The CFPB's analysis is based on the information available, and it maintains the analysis stated above.

Benefits and Costs Related to PACE Loans that Are High Cost Mortgages

Under TILA, certain additional protections apply to high-cost mortgages as defined by HOEPA. High-cost mortgages generally include those that: (1) have an APR 6.5 or 8.5 percentage points higher than the APOR for a comparable transaction, depending on whether it is a first- or subordinate-lien mortgage; (2) have points and fees exceeding 5 percent of the total loan amount or the lesser of 8 percent of the total loan amount or $1,000 (adjusted annually for inflation), depending on the size of the transaction; or (3) include certain prepayment penalties.[332] Few PACE transactions appear to have APRs high enough to meet the first prong,[333] and the CFPB understands that more recent PACE transactions generally do not include prepayment penalties, although certain early PACE contracts did include prepayment penalties. The PACE Report finds that about 35 percent of PACE transactions in the data the Report studies had up-front fees exceeding the relevant HOEPA points-and-fees threshold.[334] However, this varied sharply by State, with over half of all PACE transactions in California having fees exceeding the threshold, compared to just 8 percent of PACE transactions in Florida.[335]

Some of the requirements of HOEPA may be difficult for PACE companies to comply with. This could lead to PACE companies declining to make PACE transactions that would be

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[332] *See* TILA section 103(bb)(1)(A); 12 CFR 1026.32(a)(1).

[333] *See* PACE Report, *supra* note 12, at 15 (finding that 96 percent of PACE transactions made between 2014 and 2019 had estimated APR-APOR spreads below 6.5 percent).

[334] *Id.* at Table 5.

[335] *Id.*

high-cost mortgages. Given the variation in fees across States, it seems possible that PACE companies could make PACE transactions profitably with lower fees than they currently do. As a result, the CFPB expects that PACE companies will reduce fees or interest rates on PACE transactions that would otherwise exceed HOEPA thresholds rather than declining to make a PACE transaction at all. This will impose costs on PACE companies and the affiliated local government entities in the form of lost revenue and will benefit PACE consumers by the same measure.

A PACE company stated that it would be impossible for PACE loans to comply with some requirements of Regulation Z for high-cost mortgages as defined by HOEPA and Regulation Z. The commenter stated that the high-cost mortgage definition under HOEPA would function as a cap on loan amounts and fees.

As discussed above in the discussion of §§ 1026.32 and 1026.34, high-cost PACE loans will be able to comply with the HOEPA requirements involving payments to home improvement contractors and credit counseling that one PACE company asserted would pose challenges, although the CFPB acknowledges these or other HOEPA requirements may create costs for PACE companies and home improvement contractors. In addition, as discussed above in this part, to the extent that HOEPA compliance is infeasible or cost-prohibitive, the CFPB agrees with the commenters that PACE companies will likely respond by adjusting loan terms to avoid making loans that are high-cost mortgages under HOEPA. This would impose costs on PACE companies and PACE creditors, and benefit consumers in equal measure. Given that the PACE Report shows that PACE companies charge significantly lower fees and have a much smaller share of loans that would be high-cost mortgages under HOEPA, for PACE loans in Florida as

compared to PACE loans in California, the CFPB does not expect that changes in fee amounts would make PACE loans non-viable.

Benefits and Costs Related to PACE Loans that Are Higher-Priced Mortgage Loans

PACE companies may also experience costs due to the requirements of Regulation Z with respect to higher-priced mortgage loans. Regulation Z generally requires creditors to obtain a written appraisal of the property to be mortgaged prior to consummating higher-priced mortgage loans if the amount of credit extended exceeds a certain threshold—$32,400 in 2024—and to provide the consumer with a written copy of the appraisal.[336] The PACE Report indicates that about a quarter of PACE transactions originated between June 2014 and December 2019 had original principal amounts above that threshold, and moreover shows that most PACE transactions have APR-APOR spreads above the threshold for higher-priced mortgage loans.[337] The CFPB understands that PACE companies typically do not obtain written appraisals for properties securing PACE transactions, relying instead on automated valuation models. Switching to written appraisals, or lowering loan amounts to be under the threshold, would impose costs on PACE companies. Consumers will also experience costs to the extent that the price of conducting an appraisal is passed on to them.

Several home improvement contractors expressed concern regarding the cost of Regulation Z with respect to higher-price mortgage loans as defined under TILA and Regulation Z, specifically the requirement to obtain an in-person appraisal for loans with initial principal above a certain threshold.[338] Commenters stated that the higher-priced mortgage loan appraisal requirement would provide limited benefit; one commenter estimated that it would cost

[336] *See generally* 12 CFR 1026.35(c); comment 35(c)(2)(ii)-3.

[337] *See* PACE Report, *supra* note 12, at Table 2, Table 5.

[338] *See generally* 12 CFR 1026.35(c); comment 35(c)(2)(ii)-3.

$300-500 or more. Commenters generally indicated that the cost of an appraisal would be passed on to consumers, with some home improvement contractors stating further that they expected to require consumers to pay this fee up front, creating difficulties with an origination process for PACE loans that currently does not require any up-front fees. One home improvement contractor commenter stated that the appraisal requirement would lead to a 35 percent reduction in its business and result in layoffs. Other home improvement contractors stated that half of their customers would be unable to use PACE loans as a means of financing due to the upfront cost or delay resulting from the appraisal requirement.

PACE industry stakeholders also expressed concern that the appraisal requirement for PACE loans meeting the definition of higher-priced mortgage loans would be costly and unnecessary. The commenters cited the PACE Report, which shows that 25 percent of PACE loans had initial balances that would exceed the threshold to require an appraisal for higher-priced mortgage loans.[339] Commenters further expressed concern stating that an in-person appraisal would be unnecessary, as PACE companies are already required by State law to estimate home values using multiple automated valuation models, with strict limits on allowable loan-to-value ratios based on those outputs.

The CFPB acknowledges that requiring an in-person appraisal for PACE loans that are higher-priced mortgage loans subject to the requirements of § 1026.35(c) will impose costs on PACE companies and home improvement contractors, and on consumers to the extent that costs are passed through. As commenters noted, the PACE Report estimates that over 96 percent of

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[339] The PACE Report lists the 25th, 50th, and 75th percentiles for several characteristics of PACE loans originated between June 2014 and December 2019. Coincidentally, the 75th percentile for original principal balance was $31,060, meaning that 25 percent of PACE loans in the data had higher initial balances, and 75 percent had lower initial balances, and essentially the same percentage would be above and below exactly $31,000, the threshold at the time of the proposal.

PACE loans originated between 2014 and 2019 would have been higher-priced mortgage loans under the Regulation Z definition, and about one quarter had initial balances high enough to be subject to the appraisal requirement.[340] Recent data from State regulators and bond rating agencies indicate that average PACE transaction balances have increased since 2019, suggesting that a larger fraction would be subject to the requirement. Appraisal fees quoted by commenters, on the order of $400, are a reasonable estimate of these costs. In addition, PACE companies and home improvement contractors will likely incur some costs to arrange the appraisal, if only in staff time, beyond the direct appraisal fee. Commenters did not provide data or information suggesting the magnitude of these costs.

Although some commenters suggested that appraisals would need to be paid for by consumers up front, it is not clear why these fees would be treated differently from other fees currently associated with PACE loans, and commenters did not explain why this would be the case. Because it is currently commonplace for a variety of fees to be included in the initial principal balance of a PACE loan, the CFPB finds it most likely that any appraisal fee would also be included in the principal and passed on to consumers in full. As with the waiting period required for the TILA-RESPA integrated disclosure forms, discussed above, the CFPB does not expect that any delay in arranging an appraisal will be incompatible with the way that consumers choose contractors for home improvement work.

The CFPB further acknowledges that the appraisal requirement, where it applies, might discourage consumers from pursuing a PACE loan. The additional friction of scheduling a time with an appraiser may dissuade consumers from taking out a PACE loan at all. To the extent this occurs, PACE loans that would otherwise be above applicable thresholds would not occur,

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[340] *See* PACE Report, *supra* note 12, at Table 2 and Table 5.

leading to costs for industry participants and potentially costs and benefits to consumers as described above in this part. Some home improvement contractor commenters asserted particular fractions of their business, such as half or 35 percent, that would be lost due to an appraisal requirement. The CFPB notes that the requirement only applies to loans with initial balance above a certain threshold—$32,400 in 2024—such that estimates that half or more PACE loans would be lost seem unlikely based on data from the PACE Report.[341] Further, it is likely that some home improvement contractors and PACE companies will respond to the appraisal requirement by reducing the cost of the home improvement projects, whether by proposing smaller projects or charging lower prices, in order to reduce balances below applicable thresholds. Contractors may also be able to reduce the total cost of proposed projects, and thus the balance of any PACE transaction, by reducing or eliminating payments to PACE companies such as seller's points, as currently occurs for about one sixth of PACE loans in California. While these changes may impose further costs on industry participants, it seems unlikely that PACE loan originations would fall by as much as half solely due to the appraisal requirement for higher-price mortgage loans.

E. Potential Specific Impacts of the Rule on Access to Credit

As discussed above, the final rule may reduce access to PACE credit. Potential PACE borrowers who cannot qualify for a PACE transaction due to the ability-to-repay requirements will not have access to PACE credit. As also noted above, the PACE Report finds that the

[341] 12 CFR 1026.35(c); comment 35(c)(2)(ii)-3. The PACE Report indicates the median original balance of PACE loans originated between June 2014 and December 2019 was $20,629, with an average of $25,001. Although data from bond rating companies indicates that the average balance has increased for more recent loans, to around $31,000, the median is almost certainly still substantially lower, given that the distribution of PACE loan original balances, like most installment loans, is right skewed, with a small number of very high balance loans that increases the average above the median. Given these facts, the median original balance for new PACE loans is almost certainly well below the threshold that would require an in-person appraisal, such that less than half of PACE loans will be subject to this requirement if PACE lenders and home improvement contractors do not change their behavior.

implementation of the 2018 California PACE Reforms, which included a required ability-to-pay analysis, resulted in a substantial reduction in new PACE transactions.[342] Some of the decrease in California was likely due to increased denials of PACE applications, and some was likely due to reduced marketing of PACE transactions, such as reduced participation by home improvement contractors. However, given that Florida now requires PACE companies to confirm consumers' income before making a PACE loan, it is possible that the rule will not significantly reduce PACE lending beyond what has already occurred at baseline. Moreover, it is not clear how much of the reduction in PACE transactions in California was due to credit supply factors, versus reduced demand for PACE transactions. As discussed above, a substantial fraction of PACE transactions are paid off early, suggesting that at least some consumers who engage in a PACE transaction currently may not desire to have a long-term financial obligation. Some provisions of the rule could prompt some consumers to avoid the transaction, which would reduce the volume of PACE transactions, but this would be due to a reduction in demand for credit, not a change in access to credit. In addition, consumers who have a PACE application denied, or who are not offered an opportunity to apply for a PACE transaction, might be able to access other forms of credit, potentially at more favorable APRs.

To the extent that the legal clarity provided by the rule enables PACE financing to expand into additional States, this would increase access to PACE credit for consumers in those States.

The CFPB quantifies the potential impacts of the rule on access to credit in its discussion in part VI.D where possible. The CFPB sought comment on this issue in the proposal, particularly in the form of additional studies or data that might inform the potential impact of the

[342] PACE Report, *supra* note 12, at 45.

proposal on access to credit. Commenters did not provide any additional information beyond the qualitative discussion summarized here and above. That is, commenters noted that access to PACE credit would be reduced but provided no specific data or figures.

F. Potential Specific Impacts on Consumers in Rural Areas and Depository Institutions with Less than $10 Billion in Assets

The rule will not have a significant impact on consumers in rural areas. If anything, the rule will impact consumers in rural areas less than consumers in non-rural areas. The PACE Report shows that consumers who take part in PACE transactions are less likely to live in rural areas than other consumers in their States. Moreover, the Report notes that California and Florida, the States with the most PACE lending to date, have the smallest and sixth-smallest rural population shares among all States, respectively.

The CFPB understands that depository institutions of any size are not typically directly involved with PACE transactions, and thus the rule will have no direct impact on such entities, regardless of asset size.

Commenters did not address these specific impacts.

VII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (SISNOSE).[343] The CFPB is also subject to specific additional procedures under the RFA involving convening a panel to consult with small business representatives before proposing a

[343] 5 U.S.C. 601 *et seq.*

rule for which an IRFA is required.[344] In the proposal, the CFPB determined that an IRFA was not required because the proposal, if finalized, would not have a SISNOSE.

For the reasons discussed below, the CFPB does not believe that the final rule will have a SISNOSE.[345] While it is possible that the rule will have a significant impact on some entities, based on the information available it appears that most of those entities are not "small" as defined by the RFA, and that any small entities that may be impacted, significantly or otherwise, are unlikely to constitute a substantial number of small entities.

Small entities, for purposes of the RFA, include both small businesses as defined by the Small Business Administration (SBA), and small government jurisdictions, defined as jurisdictions with a population of less than 50,000.[346]

The CFPB understands that any economic impact from the rule will primarily fall on PACE companies, as defined under § 1026.43(b)(14). Most of these entities are private firms. A small number of local government entities administer their own PACE programs and may be affected in similar ways as PACE companies. The rule may also have a direct economic impact on the local government entities that authorize PACE programs within their jurisdictions and are parties to the financing agreements but do not otherwise administer the originations, and it may also have a direct economic impact on the home improvement contractors who market PACE to consumers.

The CFPB is aware of five entities that currently are administering PACE programs as commonly understood, including four private firms and one local government entity. Based on

[344] 5 U.S.C. 609.

[345] This analysis considers collectively the potential impacts of all aspects of the final rule on small entities, including both the affirmative new requirements and the revisions to the official commentary.

[346] 5 U.S.C. 601(3), 601(5).

the information available to the CFPB, none of these entities currently are small entities. The local government entity that directly originates PACE transactions has population greater than 50,000.[347]

For private firms, SBA size standards differ by industry based on the 6-digit North American Industry Classification System (NAICS) industry code that represents the primary business of a firm.[348] For private firms whose primary business is originating PACE transactions, the relevant SBA threshold is $47 million in annual receipts.[349] The CFPB's understanding is that PACE companies' annual receipts for purposes of the SBA criteria are based on the principal balance of the financing obligations they originate in a given year.[350] This is consistent with how PACE companies tend to describe the volume of their business.[351]

Based on the evidence available to the CFPB, it does not appear likely that any of the currently active private PACE companies averaged less than $47 million in annual receipts over

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[347] Sonoma County operates its own PACE program, called Sonoma County Energy Independence Program. Sonoma County, California had population 485,887 in 2021, according to the Census Bureau. *See* U.S. Census Bureau, *Annual Estimates of the Resident Population for Counties in California: April 1, 2020 to July 1, 2021*, https://www2.census.gov/programs-surveys/popest/tables/2020-2021/counties/totals/co-est2021-pop-06.xlsx.

[348] The NAICS system is produced by a partnership between the Office of Management and Budget and partner agencies in Canada and Mexico, with the aim of providing a consistent framework for analyzing industry statistics.

[349] The SBA generally defines receipts as "'total income'… plus 'cost of goods sold', as these terms are defined and reported on Internal Revenue Service (IRS) tax return forms." The SBA provides that the classification should be based on a five-year average of receipts, with adjustments if a firm has been in business for less than five full fiscal years. *See* 13 CFR 121.104. PACE is a small and relatively new industry that began around 2008, and there is more than one 6-digit NAICS industry that could reasonably apply to PACE companies (the NAICS system is comprehensive, such that every firm should fit into exactly one 6-digit industry code). The 6-digit NAICS industry codes that private PACE companies could arguably belong to include codes 522292 (Real Estate Credit), code 522299 (International, Secondary Market, and All Other Nondepository Credit Intermediation), or code 523910 (Miscellaneous Intermediation). *See* U.S. Census Bureau, *North American Industry Classification System 2022*, https://www.census.gov/naics/?58967?yearbck=2022. For all these industries the SBA size threshold is $47 million in annual receipts. 13 CFR 121.201.

