

## **Advocacy Submits Comments on CFPB's Residential Property Assessed Clean Energy Financing NPRM**

On July 24, 2023, the Office of Advocacy (Advocacy) submitted comments on the CFPB's notice of proposed rulemaking on Residential Property Assessed Clean Energy Financing (PACE). Section 307 of the Economic Growth, Regulatory Relief, and Consumer Protection Act directs the CFPB to prescribe ability-to-repay rules for PACE financing and to apply the civil liability provisions of the Truth in Lending Act for violations.