[350] This will somewhat undercount annual receipts, which would also include revenues the firms receive from the sale of PACE securities to the secondary market.

[351] *See, e.g.*, Ygrene Energy Fund Inc., *RE: Advanced Notice of Proposed Rulemaking on Residential Property Assessed Clean Energy (RIN 3170-AA84)* (May 7, 2019) (describing the change in the volume of PACE assessments following the 2017 California PACE statute legislation in terms of the change in number of assessments and dollar value of those assessments).

the past five years.[352] Moreover, even if some PACE companies are small entities, PACE companies would not represent a substantial number of the small entities in any of the industries they could reasonably be classified in, which have between hundreds and thousands of small firms.[353] Even if all currently operating PACE companies were small, they would not represent a substantial number within any of the relevant 6-digit NAICS industries.

The CFPB also considered whether a substantial number of small government entities could experience a significant impact under the final rule. As noted above, the CFPB is only aware of one government entity that is currently acting as its own administrator to provide PACE financing as it is commonly understood, and it is not small under the RFA. However, other government entities authorize and oversee PACE programs, are parties to the financing agreements, and receive some revenues from the programs.[354] To the extent that the rule could

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[352] Although the data used in the CFPB's PACE Report does not identify revenue separately by individual companies, publicly available data from CAEATFA indicates that the currently active PACE companies generally averaged over $50 million in new PACE transactions in California alone between 2018 and 2020. *See* Cal. Alt. Energy & Advanced Transp. Fin. Auth., *PACE Loss Reserve Program Enrollment Activity* (Mar. 2021), https://www.treasurer.ca.gov/caeatfa/pace/activity.pdf. Moreover, the PACE Report shows that PACE lending in Florida exceeded that in California after 2018. Similarly, statistics from the PACE trade association indicate that the PACE industry made around $700 million in new PACE transactions in 2023. *See* PACENation, *PACE Market Data* (updated Dec. 31, 2023), https://www.pacenation.org/pace-market-data/. Even if these revenues were not evenly distributed among the four companies, it seems unlikely that any one company had revenues less than $47 million averaged over five years.

[353] The CFPB can determine the approximate number of small firms active in each industry through the 2017 Economic Census (the most recent version available at this writing), which gives counts of firms categorized by NAICS code and annual revenues. *See* U.S. Census Bureau, *2017 Economic Census, Finance and Insurance (NAICS Sector 52), Establishment and Firm Size Statistics*, https://www.census.gov/data/tables/2017/econ/economic-census/naics-sector-52.html. The revenue categories in the public Economic Census data do not line up perfectly with the SBA size thresholds, but even excluding categories that overlap the threshold, the 2017 Economic Census indicates that there were at least 2,372 small firms in the Real Estate Credit industry, at least 1,725 small firms in the International, Secondary Market, and All Other Nondepository Credit Intermediation industry, at least 1,573 small firms in the All Other Nondepository Credit Intermediation industry and at least 6,715 in the Miscellaneous Intermediation industry.

[354] As discussed in part VII above, the CFPB understands that government entities are legally the "creditor" for purposes of the TILA requirements as implemented in Regulation Z. *See* 12 CFR 1026.2(a)(17). However, for programs administered by PACE companies, in general the CFPB does not expect significant economic impact on these government entities from these provisions, as the CFPB expects that the private PACE companies will continue to administer origination activity on behalf of the government entities, such that most of the economic burden will fall on the private entities. As discussed above, an exception to this would be small government entities

directly impact these other government entities, the CFPB must consider whether the rule will create a significant economic impact on a substantial number of these entities.

As discussed above, under the RFA, government entities are small if they have populations of less than 50,000. Nationwide in 2020 there were 41,615 small government entities, including 2,153 counties, 18,709 incorporated places, and 20,753 minor civil divisions. The 19 States plus the District of Columbia, which the CFPB understands currently have legislation authorizing PACE, contained 17,209 total small governments, consisting of 715 counties, 7,716 incorporated places, and 8,778 minor civil divisions.[355] Of these small governments, currently, only small governments in California, Florida, and Missouri could be directly impacted by the rule in any meaningful way. There are exactly 2,000 small government entities in those three States combined, consisting of 134 counties, 1,583 incorporated places, and 283 minor civil divisions. Even if all government entities in the three States were significantly impacted by the rule (which is unlikely, as most local governments in those States, especially those below county level, do not themselves sponsor PACE programs), this would be only about 11.6 percent of small government entities in States with active PACE legislation and 4.8 percent of small government entities nationwide, which the CFPB does not consider to be a substantial number. In addition, those small government entities that would be directly impacted

running programs that are not commonly understood as PACE but meet the definition of PACE financing under 12 CFR 1026.43(b)(15). Even in this case, the CFPB does not believe the rule would impose a significant economic impact, as such programs represent a small fraction of any given entity's overall revenue.

[355] The States used for this calculation are Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Maine, Maryland, Minnesota, Missouri, Nebraska, New Jersey, New Mexico, New York, Ohio, Rhode Island, Vermont, and Wyoming.

by the rule are unlikely to receive a significant proportion of their revenue from PACE financing, such that even eliminating this revenue stream would not cause a significant economic impact.[356]

The rule may impact the home improvement contractors who market and help originate PACE financing. Here again it appears that the rule will not directly impact a substantial number of small entities, even assuming that any small home improvement contractor will experience a significant economic impact. In the most recent Economic Census, there were more than 233,000 small entities in the relevant NAICS codes for home improvement contractors.[357] By comparison, there are currently approximately 3,000 firms registered in California as PACE solicitors.[358] Even if all of these entities are small and there were a similar number of small entities acting as PACE solicitors in Florida and Missouri, this would be less than 3 percent of all relevant small entities, and so not a substantial number.[359]

[356] The CFPB understands that local government entities are typically funded in large part by property taxes. Although the PACE Report finds that PACE assessments can nearly double property tax payments for individual homeowners, the CFPB understands that most of the revenue of those payments accrues to the investors in the resulting PACE bonds. Moreover, the vast majority of residential properties in any given jurisdiction do not have PACE assessments. As such, revenue related to PACE received by small government entities will typically be a small fraction of overall revenue.

[357] Home improvement contractors that serve as solicitors for PACE fall under NAICS industry codes 236118, ("Residential Remodelers"), 238150 ("Glass and glazing contractors"), 238160 ("Roofing contractors"), 238170 ("Siding Contractors"), 238210 ("Electrical contractors"), and 238220 ("Plumbing, heating, and air-conditioning contractors"). *See* U.S. Census Bureau, *North American Industry Classification System 2022*, https://www.census.gov/naics/?58967?yearbck=2022. The relevant SBA threshold for industry 236118 is $45 million per year in annual receipts; for the other industries the threshold is $19 million. 13 CFR 121.201. According to the 2017 Economic Census, these industries had at least 70,000, 4,600, 14,000, 6,000, 58,000, and 81,000 small entities, respectively. *See* U.S. Census Bureau, *2017 Economic Census, Construction (NAICS Sector 23), Establishment and Firm Size Statistics*, https://www.census.gov/data/tables/2017/econ/economic-census/naics-sector-23.html. The Economic Census data does not disaggregate firm counts by State at the 6-digit NAICS level.

[358] *See* Cal. Dep't of Fin. Prot. & Innovation, *Enrolled PACE Solicitors Search*, https://dfpi.ca.gov/regulated-industries/property-assessed-clean-energy-pace-program-administrators/enrolled-pace-solicitors-search/ (last updated Dec. 4, 2024), for California's database of solicitors, however note that many companies are duplicated to the extent they are enrolled with multiple PACE companies. California law and regulation defines a "PACE solicitor" as a person authorized by a program administrator to solicit a property owner to enter into an assessment contract. Cal. Fin. Code sec. 22017(a); *see also* 10 Cal. Code Regs. sec. 1620.02(f).

[359] Limiting consideration to contractors operating in States with PACE legislation is not appropriate in this case. Unlike local governments, contractors can and do operate across State lines, so contractors currently operating in non-PACE States could possibly be affected by the final rule. As a result, it makes sense to consider all home

Some home improvement contractors stated that they disagreed with the CFPB's preliminary decision to certify that the proposal would not have a SISNOSE. These commenters did not provide any specific details challenging the RFA analysis in the proposed rule, such as the number of home improvement contractors who would be affected by the rule. Similarly, a home improvement contractor trade association and a PACE government sponsor stated that the CFPB lacked data on costs to home improvement contractors in the proposal, although again these commenters did not provide any specific data as to home improvement contractor costs.

The CFPB acknowledges that limited information is available as to the costs of the rule for small home improvement contractors. However, as discussed above this is not dispositive—even assuming that every small home improvement contractor who is impacted by the rule experiences a significant impact, this would not constitute a substantial number of small entities. As such, for purposes of the RFA, the specific costs to impacted small home improvement contractors would not create significant impact on a substantial number of small entities. The CFPB discusses some costs to home improvement contractors, small and otherwise, in part VI above.

PACE industry stakeholders also stated that they disagreed with the CFPB's decision to certify that the proposal would not have a SISNOSE. One PACE company stated that the CFPB should have obtained more specific information on NAICS codes and revenues for PACE companies to determine whether these entities were small businesses as defined by the RFA. However, this commenter did not share its own NAICS code nor its annual revenue, or include other relevant data. Another PACE company stated that there were additional costs to small

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improvement contractors as part of the total for purposes of the "substantial number" calculation. In addition, the Economic Census does not provide industry-level data disaggregated by State in a way that would allow the CFPB to determine the number of firms by industry and annual revenue.

government entities beyond those described above but did not specify what those costs were. A third PACE company asserted that the CFPB only considered costs to home improvement contractors, ignoring impacts on PACE companies and local governments. This commenter further stated that currently active PACE companies are all small businesses although the commenter did not provide any information to support that claim.

The CFPB reiterates that, for purposes of the RFA, a PACE company would only be a small business if it meets the SBA's size standards for its industry, which would entail average annual revenues of less than $47 million over a five year period. Commenters did not dispute the CFPB's conclusion that the total dollar amount of PACE loans originated was an appropriate measure of revenue, nor that the existing PACE lenders had revenue above $47 million by that metric.

The SBA Office of Advocacy provided a comment letter to the CFPB in response to the proposed rule as well. This letter raised questions about the basis of the CFPB's SISNOSE determination. The SBA Office of Advocacy asserted that the CFPB used the incorrect denominator for determining whether a substantial number of small entities would be affected by the rule. Specifically, the SBA Office of Advocacy stated that the CFPB should have limited its consideration of home improvement contractors to those who participate in PACE financing, rather than all home improvement contractors. The SBA Office of Advocacy similarly asserted that the CFPB should have compared the number of small PACE companies, if any, to the PACE financing industry only, and the number of small government entities affected to the number of small government entities only in the three states where residential PACE financing was available at the time of the proposal. A PACE company made a similar comment with respect to the choice of comparison groups. The SBA Office of Advocacy also asserted that the CFPB had

not conducted a "threshold analysis" as part of its RFA analysis. Echoing comments from the home improvement industry described above, the SBA Office of Advocacy letter raised questions about the lack of data on costs to home improvement contractors in the proposal.

The CFPB does not agree with the suggested methodological approach with respect to the denominator for determining whether a substantial number of small entities are impacted by the rule. The CFPB agrees that agencies should consider only firms that are actively participating in the relevant industry, as opposed to those which are nominally registered or tangentially participating. However, the CFPB has determined that the relevant industry for the affected entities is not limited to entities engaging in PACE financing, and the final rule would not have a substantial impact on a significant number of firms in the relevant industries.

With respect to home improvement contractors, considering the industry to only include contractors acting as solicitors for PACE companies would be inappropriate, as these contractors are not a distinct market from other home improvement contractors. These contractors compete in the home remodeling market with home improvement contractors who do not offer PACE. Indeed, this is one reason that industry commenters offered for why the rule would be burdensome—that contractors offering PACE financing to potential customers would find it more difficult to compete with home improvement contractors who do not offer financing or who offer other types of financing.

Further, although the CFPB includes all registered PACE solicitors as part of the numerator in its analysis, in fact many of these firms likely are not active participants in marketing PACE financing. Data indicates that there were more PACE solicitors registered in

California than there were PACE loans in 2023.[360] Given that some home improvement contractor commenters indicated that large fractions of their business were funded by PACE loans (presumably indicating multiple loans per year), this means that many registered PACE solicitors are not actively involved in the market. The CFPB includes these firms as part of the numerator in its analysis to err toward finding a larger share of impacted small entities; nonetheless it does not find that a substantial number of small home improvement contractors would be impacted by the rule. By extension, the CFPB does not find that a substantial number of small home improvement contractors would experience a significant impact.

Similarly, the CFPB does not agree that the relevant comparison group for small government entities should have been further limited to small government entities in States where PACE is currently available. The relevant "industry" in this context is local governments with property taxing authority which arguably includes all such small government entities nationwide. The CFPB also notes that even within the States with active PACE programs, the vast majority of small government entities will not be affected by the rule. PACE programs are almost exclusively authorized by counties or government conglomerates (most of which are not small as defined by the RFA), such that the rule generally will not have any impact on most incorporated places or minor civil divisions. Small county governments only represent about 7 percent of small government entities in states with active PACE programs. Even if all small county governments in the States with active programs experienced a significant impact due to the rule (which, as discussed above, the CFPB does not expect to be the case) and the CFPB

[360] *See* Cal. State Treasurer, *Property Assessed Clean Energy (PACE) Loss Reserve Program*, https://www.treasurer.ca.gov/caeatfa/pace/activity.asp (indicating 2,373 PACE loans originated in California in 2023) *see also* Cal. Dep't of Fin. Prot. & Innovation, *Enrolled PACE Solicitors Search* (updated Oct. 8, 2024), https://dfpi.ca.gov/pace-program-administrators/pace-solicitor-search/?emrc=63ee970c63d06 (showing 2,891 enrolled PACE solicitor companies).

limited the denominator to small government entities in California, Florida and Missouri, the rule still would not impose a significant impact on a substantial number of small government entities.

Accordingly, the Director hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. Thus, neither an IRFA nor a small business review panel was required for the proposal, and a FRFA is not required for this final rule.

VIII. Paperwork Reduction Act

The information collections contained within TILA and Regulation Z are approved under OMB Control Number 3170-0015. The current expiration date for this approval is May 31, 2026. The CFPB has determined that this rule does not impose any new information collections or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.

IX. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the CFPB will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States at least 60 days prior to the rule's published effective date. The Office of Information and Regulatory Affairs has designated this rule as a "major rule" as defined by 5 U.S.C. 804(2).

X. Severability

The CFPB proposed the following statement regarding severability and received no comments. The CFPB is finalizing as proposed.

If any provision of this rule, or any application of a provision, is stayed or determined to be invalid, the remaining provisions or applications are severable and shall continue in effect.

List of Subjects

Advertising. Banks, banking, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth-in-lending.

Authority and Issuance

For the reasons set forth in the preamble, the CFPB amends Regulation Z, 12 CFR part 1026, as follows:

PART 1026—TRUTH IN LENDING ACT (REGULATION Z)

1. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603-2605, 2607, 2609, 2617, 3353, 3354, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

Subpart E – Special Rules for Certain Home Mortgage Transactions

2. Section 1026.35(b)(2)(i) is amended by adding paragraph (E) to read as follows:

§ 1026.35 Requirements for higher-priced mortgage loans.

* * * * *

(b) * * *

(2) * * *

(i) * * *

* * * * *

(E) A PACE transaction, as defined in § 1026.43(b)(15).

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3. Section 1026.37 is amended by adding paragraph (p) to read as follows:

§ 1026.37 Content of disclosures for certain mortgage transactions (Loan Estimate).

* * * * *

(p) *PACE transactions*. For PACE transactions as defined in § 1026.43(b)(15), the creditor must comply with the requirements of this section with the following modifications:

(1) *Itemization.*

(i) In lieu of the information required by paragraph (c)(2)(ii) of this section, the maximum amount payable for any fees or other amounts corresponding to the periodic payment for the PACE transaction that are not disclosed pursuant to paragraph (c)(2)(i) of this section, labeled "Fees or Other Amounts." The amount disclosed under this paragraph (p)(1)(i) of this section must be included in the calculation under paragraph (c)(2)(iv) of this section in place of the amount disclosed under paragraph (c)(2)(ii) of this section.

(ii) The creditor shall not disclose the information in paragraph (c)(2)(iii) of this section.

(2) *Taxes, insurance, and assessments.* The creditor shall disclose:

(i) In lieu of the information required by paragraph (c)(4)(iv) of this section, a statement of whether the amount disclosed pursuant to paragraph (c)(4)(ii) of this section includes payments for the PACE transaction, labeled "PACE Payment"; payments for other property taxes, labeled "Property Taxes (not including PACE loan)"; amounts identified in § 1026.4(b)(8); and other amounts described in paragraph (c)(4)(ii) of this section, along with a description of any such other amounts.

(ii) In lieu of the information required by paragraph (c)(4)(v) and (vi) of this section, a statement that the PACE transaction, described as a "PACE loan," will be part of the property tax payment, a statement that, if the consumer has a pre-existing mortgage with an escrow account, the PACE loan will increase the consumer's escrow payment, and a statement directing the

consumer to contact the consumer's mortgage servicer for what the consumer will owe and when.

(3) *Contact information*. In addition to the information required in paragraphs (k)(1) through (3) of this section, the creditor shall disclose the name, NMLSR ID (labeled "NMLS ID/License ID"), email address, and telephone number of the PACE company (labeled "PACE Company"). In the event the PACE company has not been assigned an NMLSR ID, the creditor shall disclose the license number or other unique identifier issued by the applicable jurisdiction or regulating body with which the PACE company is licensed and/or registered, with the abbreviation for the State of the applicable jurisdiction or regulatory body stated before the word "License" in the label, if any.

(4) *Assumption*. In lieu of the statement required by paragraph (m)(2) of this section, a statement that, if the consumer sells the property, the buyer or the buyer's mortgage lender may require the consumer to pay off the PACE transaction, using the term "PACE loan" as a condition of the sale, labeled "Selling the Property."

(5) *Late Payment*. In lieu of the statement required by paragraph (m)(4) of this section:

(i) A statement detailing any charge specific to the transaction that may be imposed for a late payment, stated as a dollar amount or percentage charge of the late payment amount, and the number of days that a payment must be late to trigger the late payment fee, labeled "Late payment," and

(ii) For any charge that is not specific to the transaction:

(A) A statement that, if the consumer's property tax payment is late, the consumer may be subject to penalties and late fees established by the consumer's property tax collector, and directing the consumer to contact the consumer's property tax collector for more information, or

(B) A statement describing any charges that may result from property tax delinquency that are not specific to the PACE transaction. The statement may include dollar amounts or percentage charges and the number of days that a payment must be late to trigger the late payment fee.

(6) *Servicing*. In lieu of the statement required by paragraph (m)(6) of this section, a statement that the consumer will pay the PACE transaction, using the term “PACE loan,” as part of the consumer’s property tax payment, and a statement directing the consumer, if the consumer has a mortgage with an escrow account that includes the consumer’s property tax payments, to contact the consumer’s mortgage servicer for what the consumer will owe and when.

(7) *Exceptions*.

(i) *Unit-period*. Wherever form H–24(H) of appendix H to this part uses “annual” to describe the frequency of any payments or the applicable unit-period, the creditor shall use the appropriate term to reflect the transaction's terms, such as semi-annual payments.

(ii) *PACE nomenclature*. Wherever this section requires disclosure of the word “PACE” or form H–24(H) of appendix H to this part uses the term “PACE,” the creditor may substitute the name of a specific PACE financing program that will be recognizable to the consumer.

4. Section 1026.38 is amended by adding paragraph (u) to read as follows:

§ 1026.38 Content of disclosures for certain mortgage transactions (Closing Disclosure).

* * * * *

(u) *PACE transactions*. For PACE transactions as defined in § 1026.43(b)(15), the creditor must comply with the requirements of this section with the following modifications:

(1) *Transaction information.* In addition to the other disclosures required under paragraph (a)(4) of this section under the heading “Transaction Information,” the creditor shall disclose the

name of any PACE company involved in the transaction, labeled “PACE Company.” For purposes of this paragraph (u)(1), “PACE company” has the same meaning as in § 1026.43(b)(14).

(2) *Projected payments.* The creditor shall disclose the information required by paragraph (c)(1) of this section as modified by § 1026.37(p)(1) and (2) and shall omit the information required by paragraph (c)(2) of this section.

(3) *Assumption*. In lieu of the information required by paragraph (l)(1) of this section, the creditor shall use the subheading “Selling the Property” and disclose the information required by § 1026.37(p)(4).

(4) *Late payment*. In lieu of the information required by paragraph (l)(3) of this section, under the subheading “Late Payment,” the creditor shall disclose the information required by § 1026.37(p)(5).

(5) *Partial payment policy*. In lieu of the information required by paragraph (l)(5) of the section, under the subheading “Partial Payment,” the creditor shall disclose a statement directing the consumer to contact the mortgage servicer about the partial payment policy for the account if the consumer has a mortgage with an escrow account for property taxes and to contact the tax collector about the tax collector’s partial payment policy if the consumer pays property taxes directly to the tax authority.

(6) *Escrow account*. The creditor shall not disclose the information required by paragraph (l)(7) of this section.

(7) *Liability after foreclosure or tax sale*. The creditor shall not disclose the information required by paragraph (p)(3) of this section. If the consumer may be responsible for any deficiency after foreclosure or tax sale under applicable State law, the creditor shall instead

disclose a brief statement that, if the property is sold through foreclosure or tax sale and the sale does not cover the amount owed on the PACE obligation, the consumer may be liable for some portion of the unpaid balance under State law, and a statement that the consumer may want to consult an attorney for additional information, under the subheading "Liability after Foreclosure or Tax Sale."

(8) *Contact information*. The creditor shall disclose the information described in paragraph (r)(1)-(7) of this section for the PACE company, as defined in § 1026.43(b)(14) (under the subheading "PACE Company").

(9) *Exceptions*.

(i) *Unit-period*. Wherever form H–25(K) of appendix H to this part uses "annual" to describe the frequency of any payments or the applicable unit-period, the creditor shall use the appropriate term to reflect the transaction's terms, such semi-annual payments.

(ii) *PACE nomenclature*.

(A) Wherever this section requires disclosure of the word "PACE" or form H–25(K) of appendix H to this part uses the term "PACE," the creditor may substitute the name of a specific PACE financing program that will be recognizable to the consumer.

(B) In disclosing the information required under paragraph (p)(2) of this section, the creditor shall use the term "PACE contract documents" to refer to the appropriate loan document and security instrument.

5. Section 1026.41 is amended by adding paragraph (e)(7) to read as follows:

§ 1026.41 Periodic statements for residential mortgage loans.

* * * * *

(e) * * *

* * *

(7) *PACE transactions.* PACE transactions, as defined in § 1026.43(b)(15), are exempt from the requirements of this section.

* * * * *

6. Section 1026.43 is amended by adding paragraphs (b)(14) and (b)(15), and paragraph (i) to read as follows:

§ 1026.43 Minimum standards for transactions secured by a dwelling.

* * * * *

(b) * * *

(14) *PACE company* means a person, other than a natural person or a government unit, that administers the program through which a consumer applies for or obtains a PACE transaction.

(15) *PACE transaction* means financing to cover the costs of home improvements that results in a tax assessment on the real property of the consumer.

* * * * *

(i) *PACE transactions*.

(1) For PACE transactions extended to consumers who pay their property taxes through an escrow account, in making the repayment ability determination required under paragraph (c)(1) and (2) of this section, a creditor must consider the factors identified in paragraphs (c)(2)(i) through (viii) of this section and also must consider any monthly payments that the creditor knows or has reason to know the consumer will have to pay into any escrow account as a result of the PACE transaction that are in excess of the monthly payment amount considered under paragraph (c)(2)(iii) of this section, taking into account:

(i) The cushion of one-sixth (1/6) of the estimated total annual payments attributable to the PACE transaction from the escrow account that the servicer may charge under § 1024.17(c)(1) of this chapter, unless the creditor reasonably expects that no such cushion will be required or unless the creditor reasonably expects that a different cushion amount will be required, in which case the creditor must use that amount; and

(ii) If the timing for when the servicer is expected to learn of the PACE transaction is likely to result in a shortage or deficiency in the consumer's escrow account, the expected effect of any such shortage or deficiency on the monthly payment that the consumer will be required to pay into the consumer's escrow account.

(2) Notwithstanding paragraphs (e)(2), (e)(5), (e)(7), or (f) of this section, a PACE transaction is not a qualified mortgage as defined in this section.

(3) For a PACE transaction, the requirements of this section apply to both the creditor and any PACE company that is substantially involved in making the credit decision. A PACE company is substantially involved in making the credit decision if it, as to a particular consumer, makes the credit decision, makes a recommendation as to whether to extend credit, or applies criteria used in making the credit decision. In the case of any failure by any such PACE company to comply with any requirement imposed under this section, section 130 of the Truth in Lending Act, 15 U.S.C. 1640, shall be applied with respect to any such failure by substituting "PACE company" for "creditor" each place such term appears in each such subsection.

*   *   *   *   *

7. Appendix H to part 1026 is amended by adding Model Forms H–24(H), H–25(K), H–28(K), and H–28(L) to read as follows:

APPENDIX H TO PART 1026—CLOSED-END MODEL FORMS AND CLAUSES

*   *   *   *   *

H–24(H) MORTGAGE LOAN TRANSACTION LOAN ESTIMATE—MODEL FORM FOR PACE TRANSACTIONS

Save this Loan Estimate to compare with your Closing Disclosure.

Loan Estimate

DATE ISSUED
APPLICANTS

PROPERTY
EST. PROP. VALUE

LOAN TERM
PURPOSE
PRODUCT
LOAN TYPE ☐ Conventional ☐ FHA ☐ VA ☐ ______________
LOAN ID #
RATE LOCK ☐ NO ☐ YES, until
Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on

Loan Terms		**Can this amount increase after closing?**
Loan Amount		
Interest Rate		
Annual Principal & Interest *See Projected Payments below for your Estimated Total Annual Payment*		
		Does the loan have these features?
Prepayment Penalty		
Balloon Payment		

Projected Payments	
Payment Calculation	
Principal & Interest Fees & Other Amounts	
Estimated Total Annual Payment	
Estimated Taxes, Insurance & Assessments *Amount can increase over time*	**This estimate includes** ☐ PACE payment ☐ Property Taxes (not including PACE loan) ☐ Homeowner's Insurance ☐ Other: *Your PACE loan will be part of your property tax payment. If you have a mortgage with an escrow account, the PACE loan will increase your escrow payment. Contact your mortgage servicer for what you will owe and when.*

Costs at Closing	
Estimated Closing Costs	Includes in Loan Costs + in Other Costs – in Lender Credits. *See details on page 2.*
Estimated Cash to Close	Includes Closing Costs. See Calculating Cash to Close on page 2 for details ☐ From ☐ To Borrower

Visit **www.consumerfinance.gov/mortgage-estimate** for general information and tools.

LOAN ESTIMATE PAGE 1 OF 3 • LOAN ID #

Closing Cost Details

Loan Costs

A. Origination Charges

% of Loan Amount (Points)

B. Services You Cannot Shop For

C. Services You Can Shop For

D. TOTAL LOAN COSTS (A + B + C)

Other Costs

E. Taxes and Other Government Fees

Recording Fees and Other Taxes
Transfer Taxes

F. Prepaids

Homeowner's Insurance Premium (__ months)
Mortgage Insurance Premium (__ months)
Prepaid Interest (per day for days @)
Property Taxes (__ months)

G. Initial Escrow Payment at Closing

Homeowner's Insurance	per month for	mo.
Mortgage Insurance	per month for	mo.
Property Taxes	per month for	mo.

H. Other

I. TOTAL OTHER COSTS (E + F + G + H)

J. TOTAL CLOSING COSTS

D + I
Lender Credits

Calculating Cash to Close

Loan Amount
Total Closing Costs (J)
Estimated Total Payoffs and Payments

Estimated Cash to Close ☐ **From** ☐ **To Borrower**

Estimated Closing Costs Financed
(Paid from your Loan Amount)

Closing Cost Details

Loan Costs

A. Origination Charges

% of Loan Amount (Points)

B. Services You Cannot Shop For

C. Services You Can Shop For

D. TOTAL LOAN COSTS (A + B + C)

Other Costs

E. Taxes and Other Government Fees

Recording Fees and Other Taxes
Transfer Taxes

F. Prepaids

Homeowner's Insurance Premium (__ months)
Mortgage Insurance Premium (__ months)
Prepaid Interest (per day for days @)
Property Taxes (__ months)

G. Initial Escrow Payment at Closing

Homeowner's Insurance	per month for	mo.
Mortgage Insurance	per month for	mo.
Property Taxes	per month for	mo.

H. Other

I. TOTAL OTHER COSTS (E + F + G + H)

J. TOTAL CLOSING COSTS

D + I
Lender Credits

Calculating Cash to Close

Loan Amount
Total Closing Costs (J)
Estimated Total Payoffs and Payments
Estimated Cash to Close ☐ **From** ☐ **To Borrower**
Estimated Closing Costs Financed (Paid from your Loan Amount)

Adjustable Payment (AP) Table

Interest Only Payments	
Optional Payments?	
Step Payments	
Seasonal Payments	
Monthly Principal and Interest Payments	
First Change/Amount	
Subsequent Changes	
Maximum Payment	

Adjustable Interest Rate (AIR) Table

Index + Margin	
Initial Interest Rate	
Minimize/Maximize Interest Rate	
Change Frequency	
First Change/Amount	
Subsequent Changes	
Limits on Interest Rate Changes	
First Change	
Subsequent Changes	

LOAN ESTIMATE PAGE 2 OF 3 • LOAN ID #

Closing Cost Details

Loan Costs

A. Origination Charges

% of Loan Amount (Points)

B. Services You Cannot Shop For

C. Services You Can Shop For

D. TOTAL LOAN COSTS (A + B + C)

Adjustable Payment (AP) Table

Interest Only Payments	
Optional Payments?	
Step Payments	
Seasonal Payments	
Monthly Principal and Interest Payments	
First Change/Amount	
Subsequent Changes	
Maximum Payment	

Other Costs

E. Taxes and Other Government Fees

Recording Fees and Other Taxes
Transfer Taxes

F. Prepaids

Homeowner's Insurance Premium (__ months)
Mortgage Insurance Premium (__ months)
Prepaid Interest (per day for days @)
Property Taxes (__ months)

G. Initial Escrow Payment at Closing

Homeowner's Insurance per month for mo.
Mortgage Insurance per month for mo.
Property Taxes per month for mo.

H. Other

I. TOTAL OTHER COSTS (E + F + G + H)

J. TOTAL CLOSING COSTS

D + I
Lender Credits

Calculating Cash to Close

Loan Amount	
Total Closing Costs (J)	
Estimated Total Payoffs and Payments	
Estimated Cash to Close ☐ **From** ☐ **To Borrower**	
Estimated Closing Costs Financed (Paid from your Loan Amount)	

Closing Cost Details

Loan Costs

A. Origination Charges

% of Loan Amount (Points)

B. Services You Cannot Shop For

C. Services You Can Shop For

D. TOTAL LOAN COSTS (A + B + C)

Other Costs

E. Taxes and Other Government Fees

Recording Fees and Other Taxes
Transfer Taxes

F. Prepaids

Homeowner's Insurance Premium (__ months)
Mortgage Insurance Premium (__ months)
Prepaid Interest (per day for days @)
Property Taxes (__ months)

G. Initial Escrow Payment at Closing

Homeowner's Insurance	per month for	mo.
Mortgage Insurance	per month for	mo.
Property Taxes	per month for	mo.

H. Other

I. TOTAL OTHER COSTS (E + F + G + H)

J. TOTAL CLOSING COSTS

D + I
Lender Credits

Calculating Cash to Close

Loan Amount
Total Closing Costs (J)
Estimated Total Payoffs and Payments
Estimated Cash to Close ☐**From** ☐**To Borrower**
Estimated Closing Costs Financed (Paid from your Loan Amount)

Adjustable Interest Rate (AIR) Table

Index + Margin
Initial Interest Rate
Minimize/Maximize Interest Rate
Change Frequency
First Change/Amount
Subsequent Changes
Limits on Interest Rate Changes
First Change
Subsequent Changes

Additional Information About This Loan

LENDER
NMLS/__LICENSE ID
LOAN OFFICER
NMLS/__LICENSE ID
EMAIL
PHONE

MORTGAGE BROKER
NMLS/__LICENSE ID
LOAN OFFICER
NMLS/__LICENSE ID
EMAIL
PHONE

PACE COMPANY
NMLS/__LICENSE ID
EMAIL
PHONE

Comparisons		Use these measures to compare this loan with other loans.
In 5 Years		Total you will have paid in principal, interest, mortgage insurance, and loan costs. Principal you will have paid off.
Annual Percentage Rate (APR)		Your costs over the loan term expressed as a rate. This is not your interest rate.
Total Interest Percentage (TIP)		The total amount of interest that you will pay over the loan term as a percentage of your loan amount.

Other Considerations

Appraisal We may order an appraisal to determine the property's value and charge you for this appraisal. We will promptly give you a copy of any appraisal, even if your loan does not close. You can pay for an additional appraisal for your own use at your own cost.

Late Payment If your property tax payment is late, you may be subject to penalties and late fees established by your property tax collector.

Refinance Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan.

Selling the Property If you sell the property, the buyer or their mortgage lender may require you to pay off the PACE loan as a condition of the sale.

Servicing You will pay your PACE loan as part of your property tax payment. If you have a mortgage with an escrow account that includes your property tax payments, contact your mortgage servicer for what you will owe and when. If you do not have a mortgage with an escrow account, you will pay your taxing authority directly.

Confirm Receipt

By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form.

Applicant Signature Date Co-Applicant Signature Date

Additional Information About This Loan

LENDER
NMLS/__LICENSE ID
LOAN OFFICER
NMLS/__LICENSE ID
EMAIL
PHONE

MORTGAGE BROKER
NMLS/__LICENSE ID
LOAN OFFICER
NMLS/__LICENSE ID
EMAIL
PHONE

PACE COMPANY
NMLS/__LICENSE ID
EMAIL
PHONE

Comparisons	Use these measures to compare this loan with other loans.
In 5 Years	Total you will have paid in principal, interest, mortgage insurance, and loan costs. Principal you will have paid off.
Annual Percentage Rate (APR)	Your costs over the loan term expressed as a rate. This is not your interest rate.
Total Interest Percentage (TIP)	The total amount of interest that you will pay over the loan term as a percentage of your loan amount.

Other Considerations

Late Payment	If your property tax payment is late, you may be subject to penalties and late fees established by your property tax collector.
Refinance	Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan.
Selling the Property	If you sell the property, the buyer or their mortgage lender may require you to pay off the PACE loan as a condition of the sale.
Servicing	You will pay your PACE loan as part of your property tax payment. If you have a mortgage with an escrow account that includes your property tax payments, contact your mortgage servicer for what you will owe and when. If you do not have a mortgage with an escrow account, you will pay your taxing authority directly.

Confirm Receipt

By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form.

Applicant Signature Date
Co-Applicant Signature Date

Additional Information About This Loan

LENDER
NMLS/__LICENSE ID
LOAN OFFICER
NMLS/__LICENSE ID
EMAIL
PHONE

MORTGAGE BROKER
NMLS/__LICENSE ID
LOAN OFFICER
NMLS/__LICENSE ID
EMAIL
PHONE

PACE COMPANY
NMLS/__LICENSE ID
EMAIL
PHONE

Comparisons	Use these measures to compare this loan with other loans.
In 5 Years	Total you will have paid in principal, interest, mortgage insurance, and loan costs. Principal you will have paid off.
Annual Percentage Rate (APR)	Your costs over the loan term expressed as a rate. This is not your interest rate.
Total Interest Percentage (TIP)	The total amount of interest that you will pay over the loan term as a percentage of your loan amount.

Other Considerations

Appraisal	We may order an appraisal to determine the property's value and charge you for this appraisal. We will promptly give you a copy of any appraisal, even if your loan does not close. You can pay for an additional appraisal for your own use at your own cost.
Late Payment	If your property tax payment is late, you may be subject to penalties and late fees established by your property tax collector.
Loan Acceptance	You do not have to accept this loan because you have received this form or signed a loan application.
Refinance	Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan.
Selling the Property	If you sell the property, the buyer or their mortgage lender may require you to pay off the PACE loan as a condition of the sale.
Servicing	You will pay your PACE loan as part of your property tax payment. If you have a mortgage with an escrow account that includes your property tax payments, contact your mortgage servicer for what you will owe and when. If you do not have a mortgage with an escrow account, you will pay your taxing authority directly.

Additional Information About This Loan

LENDER
NMLS/__LICENSE ID
LOAN OFFICER
NMLS/__LICENSE ID
EMAIL
PHONE

MORTGAGE BROKER
NMLS/__LICENSE ID
LOAN OFFICER
NMLS/__LICENSE ID
EMAIL
PHONE

PACE COMPANY
NMLS/__LICENSE ID
EMAIL
PHONE

Comparisons	Use these measures to compare this loan with other loans.
In 5 Years	Total you will have paid in principal, interest, mortgage insurance, and loan costs. Principal you will have paid off.
Annual Percentage Rate (APR)	Your costs over the loan term expressed as a rate. This is not your interest rate.
Total Interest Percentage (TIP)	The total amount of interest that you will pay over the loan term as a percentage of your loan amount.

Other Considerations

Late Payment If your property tax payment is late, you may be subject to penalties and late fees established by your property tax collector.

Loan Acceptance You do not have to accept this loan because you have received this form or signed a loan application.

Refinance Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan.

Selling the Property If you sell the property, the buyer or their mortgage lender may require you to pay off the PACE loan as a condition of the sale.

Servicing You will pay your PACE loan as part of your property tax payment. If you have a mortgage with an escrow account that includes your property tax payments, contact your mortgage servicer for what you will owe and when. If you do not have a mortgage with an escrow account, you will pay your taxing authority directly.

*   *   *   *   *

H–25(K) Mortgage Loan Transaction Closing Disclosure—Model Form for PACE Transactions

Closing Disclosure

This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.

Closing Information	Transaction Information	Loan Information
Date Issued	**Borrower**	**Loan Term**
Closing Date		**Purpose**
Disbursement Date		**Product**
Settlement Agent	**Lender**	
File #		**Loan Type** ☐ Conventional ☐ FHA ☐ VA ☐ ____________
Property	**PACE Company**	**Loan ID #**
Estimated Prop. Value		**MIC #**

Loan Terms		**Can this amount increase after closing?**
Loan Amount		
Interest Rate		
Annual Principal & Interest *See Projected Payments below for your Estimated Total Annual Payment*		
		Does the loan have these features?
Prepayment Penalty		
Balloon Payment		

Projected Payments	
Payment Calculation	
Principal & Interest Fees and Other Amounts	
Estimated Total Annual Payment	
Estimated Taxes, Insurance & Assessments *Amount can increase over time*	**This estimate includes** ☐ PACE Payment ☐ Property Taxes (not including PACE loan) ☐ Homeowner's Insurance ☐ Other: *Your PACE loan will be part of your property tax payment. If you have a mortgage with an escrow account, the PACE loan will increase your escrow payment. Contact your mortgage servicer for what you will owe and when.*

Costs at Closing	
Closing Costs	Includes in Loan Costs + in Other Costs – in Lender Credits. *See details on page 2.*
Cash to Close	Includes Closing Costs. *See Calculating Cash to Close on page 3 for details* ☐ From ☐ To Borrower

CLOSING DISCLOSURE PAGE 1 OF 5 • LOAN ID #

Closing Disclosure

This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.

Closing Information	Transaction Information	Loan Information
Date Issued	**Borrower**	**Loan Term**
Closing Date		**Purpose**
Disbursement Date		**Product**
Settlement Agent	**Lender**	
File #		**Loan Type** ☐ Conventional ☐ FHA ☐ VA ☐ ___________
Property	**PACE Company**	**Loan ID #**
Appraised Prop. Value		**MIC #**

Loan Terms

		Can this amount increase after closing?
Loan Amount		
Interest Rate		
Annual Principal & Interest *See Projected Payments below for your Estimated Total Annual Payment*		
		Does the loan have these features?
Prepayment Penalty		
Balloon Payment		

Projected Payments

Payment Calculation	
Principal & Interest Fees and Other Amounts	
Estimated Total Annual Payment	
Estimated Taxes, Insurance & Assessments *Amount can increase over time*	**This estimate includes** ☐ PACE Payment ☐ Property Taxes (not including PACE loan) ☐ Homeowner's Insurance ☐ Other: *Your PACE loan will be part of your property tax payment. If you have a mortgage with an escrow account, the PACE loan payment will increase your escrow payment. Contact your mortgage servicer for what you will owe and when.*

Costs at Closing

Closing Costs	Includes in Loan Costs + in Other Costs – in Lender Credits. *See details on page 2.*
Cash to Close	Includes Closing Costs. *See Calculating Cash to Close on page 3 for details* ☐ From ☐ To Borrower

Closing Cost Details

Loan Costs	Borrower-Paid At Closing	Borrower-Paid Before Closing	Paid by Others
A. Origination Charges			
01 % of Loan Amount (Points)			
02			
03			
04			
05			
06			
07			
08			
B. Services Borrower Did Not Shop For			
01			
02			
03			
04			
05			
06			
07			
08			
09			
10			
C. Services Borrower Did Shop For			
01			
02			
03			
04			
05			
06			
07			
08			
D. TOTAL LOAN COSTS (Borrower-Paid)			
Loan Costs Subtotals (A + B + C)			

Other Costs	Borrower-Paid At Closing	Borrower-Paid Before Closing	Paid by Others
E. Taxes and Other Government Fees			
01 Recording Fees Deed: Mortgage:			
02			
F. Prepaids			
01 Homeowner's Insurance Premium (mo.)			
02 Mortgage Insurance Premium (mo.)			
03 Prepaid Interest (per day from to)			
04 Property Taxes (mo.)			
05			
G. Initial Escrow Payment at Closing			
01 Homeowner's Insurance per month for mo.			
02 Mortgage Insurance per month for mo.			
03 Property Taxes per month for mo.			
04			
05			
06			
07			
08 Aggregate Adjustment			
H. Other			
01			
02			
03			
04			
05			
06			
07			
08			
I. TOTAL OTHER COSTS (Borrower-Paid)			
Other Costs Subtotals (E + F + G + H)			

J. TOTAL CLOSING COSTS (Borrower-Paid)			
Closing Costs Subtotals (D + I)			
Lender Credits			

Payoffs and Payments

Use this table to see a summary of your payoffs and payments to others from your loan amount.

TO	AMOUNT
01	
02	
03	
04	
05	
06	
07	
08	
09	
10	
11	
12	
13	
14	
15	
K. TOTAL PAYOFFS AND PAYMENTS	

Calculating Cash to Close

Use this table to see what has changed from your Loan Estimate.

	Loan Estimate	Final	Did this change?
Loan Amount			
Total Closing Costs (J)			
Closing Costs Paid Before Closing			
Total Payoffs and Payments (K)			
Cash to Close	☐ From ☐ To Borrower	☐ From ☐ To Borrower	Closing Costs Financed (Paid from your Loan Amount)

Additional Information About This Loan

Loan Disclosures

Demand Feature
Your loan
☐ has a demand feature, which permits your lender to require early repayment of the loan. You should review your note for details.
☐ does not have a demand feature.

Late Payment
If your property tax payment is late, you may be subject to penalties and late fees established by your property tax collector. You may want to contact your tax collector for more information.

Negative Amortization (Increase in Loan Amount)
Under your loan terms, you
☐ are scheduled to make monthly payments that do not pay all of the interest due that month. As a result, your loan amount will increase (negatively amortize), and your loan amount will likely become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
☐ may have monthly payments that do not pay all of the interest due that month. If you do, your loan amount will increase (negatively amortize), and, as a result, your loan amount may become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
☐ do not have a negative amortization feature.

Partial Payment
If you pay your property taxes directly to your tax collector, contact your tax collector about its partial payment policy. If you have a mortgage with an escrow account for your property taxes, contact your mortgage servicer about the partial payment policy for the account.

Security Interest
You are granting a security interest in ______________________
____
____
You may lose this property if you do not make your payments or satisfy other obligations for this loan.

Selling the Property
If you sell the property, the buyer or their mortgage lender may require you to pay off the PACE loan as a condition of sale.

Adjustable Payment (AP) Table

Interest Only Payments?	
Optional Payments?	
Step Payments?	
Seasonal Payments?	
Monthly Principal and Interest Payments	
First Change/Amount	
Subsequent Changes	
Maximum Payment	

Additional Information About This Loan

Loan Disclosures

Demand Feature
Your loan
- ☐ has a demand feature, which permits your lender to require early repayment of the loan. You should review your note for details.
- ☐ does not have a demand feature.

Late Payment
If your property tax payment is late, you may be subject to penalties and late fees established by your property tax collector. You may want to contact your tax collector for more information.

Negative Amortization (Increase in Loan Amount)
Under your loan terms, you
- ☐ are scheduled to make monthly payments that do not pay all of the interest due that month. As a result, your loan amount will increase (negatively amortize), and your loan amount will likely become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
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If you sell the property, the buyer or their mortgage lender may require you to pay off the PACE loan as a condition of sale.

Adjustable Interest Rate (AIR) Table

Index + Margin	
Initial Interest Rate	
Minimum/Maximum Interest Rate	
Change Frequency	
First Change	
Subsequent Changes	
Limits on Interest Rate Changes	
First Change	
Subsequent Changes	

Additional Information About This Loan

Loan Disclosures

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Selling the Property

If you sell the property, the buyer or their mortgage lender may require you to pay off the PACE loan as a condition of sale.

Loan Calculations

Total of Payments. Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.	
Finance Charge. The dollar amount the loan will cost you.	
Amount Financed. The loan amount available after paying your upfront finance charge.	
Annual Percentage Rate (APR). Your costs over the loan term expressed as a rate. This is not your interest rate.	
Total Interest Percentage (TIP). The total amount of interest that you will pay over the loan term as a percentage of your loan amount.	

Questions? If you have questions about the loan terms and costs on this form, use the contact information below. To get more information or make a complaint, contact the Consumer Financial Protection Bureau at **www.consumerfinance.gov/mortgage-closing**

Other Disclosures

Appraisal
If the property was appraised for your loan, your lender is required to give you a copy at no additional cost at least 3 days before closing. If you have not yet received it, please contact your lender at the information listed below.

Contract Details
See your PACE contract documents for more information about
- what happens if you fail to make your payments,
- what is a default on the loan,
- situations in which your lender can require early repayment of the loan, and
- the rules for making payments before they are due.

Liability After Foreclosure or Tax Sale
If this property is sold through foreclosure or tax sale and the sale does not cover the amount owed on the PACE obligation, you may be liable for some portion of the unpaid balance under state law. You may want to consult a lawyer for more information.

Refinance
Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan.

Tax Deductions
If you borrow more than this property is worth, the interest on the loan amount above this property's fair market value is not deductible from your federal income taxes. You should consult a tax advisor for more information.

Contact Information

	Lender	Mortgage Broker	Settlement Agent	PACE Company
Name				
Address				
NMLS ID				
___License ID				
Contact				
Contact NMLS ID				
Contact___License ID				
Email				
Phone				

Confirm Receipt

By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form.

Applicant Signature Date Co-Applicant Signature Date

Loan Calculations

Total of Payments. Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.	
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Loan Acceptance
You do not have to accept this loan because you have received this form or signed a loan application.

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Name				
Address				
NMLS ID				
___License ID				
Contact				
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Address				
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Contact				
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Contact___License ID				
Email				
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Applicant Signature　　　Date　　　Co-Applicant Signature　　　Date

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Name				
Address				
NMLS ID				
___License ID				
Contact				
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Contact___License ID				
Email				
Phone				

*   *   *   *   *

H–28(K) Mortgage Loan Transaction Loan Estimate—Model Form for PACE Transactions—Spanish Language Model Form

Guarde esta Estimación de Préstamo para compararla con su Declaración de Cierre.

Estimación de Préstamo

FECHA DE EMISIÓN
SOLICITANTES

INMUEBLE

VALOR ESTIMADO DE LA VIVIENDA

PLAZO DEL PRÉSTAMO
FINALIDAD
PRODUCTO
TIPO DE PRÉSTAMO ☐ Convencional ☐ FHA ☐ VA ☐ ___________
N.° DEL PRÉSTAMO
BLOQUEO DE TASA ☐ NO ☐ SÍ, hasta el a las

Antes del cierre, la tasa de interés, los puntos y los créditos del prestamista podrían cambiar, a menos que usted bloquee la tasa de interés. Todos los demás costos de cierre estimados estarán vigentes hasta el

Términos del préstamo		**¿Puede aumentar este monto después del cierre?**
Monto del préstamo		
Tasa de interés		
Capital e intereses anuales *Consulte la sección Pagos Proyectados a continuación para conocer su Pago Anual Total Estimado.*		
		¿Tiene el préstamo estas características?
Multa por pago anticipado		
Cuota extraordinaria		

Pagos proyectados	
Cálculo de los pagos	
Capital e intereses Tarifas y otros montos	
Pago Anual Total Estimado	
Impuestos, seguro y evaluaciones estimados *El monto puede aumentar con el paso del tiempo*	**Esta estimación incluye** ☐ Pago de PACE ☐ Impuestos sobre la propiedad (no incluyen el préstamo PACE) ☐ Seguro de la vivienda ☐ Otro: *Su préstamo PACE formará parte de su pago de impuestos sobre la propiedad. Si tiene una hipoteca con una cuenta de depósito en garantía, el préstamo PACE aumentará su pago del depósito en garantía. Comuníquese con el administrador de la hipoteca para saber cuánto adeuda y cuándo debe pagar.* **¿En depósito?**

Costos al momento del cierre		
Costos de cierre estimados		Incluye por costos del préstamo + por otros costos – por créditos del prestamista. *Consulte los detalles en la página 2.*
Dinero en efectivo estimado para el cierre		Incluye costos de cierre. *Consulte los detalles en Cálculo del dinero en efectivo para el cierre en la página 2.* ☐ Del Deudor ☐ Para Deudor

Visite **www.consumerfinance.gov/mortgage-estimate** para información general y ayuda.

ESTIMACIÓN DE PRÉSTAMO PÁGINA 1 DE 3 • N.° DEL PRÉSTAMO

Detalles de los costos del cierre

Costos del préstamo

A. Gastos por tramitación

% del monto del préstamo (Puntos)

B. Servicios que usted no puede contratar

C. Servicios que usted puede contratar

D. COSTOS TOTALES DEL PRÉSTAMO (A + B + C)

Otros costos

E. Impuestos y otros cargos gubernamentales

Costos de registro y otros impuestos
Impuestos por transferencia de título

F. Pagos anticipados

Impuestos sobre la propiedad (meses)
Pago anticipado de intereses
(diarios durante días a la tasa de)
Prima del seguro de hipoteca (meses)
Prima del seguro de la vivienda (meses)

G. Pago inicial de la cuenta en depósito al cierre

Impuestos sobre la propiedad
de por mes durante meses
Seguro de hipoteca de por mes durante meses
Seguro de la vivienda de por mes durante meses

H. Otros

I. TOTAL DE OTROS COSTOS (E + F + G + H)

J. TOTAL DE COSTOS DE CIERRE

D + I
Créditos del prestamista

Cálculo del dinero en efectivo para el cierre

Monto del préstamo
Total de costos de cierre (J)
Liquidaciones y pagos totales estimados
Dinero en efectivo estimado para el cierre
☐ **Del Deudor** ☐ **Para Deudor**

Costos de cierre financiados estimados
(pagados del monto del préstamo)

Detalles de los costos del cierre

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A. Gastos por tramitación

% del monto del préstamo (Puntos)

B. Servicios que usted no puede contratar

C. Servicios que usted puede contratar

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Impuestos por transferencia de título

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☐ **Del Deudor** ☐ **Para Deudor**

Costos de cierre financiados estimados
(pagados del monto del préstamo)

Tabla de pagos ajustables (PA)

¿Pago de interés solamente?	
¿Pagos opcionales?	
¿Pagos escalonados?	
¿Pagos estacionales?	
Pagos mensuales de capital e intereses	
Primer cambio/Monto	
Cambios subsiguientes	
Pago máximo	

Tabla de tasa de interés ajustable (TIA)

Índice + Margen	
Tasa de interés inicial	
Tasa de interés mínima/máxima	
Frecuencia de los cambios	
Primer cambio	
Cambios subsiguientes	
Límites de cambios en la tasa de interés	
Primer cambio	
Cambios subsiguientes	

ESTIMACIÓN DE PRÉSTAMO PÁGINA 2 DE 3 • N.° DEL PRÉSTAMO

Detalles de los costos del cierre

Costos del préstamo

A. Gastos por tramitación

% del monto del préstamo (Puntos)

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Prima del seguro de la vivienda (meses)

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Costos de cierre financiados estimados
(pagados del monto del préstamo)

ESTIMACIÓN DE PRÉSTAMO

PÁGINA 2 DE 3 • N.º DEL PRÉSTAMO

Detalles de los costos del cierre

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Otros costos

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Índice + Margen
Tasa de interés inicial
Tasa de interés mínima/máxima
Frecuencia de los cambios
Primer cambio
Cambios subsiguientes
Límites de cambios en la tasa de interés
Primer cambio
Cambios subsiguientes

Información adicional sobre este préstamo

PRESTAMISTA
N. ° DE NMLS/ LICENCIA DE__
AGENTE DE PRÉSTAMO
N. ° DE NMLS/ LICENCIA DE__
CORREO ELECTRÓNICO
TELÉFONO

CORREDOR HIPOTECARIO
N. ° DE NMLS/ LICENCIA DE__
AGENTE DE PRÉSTAMO
N. ° DE NMLS/ LICENCIA DE__
CORREO ELECTRÓNICO
TELÉFONO

COMPAÑÍA PACE
N. ° DE NMLS/ LICENCIA DE__
AGENTE DE PRÉSTAMO
N. ° DE NMLS/ LICENCIA DE__
CORREO ELECTRÓNICO
TELÉFONO

Comparaciones

Utilice estas medidas para comparar este préstamo con otros.

En 5 años		Total que habrá pagado en capital, intereses, seguro hipotecario y costos del préstamo. Capital que habrá pagado.
Tasa porcentual anual (APR)		Sus costos durante el plazo del préstamo expresados como una tasa. Esta no es su tasa de interés.
Total de intereses pagados a lo largo del plazo del préstamo (TIP)		El monto total de intereses que pagará durante el plazo del préstamo como porcentaje del monto del préstamo.

Otras consideraciones

Administración	Usted pagará su préstamo PACE como parte de su pago del impuesto sobre la propiedad. Si tiene una hipoteca con una cuenta de depósito en garantía que incluye sus pagos del impuesto sobre la propiedad, comuníquese con su administrador hipotecario para saber cuánto adeuda y cuándo debe pagar. Si no tiene una hipoteca con una cuenta de depósito en garantía, le pagará directamente a su autoridad fiscal."
Pago atrasado	Si se retrasa en el pago de su impuesto sobre la propiedad, es posible que esté sujeto a las multas y penalidades por mora establecidas por su recaudador de impuestos sobre la propiedad.
Refinanciamiento	El refinanciamiento de este préstamo dependerá de su situación financiera futura, del valor de la propiedad y de las condiciones del mercado. Es posible que no se le pueda refinanciar este préstamo.
Valoración de la vivienda	Es posible que pidamos una valoración de la vivienda para determinar el valor de la propiedad y que le cobremos por esta valoración de la vivienda. Inmediatamente, le daremos una copia de la valoración aunque su préstamo no se cierre. Puede pagar para que se haga otra valoración de la vivienda más para su uso personal y esta correrá por su cuenta.
Venta de la propiedad	Si vende la propiedad, el comprador o su prestamista hipotecario pueden exigirle que pague el préstamo PACE como condición para la venta.

Confirmación de recepción

Al firmar, usted solo confirma que ha recibido este formulario. No es necesario que acepte este préstamo por el hecho de haber firmado o recibido este formulario.

Firma del solicitante Fecha Firma del cosolicitante Fecha

Información adicional sobre este préstamo

N. ° DE NMLS/ LICENCIA DE__
AGENTE DE PRÉSTAMO
N. ° DE NMLS/ LICENCIA DE__
CORREO ELECTRÓNICO
TELÉFONO

COMPAÑÍA PACE
N. ° DE NMLS/ LICENCIA DE__
AGENTE DE PRÉSTAMO
N. ° DE NMLS/ LICENCIA DE__
CORREO ELECTRÓNICO
TELÉFONO

CORREDOR HIPOTECARIO
N. ° DE NMLS/ LICENCIA DE__
AGENTE DE PRÉSTAMO
N. ° DE NMLS/ LICENCIA DE__
CORREO ELECTRÓNICO
TELÉFONO

Comparaciones

Utilice estas medidas para comparar este préstamo con otros.

En 5 años		Total que habrá pagado en capital, intereses, seguro hipotecario y costos del préstamo. Capital que habrá pagado.
Tasa porcentual anual (APR)		Sus costos durante el plazo del préstamo expresados como una tasa. Esta no es su tasa de interés.
Total de intereses pagados a lo largo del plazo del préstamo (TIP)		El monto total de intereses que pagará durante el plazo del préstamo como porcentaje del monto del préstamo.

Otras consideraciones

Administración Usted pagará su préstamo PACE como parte de su pago del impuesto sobre la propiedad. Si tiene una hipoteca con una cuenta de depósito en garantía que incluye sus pagos del impuesto sobre la propiedad, comuníquese con su administrador hipotecario para saber cuánto adeuda y cuándo debe pagar. Si no tiene una hipoteca con una cuenta de depósito en garantía, le pagará directamente a su autoridad fiscal."

Pago atrasado Si se retrasa en el pago de su impuesto sobre la propiedad, es posible que esté sujeto a las multas y penalidades por mora establecidas por su recaudador de impuestos sobre la propiedad.

Refinanciamiento El refinanciamiento de este préstamo dependerá de su situación financiera futura, del valor de la propiedad y de las condiciones del mercado. Es posible que no se le pueda refinanciar este préstamo.

Venta de la propiedad Si vende la propiedad, el comprador o su prestamista hipotecario pueden exigirle que pague el préstamo PACE como condición para la venta.

Confirmación de recepción

Al firmar, usted solo confirma que ha recibido este formulario. No es necesario que acepte este préstamo por el hecho de haber firmado o recibido este formulario.

Firma del solicitante Fecha Firma del cosolicitante Fecha

Información adicional sobre este préstamo

PRESTAMISTA
N.° DE NMLS/ LICENCIA DE__
AGENTE DE PRÉSTAMO
N.° DE NMLS/ LICENCIA DE__
CORREO ELECTRÓNICO
TELÉFONO

CORREDOR HIPOTECARIO
N.° DE NMLS/ LICENCIA DE__
AGENTE DE PRÉSTAMO
N.° DE NMLS/ LICENCIA DE__
CORREO ELECTRÓNICO
TELÉFONO

COMPAÑÍA PACE
N.° DE NMLS/ LICENCIA DE__
AGENTE DE PRÉSTAMO
N.° DE NMLS/ LICENCIA DE__
CORREO ELECTRÓNICO
TELÉFONO

Comparaciones

Utilice estas medidas para comparar este préstamo con otros.

En 5 años		Total que habrá pagado en capital, intereses, seguro hipotecario y costos del préstamo. Capital que habrá pagado.
Tasa porcentual anual (APR)		Sus costos durante el plazo del préstamo expresados como una tasa. Esta no es su tasa de interés.
Total de intereses pagados a lo largo del plazo del préstamo (TIP)		El monto total de intereses que pagará durante el plazo del préstamo como porcentaje del monto del préstamo.

Otras consideraciones

Aceptación del préstamo No tiene que aceptar este préstamo por el hecho de haber recibido este formulario o firmado una aplicación para un préstamo.

Administración Usted pagará su préstamo PACE como parte de su pago del impuesto sobre la propiedad. Si tiene una hipoteca con una cuenta de depósito en garantía que incluye sus pagos del impuesto sobre la propiedad, comuníquese con su administrador hipotecario para saber cuánto adeuda y cuándo debe pagar. Si no tiene una hipoteca con una cuenta de depósito en garantía, le pagará directamente a su autoridad fiscal."

Pago atrasado Si se retrasa en el pago de su impuesto sobre la propiedad, es posible que esté sujeto a las multas y penalidades por mora establecidas por su recaudador de impuestos sobre la propiedad.

Refinanciamiento El refinanciamiento de este préstamo dependerá de su situación financiera futura, del valor de la propiedad y de las condiciones del mercado. Es posible que no se le pueda refinanciar este préstamo.

Valoración de la vivienda Es posible que pidamos una valoración de la vivienda para determinar el valor de la propiedad y que le cobremos por esta valoración de la vivienda. Inmediatamente, le daremos una copia de la valoración aunque su préstamo no se cierre. Puede pagar para que se haga otra valoración de la vivienda más para su uso personal y esta correrá por su cuenta.

Venta de la propiedad Si vende la propiedad, el comprador o su prestamista hipotecario pueden exigirle que pague el préstamo PACE como condición para la venta.

Información adicional sobre este préstamo

PRESTAMISTA
N. ° DE NMLS/ LICENCIA DE__
AGENTE DE PRÉSTAMO
N. ° DE NMLS/ LICENCIA DE__
CORREO ELECTRÓNICO
TELÉFONO

CORREDOR HIPOTECARIO
N. ° DE NMLS/ LICENCIA DE__
AGENTE DE PRÉSTAMO
N. ° DE NMLS/ LICENCIA DE__
CORREO ELECTRÓNICO
TELÉFONO

COMPAÑÍA PACE
N. ° DE NMLS/ LICENCIA DE__
AGENTE DE PRÉSTAMO
N. ° DE NMLS/ LICENCIA DE__
CORREO ELECTRÓNICO
TELÉFONO

Comparaciones

Utilice estas medidas para comparar este préstamo con otros.

En 5 años		Total que habrá pagado en capital, intereses, seguro hipotecario y costos del préstamo. Capital que habrá pagado.
Tasa porcentual anual (APR)		Sus costos durante el plazo del préstamo expresados como una tasa. Esta no es su tasa de interés.
Total de intereses pagados a lo largo del plazo del préstamo (TIP)		The total amount of interest that you will pay over the loan term as a percentage of your loan amount.

Otras consideraciones

Aceptación del préstamo No tiene que aceptar este préstamo por el hecho de haber recibido este formulario o firmado una aplicación para un préstamo.

Administración Usted pagará su préstamo PACE como parte de su pago del impuesto sobre la propiedad. Si tiene una hipoteca con una cuenta de depósito en garantía que incluye sus pagos del impuesto sobre la propiedad, comuníquese con su administrador hipotecario para saber cuánto adeuda y cuándo debe pagar. Si no tiene una hipoteca con una cuenta de depósito en garantía, le pagará directamente a su autoridad fiscal."

Pago atrasado Si se retrasa en el pago de su impuesto sobre la propiedad, es posible que esté sujeto a las multas y penalidades por mora establecidas por su recaudador de impuestos sobre la propiedad.

Refinanciamiento El refinanciamiento de este préstamo dependerá de su situación financiera futura, del valor de la propiedad y de las condiciones del mercado. Es posible que no se le pueda refinanciar este préstamo.

Venta de la propiedad Si vende la propiedad, el comprador o su prestamista hipotecario pueden exigirle que pague el préstamo PACE como condición para la venta.

H–28(L) MORTGAGE LOAN TRANSACTION CLOSING DISCLOSURE—MODEL FORM FOR PACE TRANSACTIONS—SPANISH LANGUAGE MODEL FORM

Declaración de Cierre

Este formulario es una declaración sobre los términos y condiciones finales del préstamo y los costos de cierre. Compare este documento con su Estimación de Préstamo.

Información sobre el cierre	Información sobre la transacción	Información sobre el préstamo
Fecha de emisión	**Deudor**	**Plazo del préstamo**
Fecha de cierre		**Finalidad**
Fecha de desembolso		**Producto**
Agente a cargo de la operación de cierre	**Prestamista**	**Tipo de préstamo** ☐ Convencional ☐ FHA ☐ VA ☐ ____________
N.° de Archivo		**N.° de préstamo**
Inmueble	**Compañía PACE**	**N.° de MIC #**
Valor estimado de la vivienda		

Términos del préstamo		**¿Puede aumentar este monto después del cierre?**
Monto del préstamo		
Tasa de interéste		
Capital e intereses anuales *Consulte la sección Pagos Proyectados a contiuación para conocer su Pago Anual Total Estimado.*		
		¿Tiene el préstamo estas características?
Multa por pago anticipado		
Cuota extraordinaria		

Pagos proyectados	
Cálculo de los pagos	
Capital e intereses Tarifas y otros montos	
Pago Anual Total Estimado	
Impuestos, seguro y evaluaciones estimados *El monto puede aumentar con el paso del tiempo*	**Esta estimación incluye** ☐ Pago de PACE ☐ Impuestos sobre la propiedad (no incluyen el préstamo PACE) ☐ Seguro de la vivienda ☐ Otro: *Su préstamo PACE formará parte de su pago de impuestos sobre la propiedad. Si tiene una hipoteca con una cuenta de depósito en garantía, el préstamo PACE aumentará su pago del depósito en garantía. Comuníquese con el administrador de la hipoteca para saber cuánto adeuda y cuándo debe pagar.*

Costos al momento del cierre	
Costos de cierre	Incluye por costos del préstamo + por otros costos – por créditos del prestamista. *Consulte los detalles en la página 2.*
Dinero en efectivo para el cierre	Incluye costos de cierre. *Consulte los detalles en Cálculo del dinero en efectivo para el cierre en la página 3.* ☐ Del Deudor ☐ Para Deudor

Declaración de Cierre

Este formulario es una declaración sobre los términos y condiciones finales del préstamo y los costos de cierre. Compare este documento con su Estimación de Préstamo.

Información sobre el cierre

Fecha de emisión
Fecha de cierre
Fecha de desembolso
Agente a cargo de la operación de cierre
N.° de Archivo
Inmueble

Valoración de la vivienda

Información sobre la transacción

Deudor

Prestamista

Compañía PACE

Información sobre el préstamo

Plazo del préstamo
Finalidad
Producto
Tipo de préstamo ☐ Convencional ☐ FHA ☐ VA ☐ ____________
N.° de préstamo
N.° de MIC #

Términos del préstamo

	¿Puede aumentar este monto después del cierre?
Monto del préstamo	
Tasa de interéste	
Capital e intereses anuales *Consulte la sección Pagos Proyectados a contiuación para conocer su Pago Anual Total Estimado.*	
	¿Tiene el préstamo estas características?
Multa por pago anticipado	
Cuota extraordinaria	

Pagos proyectados

Cálculo de los pagos	
Capital e intereses Tarifas y otros montos	
Pago Anual Total Estimado	
Impuestos, seguro y evaluaciones estimados *El monto puede aumentar con el paso del tiempo*	**Esta estimación incluye** ☐ Pago de PACE ☐ Impuestos sobre la propiedad (no incluyen el préstamo PACE) ☐ Seguro de la vivienda ☐ Otro: *Su préstamo PACE formará parte de su pago de impuestos sobre la propiedad. Si tiene una hipoteca con una cuenta de depósito en garantía, el préstamo PACE aumentará su pago del depósito en garantía. Comuníquese con el administrador de la hipoteca para saber cuánto adeuda y cuándo debe pagar.*

Costos al momento del cierre

Costos de cierre	Incluye por costos del préstamo + por otros costos – por créditos del prestamista. *Consulte los detalles en la página 2.*
Dinero en efectivo para el cierre	Incluye costos de cierre. *Consulte los detalles en Cálculo del dinero en efectivo para el cierre en la página 3.* ☐ Del Deudor ☐ Para Deudor

Detalles de los costos de cierre

Costos del préstamo

	Pagados por el deudor		Pagados por otros
	Al cierre	Antes del cierre	
A. Gastos por tramitación			
01 % del monto del préstamo (Puntos)			
02			
03			
04			
05			
06			
07			
08			
B. Servicios que el deudor no contrato			
01			
02			
03			
04			
05			
06			
07			
08			
09			
10			
C. Servicios que el deudor contrato			
01			
02			
03			
04			
05			
06			
07			
08			
D. COSTOS TOTALES DEL PRÉSTAMO (pagados por el deudor)			
Subtotales de los costos del préstamo (A + B + C)			

Otros costos

	Pagados por el deudor		Pagados por otros
	Al cierre	Antes del cierre	
E. Impuestos y otros cargos gubernamentales			
01 Costos de registro y otros impuestos por registro del título de Inmueble: Hipoteca:			
02			
F. . Pagos anticipados			
01 Impuestos sobre la propiedad (meses)			
02 Pago anticipado de intereses (por dia del al)			
03 Prima del seguro de hipoteca (meses)			
04 Prima del seguro de la vivienda (meses)			
05			
G. Pago inicial de la cuenta en depósito para impuestos y seguros de la vivienda			
01 Impuestos sobre la propiedad de por mes, durante meses			
02 Seguro de hipoteca de por mes, durante meses			
03 Seguro de la vivienda de por mes, durante meses			
04			
05			
06			
07			
08 Ajuste acumulado			
H. Otros			
01			
02			
03			
04			
05			
06			
07			
08			
I. TOTAL DE OTROS COSTOS (pagados por el deudor)			
Subtotales de otros costos (E + F + G + H)			

	Pagados por el deudor		Pagados por otros
	Al cierre	Antes del cierre	
J. TOTAL DE COSTOS DE CIERRE (pagados por el deudor)			
Subtotales de costos de cierre (D + I)			
Créditos del prestamista			

DECLARACIÓN DE CIERRE PÁGINA 2 DE 5 • N.º DEL PRÉSTAMO

Liquidaciones y pagos

Utilice esta tabla para ver un resumen de sus liquidaciones y de sus pagos realizados a otros utilizando el monto del préstamo.

PARA	MONTO
01	
02	
03	
04	
05	
06	
07	
08	
09	
10	
11	
12	
13	
14	
15	
K. TOTAL DE LIQUIDACIONES Y PAGOS	

Cálculo del dinero en efectivo para el cierre

Utilice esta tabla para saber lo que ha cambiado en su Estimación de Préstamo.

	Estimación del Préstamo	Final	¿Esto cambió?
Monto del préstamo			
Total de costos de cierre (J)			
Costos de cierre pagados antes del cierre			
Total de liquidaciones y pagos (K)			
Dinero en efectivo para el cierre	☐ **Del Deudor** ☐ **Para Deudor**	☐ **Del Deudor** ☐ **Para Deudor**	Costos de cierre financiados (pagados del monto del préstamo)

Información adicional sobre este préstamo

Declaraciones del préstamo

Amortización negativa (aumento del monto del préstamo)
De acuerdo con los términos de su préstamo, usted

- ☐ debe realizar pagos mensuales programados que no incluyen todos los intereses adeudados para ese mes. Como consecuencia, el monto de su préstamo aumentará (amortización negativa) y posiblemente, será más alto que el monto original del préstamo. Los aumentos del monto de su préstamo disminuyen su participación en el patrimonio que usted tiene en este inmueble.
- ☐ puede tener pagos mensuales que no incluyan todos los intereses adeudados para ese mes. Si los tiene, el monto de su préstamo aumentará (amortización negativa) y, como consecuencia, puede ser más alto que el monto original del préstamo. Los aumentos del monto de su préstamo disminuyen su participación en el patrimonio que usted tiene en este inmueble.
- ☐ no incluye una característica de amortización negativa.

Característica de demanda
Su préstamo

- ☐ incluye una característica de demanda, que le permite a su prestamista exigir el pago anticipado del préstamo. Debe revisar su pagaré para obtener detalles.
- ☐ no incluye una característica de demanda.

Intereses de garantía
Se le otorga un interés de garantía en ______________________

____

Usted puede perder esta propiedad si no cumple con sus pagos o con el resto de las obligaciones de este préstamo.

Pago atrasado
Si se retrasa en el pago de su impuesto sobre la propiedad, es posible que esté sujeto a las multas y penalidades por mora establecidas por su recaudador de impuestos sobre la propiedad

Tabla de pagos ajustables (PA)

¿Pago de interés solamente?	
¿Pagos opcionales?	
¿Pagos escalonados?	
¿Pagos estacionales?	
Pagos mensuales de capital e intereses	
Primer cambio/Monto	
Cambios subsiguientes	
Pago máximo	

Pagos parciales
Si paga los impuestos sobre la propiedad directamente al recaudador de impuestos, comuníquese con él para saber cuál es la política de pagos parciales. Si tiene una hipoteca con una cuenta de depósito en garantía para sus impuestos sobre la propiedad, comuníquese con su administrador hipotecario para conocer la política de pagos parciales de la cuenta.

Venta de la propiedad
Si vende la propiedad, el comprador o su prestamista hipotecario pueden exigirle que pague el préstamo PACE como condición para la venta.

Información adicional sobre este préstamo

Declaraciones del préstamo

Amortización negativa (aumento del monto del préstamo)
De acuerdo con los términos de su préstamo, usted

- ☐ debe realizar pagos mensuales programados que no incluyen todos los intereses adeudados para ese mes. Como consecuencia, el monto de su préstamo aumentará (amortización negativa) y posiblemente, será más alto que el monto original del préstamo. Los aumentos del monto de su préstamo disminuyen su participación en el patrimonio que usted tiene en este inmueble.
- ☐ puede tener pagos mensuales que no incluyan todos los intereses adeudados para ese mes. Si los tiene, el monto de su préstamo aumentará (amortización negativa) y, como consecuencia, puede ser más alto que el monto original del préstamo. Los aumentos del monto de su préstamo disminuyen su participación en el patrimonio que usted tiene en este inmueble.
- ☐ no incluye una característica de amortización negativa.

Característica de demanda
Su préstamo

- ☐ incluye una característica de demanda, que le permite a su prestamista exigir el pago anticipado del préstamo. Debe revisar su pagaré para obtener detalles.
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Intereses de garantía
Se le otorga un interés de garantía en ____________________

____

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Pago atrasado
Si se retrasa en el pago de su impuesto sobre la propiedad, es posible que esté sujeto a las multas y penalidades por mora establecidas por su recaudador de impuestos sobre la propiedad

Pagos parciales
Si paga los impuestos sobre la propiedad directamente al recaudador de impuestos, comuníquese con él para saber cuál es la política de pagos parciales. Si tiene una hipoteca con una cuenta de depósito en garantía para sus impuestos sobre la propiedad, comuníquese con su administrador hipotecario para conocer la política de pagos parciales de la cuenta.

Venta de la propiedad
Si vende la propiedad, el comprador o su prestamista hipotecario pueden exigirle que pague el préstamo PACE como condición para la venta.

Tabla de tasa de interés ajustable (TIA)

Índice + Margen	
Tasa de interés inicial	
Tasa de interés mínima/máxima	
Frecuencia de los cambios	
Primer cambio	
Cambios subsiguientes	
Límites de cambios en la tasa de interés	
Primer cambio	
Cambios subsiguientes	

Información adicional sobre este préstamo

Declaraciones del préstamo

Amortización negativa (aumento del monto del préstamo)
De acuerdo con los términos de su préstamo, usted

- ☐ debe realizar pagos mensuales programados que no incluyen todos los intereses adeudados para ese mes. Como consecuencia, el monto de su préstamo aumentará (amortización negativa) y posiblemente, será más alto que el monto original del préstamo. Los aumentos del monto de su préstamo disminuyen su participación en el patrimonio que usted tiene en este inmueble.
- ☐ puede tener pagos mensuales que no incluyan todos los intereses adeudados para ese mes. Si los tiene, el monto de su préstamo aumentará (amortización negativa) y, como consecuencia, puede ser más alto que el monto original del préstamo. Los aumentos del monto de su préstamo disminuyen su participación en el patrimonio que usted tiene en este inmueble.
- ☐ no incluye una característica de amortización negativa.

Característica de demanda
Su préstamo

- ☐ incluye una característica de demanda, que le permite a su prestamista exigir el pago anticipado del préstamo. Debe revisar su pagaré para obtener detalles.
- ☐ no incluye una característica de demanda.

Intereses de garantía
Se le otorga un interés de garantía en ______________________

Usted puede perder esta propiedad si no cumple con sus pagos o con el resto de las obligaciones de este préstamo.

Pago atrasado
Si se retrasa en el pago de su impuesto sobre la propiedad, es posible que esté sujeto a las multas y penalidades por mora establecidas por su recaudador de impuestos sobre la propiedad

Pagos parciales
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Venta de la propiedad
Si vende la propiedad, el comprador o su prestamista hipotecario pueden exigirle que pague el préstamo PACE como condición para la venta.

Tabla de pagos ajustables (PA)

¿Pago de interés solamente?	
¿Pagos opcionales?	
¿Pagos escalonados?	
¿Pagos estacionales?	
Pagos mensuales de capital e intereses	
Primer cambio/Monto	
Cambios subsiguientes	
Pago máximo	

Tabla de tasa de interés ajustable (TIA)

Índice + Margen	
Tasa de interés inicial	
Tasa de interés mínima/máxima	
Frecuencia de los cambios	
Primer cambio	
Cambios subsiguientes	
Límites de cambios en la tasa de interés	
Primer cambio	
Cambios subsiguientes	

Información adicional sobre este préstamo

Declaraciones del préstamo

Amortización negativa (aumento del monto del préstamo)
De acuerdo con los términos de su préstamo, usted

- ☐ debe realizar pagos mensuales programados que no incluyen todos los intereses adeudados para ese mes. Como consecuencia, el monto de su préstamo aumentará (amortización negativa) y posiblemente, será más alto que el monto original del préstamo. Los aumentos del monto de su préstamo disminuyen su participación en el patrimonio que usted tiene en este inmueble.
- ☐ puede tener pagos mensuales que no incluyan todos los intereses adeudados para ese mes. Si los tiene, el monto de su préstamo aumentará (amortización negativa) y, como consecuencia, puede ser más alto que el monto original del préstamo. Los aumentos del monto de su préstamo disminuyen su participación en el patrimonio que usted tiene en este inmueble.
- ☐ no incluye una característica de amortización negativa.

Característica de demanda
Su préstamo

- ☐ incluye una característica de demanda, que le permite a su prestamista exigir el pago anticipado del préstamo. Debe revisar su pagaré para obtener detalles.
- ☐ no incluye una característica de demanda.

Intereses de garantía
Se le otorga un interés de garantía en ______________________

____

Usted puede perder esta propiedad si no cumple con sus pagos o con el resto de las obligaciones de este préstamo.

Pago atrasado
Si se retrasa en el pago de su impuesto sobre la propiedad, es posible que esté sujeto a las multas y penalidades por mora establecidas por su recaudador de impuestos sobre la propiedad

Pagos parciales
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Venta de la propiedad
Si vende la propiedad, el comprador o su prestamista hipotecario pueden exigirle que pague el préstamo PACE como condición para la venta.

Cálculos del préstamo

Pagos totales. Total que habrá pagado después de haber hecho todos los pagos de capital, intereses, seguro hipotecario y costos del préstamo, según lo programado.	
Cargo financiero. El monto en dólares que le costará el préstamo.	
Monto financiado. El monto en dólares disponible después de que pague el cargo financiero inicial.	
Tasa porcentual anual (APR). Sus costos durante el plazo del préstamo, expresados como una tasa. Esta no es su tasa de interés.	
Total de intereses pagados (TIP). El monto total de los intereses que pagará durante el plazo del préstamo, como porcentaje del monto total del préstamo.	

¿Tiene preguntas? Si tiene preguntas sobre los términos y costos del préstamo que se establecen en este formulario, utilice la información a continuación. Para obtener más información o para presentar un reclamo, comuníquese con la Oficina para la Protección Financiera del Consumidor en **www.consumerfinance.gov/mortgage-closing**

Otras declaraciones

Deducciones tributarias
Si adquiere una deuda mayor al valor de este inmueble, los intereses del monto del préstamo que sean superiores al valor real de mercado no se deducirán de sus impuestos federales sobre la renta. Debería consultar con un asesor fiscal para obtener más información.

Detalles del contrato
Consulte los documentos del contrato del préstamo PACE para obtener más información sobre:
- ¿Qué sucede si no hace sus pagos?
- ¿Qué es un incumplimiento de pago del préstamo?
- Situaciones en que su prestamista puede exigirle que pague el préstamo por anticipado.
- Las reglas para realizar pagos antes de la fecha estipulada.

Refinanciamiento
El refinanciamiento de este préstamo dependerá de su situación financiera futura, del valor de propiedad y de las condiciones del mercado. Es posible que no se le pueda refinanciar este préstamo.

Responsabilidad después de la ejecución hipotecaria o venta de impuestos
Si esta propiedad se vende a través de una ejecución hipotecaria o una venta de impuestos y la venta no cubre el monto adeudado en la obligación de PACE, es posible que usted sea responsable de una parte del saldo no pagado según la ley estatal. Puede consultar a un abogado para obtener más información.

Valoración de la vivienda
Si la propiedad tuvo una valoración para su préstamo, su prestamista debe proporcionarle una copia sin costo adicional, al menos tres días antes del cierre. Si aún no la ha recibido, comuníquese con su prestamista utilizando la información que se le brinda en la página 6.

Información de contacto

	Prestamista	Corredor hipotecario	Agente a cargo de la operación de cierre	Compañía PACE
Nombre				
Dirección				
N.º de NMLS				
N.º de licencia de ____				
Contacto				
ID. de contacto de NMLS				
ID. de contacto de licencia de				
Correo electrónico				
Teléfono				

Confirmación de recepción

Al firmar, usted solo confirma que ha recibido este formulario. No es necesario que acepte este préstamo por el hecho de haber firmado o recibido este formulario.

Firma del solicitante ____ Fecha ____

Firma del cosolicitante ____ Fecha ____

Cálculos del préstamo

Pagos totales. Total que habrá pagado después de haber hecho todos los pagos de capital, intereses, seguro hipotecario y costos del préstamo, según lo programado.	
Cargo financiero. El monto en dólares que le costará el préstamo.	
Monto financiado. El monto en dólares disponible después de que pague el cargo financiero inicial.	
Tasa porcentual anual (APR). Sus costos durante el plazo del préstamo, expresados como una tasa. Esta no es su tasa de interés.	
Total de intereses pagados (TIP). El monto total de los intereses que pagará durante el plazo del préstamo, como porcentaje del monto total del préstamo.	

¿Tiene preguntas? Si tiene preguntas sobre los términos y costos del préstamo que se establecen en este formulario, utilice la información a continuación. Para obtener más información o para presentar un reclamo, comuníquese con la Oficina para la Protección Financiera del Consumidor en **www.consumerfinance.gov/mortgage-closing**

Otras declaraciones

Aceptación del préstamo
No tiene que aceptar este préstamo por el hecho de haber recibido este formulario o firmado una aplicación para un préstamo.

Deducciones tributarias
Si adquiere una deuda mayor al valor de este inmueble, los intereses del monto del préstamo que sean superiores al valor real de mercado no se deducirán de sus impuestos federales sobre la renta. Debería consultar con un asesor fiscal para obtener más información.

Detalles del contrato
Consulte los documentos del contrato del préstamo PACE para obtener más información sobre:

- ¿Qué sucede si no hace sus pagos?
- ¿Qué es un incumplimiento de pago del préstamo?
- Situaciones en que su prestamista puede exigirle que pague el préstamo por anticipado.
- Las reglas para realizar pagos antes de la fecha estipulada.

Refinanciamiento
El refinanciamiento de este préstamo dependerá de su situación financiera futura, del valor de propiedad y de las condiciones del mercado. Es posible que no se le pueda refinanciar este préstamo.

Responsabilidad después de la ejecución hipotecaria o venta de impuestos
Si esta propiedad se vende a través de una ejecución hipotecaria o una venta de impuestos y la venta no cubre el monto adeudado en la obligación de PACE, es posible que usted sea responsable de una parte del saldo no pagado según la ley estatal. Puede consultar a un abogado para obtener más información.

Valoración de la vivienda
Si la propiedad tuvo una valoración para su préstamo, su prestamista debe proporcionarle una copia sin costo adicional, al menos tres días antes del cierre. Si aún no la ha recibido, comuníquese con su prestamista utilizando la información que se le brinda en la página 6.

Información de contacto

	Prestamista	Corredor hipotecario	Agente a cargo de la operación de cierre	Compañía PACE
Nombre				
Dirección				
N.º de NMLS				
N.º de licencia de ____				
Contacto				
ID. de contacto de NMLS				
ID. de contacto de licencia de				
Correo electrónico				
Teléfono				

Cálculos del préstamo

Pagos totales. Total que habrá pagado después de haber hecho todos los pagos de capital, intereses, seguro hipotecario y costos del préstamo, según lo programado.	
Cargo financiero. El monto en dólares que le costará el préstamo.	
Monto financiado. El monto en dólares disponible después de que pague el cargo financiero inicial.	
Tasa porcentual anual (APR). Sus costos durante el plazo del préstamo, expresados como una tasa. Esta no es su tasa de interés.	
Total de intereses pagados (TIP). El monto total de los intereses que pagará durante el plazo del préstamo, como porcentaje del monto total del préstamo.	

¿Tiene preguntas? Si tiene preguntas sobre los términos y costos del préstamo que se establecen en este formulario, utilice la información a continuación. Para obtener más información o para presentar un reclamo, comuníquese con la Oficina para la Protección Financiera del Consumidor en **www.consumerfinance.gov/mortgage-closing**

Otras declaraciones

Deducciones tributarias
Si adquiere una deuda mayor al valor de este inmueble, los intereses del monto del préstamo que sean superiores al valor real de mercado no se deducirán de sus impuestos federales sobre la renta. Debería consultar con un asesor fiscal para obtener más información.

Detalles del contrato
Consulte los documentos del contrato del préstamo PACE para obtener más información sobre:
- ¿Qué sucede si no hace sus pagos?
- ¿Qué es un incumplimiento de pago del préstamo?
- Situaciones en que su prestamista puede exigirle que pague el préstamo por anticipado.
- Las reglas para realizar pagos antes de la fecha estipulada.

Refinanciamiento
El refinanciamiento de este préstamo dependerá de su situación financiera futura, del valor de propiedad y de las condiciones del mercado. Es posible que no se le pueda refinanciar este préstamo.

Responsabilidad después de la ejecución hipotecaria o venta de impuestos
Si esta propiedad se vende a través de una ejecución hipotecaria o una venta de impuestos y la venta no cubre el monto adeudado en la obligación de PACE, es posible que usted sea responsable de una parte del saldo no pagado según la ley estatal. Puede consultar a un abogado para obtener más información.

Información de contacto

	Prestamista	Corredor hipotecario	Agente a cargo de la operación de cierre	Compañía PACE
Nombre				
Dirección				
N.º de NMLS				
N.º de licencia de ____				
Contacto				
ID. de contacto de NMLS				
ID. de contacto de licencia de				
Correo electrónico				
Teléfono				

Confirmación de recepción

Al firmar, usted solo confirma que ha recibido este formulario. No es necesario que acepte este préstamo por el hecho de haber firmado o recibido este formulario.

Firma del solicitante Fecha

Firma del cosolicitante Fecha

Cálculos del préstamo

Pagos totales. Total que habrá pagado después de haber hecho todos los pagos de capital, intereses, seguro hipotecario y costos del préstamo, según lo programado.	
Cargo financiero. El monto en dólares que le costará el préstamo.	
Monto financiado. El monto en dólares disponible después de que pague el cargo financiero inicial.	
Tasa porcentual anual (APR). Sus costos durante el plazo del préstamo, expresados como una tasa. Esta no es su tasa de interés.	
Total de intereses pagados (TIP). El monto total de los intereses que pagará durante el plazo del préstamo, como porcentaje del monto total del préstamo.	

¿Tiene preguntas? Si tiene preguntas sobre los términos y costos del préstamo que se establecen en este formulario, utilice la información a continuación. Para obtener más información o para presentar un reclamo, comuníquese con la Oficina para la Protección Financiera del Consumidor en **www.consumerfinance.gov/mortgage-closing**

Otras declaraciones

Aceptación del préstamo
No tiene que aceptar este préstamo por el hecho de haber recibido este formulario o firmado una aplicación para un préstamo.

Deducciones tributarias
Si adquiere una deuda mayor al valor de este inmueble, los intereses del monto del préstamo que sean superiores al valor real de mercado no se deducirán de sus impuestos federales sobre la renta. Debería consultar con un asesor fiscal para obtener más información.

Detalles del contrato
Consulte los documentos del contrato del préstamo PACE para obtener más información sobre:

- ¿Qué sucede si no hace sus pagos?
- ¿Qué es un incumplimiento de pago del préstamo?
- Situaciones en que su prestamista puede exigirle que pague el préstamo por anticipado.
- Las reglas para realizar pagos antes de la fecha estipulada.

Refinanciamiento
El refinanciamiento de este préstamo dependerá de su situación financiera futura, del valor de propiedad y de las condiciones del mercado. Es posible que no se le pueda refinanciar este préstamo.

Responsabilidad después de la ejecución hipotecaria o venta de impuestos
Si esta propiedad se vende a través de una ejecución hipotecaria o una venta de impuestos y la venta no cubre el monto adeudado en la obligación de PACE, es posible que usted sea responsable de una parte del saldo no pagado según la ley estatal. Puede consultar a un abogado para obtener más información.

Información de contacto

	Prestamista	Corredor hipotecario	Agente a cargo de la operación de cierre	Compañía PACE
Nombre				
Dirección				
N.º de NMLS				
N.º de licencia de ____				
Contacto				
ID. de contacto de NMLS				
ID. de contacto de licencia de				
Correo electrónico				
Teléfono				

*   *   *   *   *

8. Supplement I to Part 1026—Official Interpretations is amended by:

a. Under *Section 1026.2—Definitions and Rules of Construction*, revising *2(a)(14) Credit*;

b. Under *Section 1026.37—Content of disclosures for certain mortgage transactions (Loan Estimate)*, add *(p) PACE transactions*;

c. Under *Section 1026.38—Content of disclosures for certain mortgage transactions (Closing Disclosure)*, add *38(u) – PACE transactions*;

d. Under *Section 1026.43—Minimum standards for transactions secured by a dwelling;*

i. Revising *43(b)(8) Mortgage-related obligations*;

ii. Adding *43(b)(14) PACE company;*

iii. Revising *Paragraph 43(c)(2)(iv)*;

iv. Revising *43(c)(3) Verification using third-party records*, and

e. Revise *Appendix H – Closed-End Forms and Clauses*.

The revisions and additions read as follows:

Supplement I to Part 1026—Official Interpretations

*   *   *   *   *

Section 1026.2—Definitions and Rules of Construction

*   *   *   *   *

2(a)(14) Credit

1. *Exclusions.* The following situations are not considered credit for purposes of the regulation:

i. Layaway plans, unless the consumer is contractually obligated to continue making

payments. Whether the consumer is so obligated is a matter to be determined under applicable law. The fact that the consumer is not entitled to a refund of any amounts paid towards the cash price of the merchandise does not bring layaways within the definition of credit.

ii. Involuntary tax liens, involuntary tax assessments, court judgments, and court approvals of reaffirmation of debts in bankruptcy. However, third-party financing of such obligations (for example, a bank loan obtained to pay off an involuntary tax lien) is credit for purposes of the regulation.

iii. Insurance premium plans that involve payment in installments with each installment representing the payment for insurance coverage for a certain future period of time, unless the consumer is contractually obligated to continue making payments.

iv. Home improvement transactions that involve progress payments, if the consumer pays, as the work progresses, only for work completed and has no contractual obligation to continue making payments.

v. Borrowing against the accrued cash value of an insurance policy or a pension account, if there is no independent obligation to repay.

vi. Letters of credit.

vii. The execution of option contracts. However, there may be an extension of credit when the option is exercised, if there is an agreement at that time to defer payment of a debt.

viii. Investment plans in which the party extending capital to the consumer risks the loss of the capital advanced. This includes, for example, an arrangement with a home purchaser in which the investor pays a portion of the downpayment and of the periodic mortgage payments in return for an ownership interest in the property, and shares in any gain or loss of property value.

ix. Mortgage assistance plans administered by a government agency in which a portion of

the consumer's monthly payment amount is paid by the agency. No finance charge is imposed on the subsidy amount, and that amount is due in a lump-sum payment on a set date or upon the occurrence of certain events. (If payment is not made when due, a new note imposing a finance charge may be written, which may then be subject to the regulation.)

2. *Payday loans; deferred presentment*. Credit includes a transaction in which a cash advance is made to a consumer in exchange for the consumer's personal check, or in exchange for the consumer's authorization to debit the consumer's deposit account, and where the parties agree either that the check will not be cashed or deposited, or that the consumer's deposit account will not be debited, until a designated future date. This type of transaction is often referred to as a "payday loan" or "payday advance" or "deferred-presentment loan." A fee charged in connection with such a transaction may be a finance charge for purposes of § 1026.4, regardless of how the fee is characterized under State law. Where the fee charged constitutes a finance charge under § 1026.4 and the person advancing funds regularly extends consumer credit, that person is a creditor and is required to provide disclosures consistent with the requirements of Regulation Z. (See § 1026.2(a)(17).)

3. *Transactions on the asset features of prepaid accounts when there are insufficient or unavailable funds.* Credit includes authorization of a transaction on the asset feature of a prepaid account as defined in § 1026.61 where the consumer has insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is authorized to cover the amount of the transaction. It also includes settlement of a transaction on the asset feature of a prepaid account where the consumer has insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is settled to cover the amount of the transaction. This includes a transaction where the consumer has sufficient or available funds in the asset feature of

a prepaid account to cover the amount of the transaction at the time the transaction is authorized but insufficient or unavailable funds in the asset feature of the prepaid account to cover the transaction amount at the time the transaction is settled. See § 1026.61 and related commentary on the applicability of this regulation to credit that is extended in connection with a prepaid account.

*   *   *   *   *

Section 1026.37—Content of disclosures for certain mortgage transactions (Loan Estimate)

*   *   *   *   *

37(p) PACE transactions.

37(p)(5) Late payment.

1. For purposes of § 1026.37(p)(5), a charge is specific to the PACE transaction if the property tax collector does not impose the same charges for general property tax delinquencies.

37(p)(7) Exceptions.

37(p)(7)(ii) PACE nomenclature.

1. Wherever § 1026.37 requires disclosure of the word "PACE" or form H–24(H) of appendix H uses the term "PACE," § 1026.37(p)(7)(ii) permits a creditor to substitute the name of a specific PACE financing program that will be recognizable to the consumer in lieu of the term "PACE." The name of a specific PACE financing program will not be recognizable to the consumer unless it is used consistently in financing documents for the PACE transaction and any marketing materials provided to the consumer. For example, if the name XYZ Financing is used in marketing materials and financing documents for the PACE transaction provided to the consumer, such that XYZ Financing will be recognizable to the consumer, the creditor may substitute the name XYZ Financing for PACE on the Loan Estimate.

Section 1026.38—Content of disclosures for certain mortgage transactions (Closing Disclosure).

*   *   *   *   *

38(u) – PACE transactions.

38(u)(9) Exceptions.

38(u)(9)(ii)(A) PACE nomenclature.

1. Wherever § 1026.38 requires disclosure of the word "PACE" or form H–25(K) of appendix H uses the term "PACE," § 1026.38(u)(9)(ii)(A) permits a creditor to substitute the name of a specific PACE financing program that will be recognizable to the consumer in lieu of the term "PACE." The name of a specific PACE financing program will not be recognizable to the consumer unless it is used consistently in financing documents for the PACE transaction and any marketing materials provided to the consumer. For example, if the name XYZ Financing is used in marketing materials and financing documents provided to the consumer for the PACE transaction, such that XYZ Financing will be recognizable to the consumer, the creditor may substitute the name XYZ Financing for PACE on the Closing Disclosure.

*   *   *   *   *

Section 1026.43— Minimum standards for transactions secured by a dwelling.

*   *   *   *   *

43(b)(8) Mortgage-related obligations.

1. ***General.*** Section 1026.43(b)(8) defines mortgage-related obligations, which must be considered in determining a consumer's ability to repay pursuant to § 1026.43(c). Section 1026.43(b)(8) includes, in the evaluation of mortgage-related obligations, fees and special assessments owed to a condominium, cooperative, or homeowners association. Section 1026.43(b)(8) includes ground rent and leasehold payments in the definition of mortgage-related

obligations. See commentary to § 1026.43(c)(2)(v) regarding the requirement to take into account any mortgage-related obligations for purposes of determining a consumer's ability to repay.

2. *Property taxes*. Section 1026.43(b)(8) includes property taxes in the evaluation of mortgage-related obligations. Obligations that are related to the ownership or use of real property and paid to a taxing authority, whether on a monthly, quarterly, annual, or other basis, are property taxes for purposes of § 1026.43(b)(8). Section 1026.43(b)(8) includes obligations that are equivalent to property taxes, even if such obligations are not denominated as "taxes." For example, governments may establish or allow independent districts with the authority to impose levies on properties within the district to fund a special purpose, such as a local development bond district, water district, or other public purpose. These levies may be referred to as taxes, assessments, surcharges, or by some other name. For purposes of § 1026.43(b)(8), these are property taxes and are included in the determination of mortgage-related obligations. Any payments for pre-existing PACE transactions are considered property taxes for purposes of § 1026.43(b)(8).

3. *Insurance premiums and similar charges.* Section 1026.43(b)(8) includes in the evaluation of mortgage-related obligations premiums and similar charges identified in § 1026.4(b)(5), (7), (8), or (10) that are required by the creditor. This includes all premiums or charges related to coverage protecting the creditor against a consumer's default, credit loss, collateral loss, or similar loss, if the consumer is required to pay the premium or charge. For example, if Federal law requires flood insurance to be obtained in connection with the mortgage loan, the flood insurance premium is a mortgage-related obligation for purposes of § 1026.43(b)(8). Section 1026.43(b)(8) does not include premiums or similar charges identified

in § 1026.4(b)(5), (7), (8), or (10) that are not required by the creditor and that the consumer purchases voluntarily. For example:

i. If a creditor does not require earthquake insurance to be obtained in connection with the mortgage loan, but the consumer voluntarily chooses to purchase such insurance, the earthquake insurance premium is not a mortgage-related obligation for purposes of § 1026.43(b)(8).

ii. If a creditor requires a minimum amount of coverage for homeowners' insurance and the consumer voluntarily chooses to purchase a more comprehensive amount of coverage, the portion of the premium allocated to the required minimum coverage is a mortgage-related obligation for purposes of § 1026.43(b)(8), while the portion of the premium allocated to the more comprehensive coverage voluntarily purchased by the consumer is not a mortgage-related obligation for purposes of § 1026.43(b)(8).

iii. If the consumer purchases insurance or similar coverage not required by the creditor at consummation without having requested the specific non-required insurance or similar coverage and without having agreed to the premium or charge for the specific non-required insurance or similar coverage prior to consummation, the premium or charge is not voluntary for purposes of § 1026.43(b)(8) and is a mortgage-related obligation.

4. *Mortgage insurance, guarantee, or similar charges.* Section 1026.43(b)(8) includes in the evaluation of mortgage-related obligations premiums or charges protecting the creditor against the consumer's default or other credit loss. This includes all premiums or similar charges, whether denominated as mortgage insurance, guarantee, or otherwise, as determined according to applicable State or Federal law. For example, monthly "private mortgage insurance" payments paid to a non-governmental entity, annual "guarantee fee" payments required by a Federal housing program, and a quarterly "mortgage insurance" payment paid to a State agency

administering a housing program are all mortgage-related obligations for purposes of § 1026.43(b)(8). Section 1026.43(b)(8) includes these charges in the definition of mortgage-related obligations if the creditor requires the consumer to pay them, even if the consumer is not legally obligated to pay the charges under the terms of the insurance program. For example, if a mortgage insurance program obligates the creditor to make recurring mortgage insurance payments, and the creditor requires the consumer to reimburse the creditor for such recurring payments, the consumer's payments are mortgage-related obligations for purposes of § 1026.43(b)(8). However, if a mortgage insurance program obligates the creditor to make recurring mortgage insurance payments, and the creditor does not require the consumer to reimburse the creditor for the cost of the mortgage insurance payments, the recurring mortgage insurance payments are not mortgage-related obligations for purposes of § 1026.43(b)(8).

5. *Relation to the finance charge.* Section 1026.43(b)(8) includes in the evaluation of mortgage-related obligations premiums and similar charges identified in § 1026.4(b)(5), (7), (8), or (10) that are required by the creditor. These premiums and similar charges are mortgage-related obligations regardless of whether the premium or similar charge is excluded from the finance charge pursuant to § 1026.4(d). For example, a premium for insurance against loss or damage to the property written in connection with the credit transaction is a premium identified in § 1026.4(b)(8). If this premium is required by the creditor, the premium is a mortgage-related obligation pursuant to § 1026.43(b)(8), regardless of whether the premium is excluded from the finance charge pursuant to § 1026.4(d)(2).

* * * * *

43(b)(14) PACE company.

1. Indicia of whether a person administers a PACE financing program for purposes of §

1026.43(b)(14) include, for example, marketing PACE financing to consumers, developing or implementing policies and procedures for the origination process, being substantially involved in making a credit decision, or extending an offer to the consumer.

43(c) Repayment ability.

*   *   *   *   *

43(c)(2) Basis for determination.

*   *   *   *   *

Paragraph 43(c)(2)(iv).

1. *Home equity lines of credit.* For purposes of § 1026.43(c)(2)(iv), a simultaneous loan includes any covered transaction or home equity line of credit (HELOC) subject to § 1026.40 that will be made to the same consumer at or before consummation of the covered transaction and secured by the same dwelling that secures the covered transaction. A HELOC that is a simultaneous loan that the creditor knows or has reason to know about must be considered as a mortgage obligation in determining a consumer's ability to repay the covered transaction even though the HELOC is not a covered transaction subject to § 1026.43. See § 1026.43(a) discussing the scope of this section. “Simultaneous loan” is defined in § 1026.43(b)(12). For further explanation of “same consumer,” see comment 43(b)(12)-2.

2. *Knows or has reason to know.* In determining a consumer's repayment ability for a covered transaction under § 1026.43(c)(2), a creditor must consider the consumer's payment obligation on any simultaneous loan that the creditor knows or has reason to know will be or has been made at or before consummation of the covered transaction. For example, where a covered transaction is a home purchase loan, the creditor must consider the consumer's periodic payment obligation for any “piggyback” second-lien loan that the creditor knows or has reason to know

will be used to finance part of the consumer's down payment. The creditor complies with this requirement where, for example, the creditor follows policies and procedures that are designed to determine whether at or before consummation the same consumer has applied for another credit transaction secured by the same dwelling. To illustrate, assume a creditor receives an application for a home purchase loan where the requested loan amount is less than the home purchase price. The creditor's policies and procedures must require the consumer to state the source of the down payment and provide verification. If the creditor determines the source of the down payment is another extension of credit that will be made to the same consumer at or before consummation and secured by the same dwelling, the creditor knows or has reason to know of the simultaneous loan and must consider the simultaneous loan. Alternatively, if the creditor has information that suggests the down payment source is the consumer's existing assets, the creditor would be under no further obligation to determine whether a simultaneous loan will be extended at or before consummation of the covered transaction. The creditor is not obligated to investigate beyond reasonable underwriting policies and procedures to determine whether a simultaneous loan will be extended at or before consummation of the covered transaction.

3. *Scope of timing.* For purposes of § 1026.43(c)(2)(iv), a simultaneous loan includes a loan that comes into existence concurrently with the covered transaction subject to § 1026.43(c). A simultaneous loan does not include a credit transaction that occurs after consummation of the covered transaction that is subject to this section. However, any simultaneous loan that specifically covers closing costs of the covered transaction, but is scheduled to be extended after consummation must be considered for the purposes of § 1026.43(c)(2)(iv).

4. *Knows or has reason to know—PACE transaction.* In addition to the guidance provided under comment 43(c)(2)(iv)-2, a creditor originating a PACE transaction knows or has

reason to know of any simultaneous loans that are PACE transactions if the transactions are included in any existing database or registry of PACE transactions that includes the geographic area in which the property is located and to which the creditor has access.

* * * * *

43(c)(3) Verification using third-party records.

1. *Records specific to the individual consumer.* Records a creditor uses for verification under § 1026.43(c)(3) and (4) must be specific to the individual consumer. Records regarding average incomes in the consumer's geographic location or average wages paid by the consumer's employer, for example, are not specific to the individual consumer and are not sufficient for verification.

2. *Obtaining records.* To conduct verification under § 1026.43(c)(3) and (4), a creditor may obtain records from a third-party service provider, such as a party the consumer's employer uses to respond to income verification requests, as long as the records are reasonably reliable and specific to the individual consumer. A creditor also may obtain third-party records directly from the consumer, likewise as long as the records are reasonably reliable and specific to the individual consumer. For example, a creditor using payroll statements to verify the consumer's income, as allowed under § 1026.43(c)(4)(iii), may obtain the payroll statements from the consumer.

3. *Credit report as a reasonably reliable third-party record.* A credit report generally is considered a reasonably reliable third-party record under § 1026.43(c)(3) for purposes of verifying items customarily found on a credit report, such as the consumer's current debt obligations, monthly debts, and credit history. Section 1026.43(c)(3) generally does not require creditors to obtain additional reasonably reliable third-party records to verify information

contained in a credit report. For example, if a credit report states the existence and amount of a consumer's debt obligation, the creditor is not required to obtain additional verification of the existence or amount of that obligation. In contrast, a credit report does not serve as a reasonably reliably third-party record for purposes of verifying items that do not appear on the credit report. For example, certain monthly debt obligations, such as legal obligations like alimony or child support, may not be reflected on a credit report. Thus, a credit report that does not list a consumer's monthly alimony obligation does not serve as a reasonably reliable third-party record for purposes of verifying that obligation. If a credit report reflects a current debt obligation that a consumer has not listed on the application, the creditor complies with § 1026.43(c)(3) if the creditor considers the existence and amount of the debt obligation as it is reflected in the credit report. However, in some cases a creditor may know or have reason to know that a credit report may be inaccurate in whole or in part. For example, a creditor may have information indicating that a credit report is subject to a fraud alert, extended alert, active duty alert, or similar alert identified in 15 U.S.C. 1681c-1 or that a debt obligation listed on a credit report is subject to a statement of dispute pursuant to 15 U.S.C. 1681i(b). A creditor may also have other reasonably reliable third-party records or other information or evidence that the creditor reasonably finds to be reliable that contradict the credit report or otherwise indicate that the credit report is inaccurate. If a creditor knows or has reason to know that a credit report may be inaccurate in whole or in part, the creditor complies with § 1026.43(c)(3) by disregarding an inaccurate or disputed item, items, or credit report, but does not have to obtain additional third-party records. The creditor may also, but is not required, to obtain other reasonably reliable third-party records to verify information with respect to which the credit report, or item therein, may be inaccurate. For example, the creditor might obtain statements or bank records regarding a particular debt

obligation subject to a statement of dispute. See also comment 43(c)(3)-6, which describes a situation in which a consumer reports a debt obligation that is not listed on a credit report.

4. *Verification of simultaneous loans.* Although a credit report may be used to verify current obligations, it will not reflect a simultaneous loan that has not yet been consummated and may not reflect a loan that has just recently been consummated. If the creditor knows or has reason to know that there will be a simultaneous loan extended at or before consummation, the creditor may verify the simultaneous loan by obtaining third-party verification from the third-party creditor of the simultaneous loan. For example, the creditor may obtain a copy of the promissory note or other written verification from the third-party creditor. For further guidance, see comments 43(c)(3)-1 and -2 discussing verification using third-party records.

5. *Verification of mortgage-related obligations*. Creditors must make the repayment ability determination required under § 1026.43(c)(2) based on information verified from reasonably reliable records. For general guidance regarding verification see comments 43(c)(3)-1 and -2, which discuss verification using third-party records. With respect to the verification of mortgage-related obligations that are property taxes required to be considered under § 1026.43(c)(2)(v), a record is reasonably reliable if the information in the record was provided by a governmental organization, such as a taxing authority or local government. The creditor complies with § 1026.43(c)(2)(v) by relying on property taxes referenced in the title report if the source of the property tax information was a local taxing authority. A creditor that knows or has reason to know that a consumer has an existing PACE transaction does not comply with § 1026.43(c)(2)(v) by relying on information provided by a governmental organization, either directly or indirectly, if the information provided does not reflect the PACE transaction. With respect to other information in a record provided by an entity assessing charges, such as a

homeowners association, the creditor complies with § 1026.43(c)(2)(v) if it relies on homeowners association billing statements provided by the seller. Records are also reasonably reliable if the information in the record was obtained from a valid and legally executed contract. For example, the creditor complies with § 1026.43(c)(2)(v) by relying on the amount of monthly ground rent referenced in the ground rent agreement currently in effect and applicable to the subject property. Records, other than those discussed above, may be reasonably reliable for purposes of § 1026.43(c)(2)(v) if the source provided the information objectively.

6. *Verification of current debt obligations.* Section 1026.43(c)(3) does not require creditors to obtain additional records to verify the existence or amount of obligations shown on a consumer's credit report or listed on the consumer's application, absent circumstances described in comment 43(c)(3)-3. Under § 1026.43(c)(3)(iii), if a creditor relies on a consumer's credit report to verify a consumer's current debt obligations and the consumer's application lists a debt obligation not shown on the credit report, the creditor may consider the existence and amount of the obligation as it is stated on the consumer's application. The creditor is not required to further verify the existence or amount of the obligation, absent circumstances described in comment 43(c)(3)-3.

7. *Verification of credit history.* To verify credit history, a creditor may, for example, look to credit reports from credit bureaus or to reasonably reliable third-party records that evidence nontraditional credit references, such as evidence of rental payment history or public utility payments.

8. *Verification of military employment.* A creditor may verify the employment status of military personnel by using a military Leave and Earnings Statement or by using the electronic database maintained by the Department of Defense to facilitate identification of consumers

covered by credit protections provided pursuant to 10 U.S.C. 987.

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Appendix H – Closed-End Forms and Clauses.

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30. *Standard Loan Estimate and Closing Disclosure forms.* Forms H–24(A) through (H), H–25(A) through (K), and H–28(A) through (L) are model forms for the disclosures required under §§ 1026.37 and 1026.38. However, pursuant to §§ 1026.37(o)(3) and 1026.38(t)(3), for federally related mortgage loans forms H–24(A) through (H) and H–25(A) through (K) are standard forms required to be used for the disclosures required under §§ 1026.37 and 1026.38, respectively.

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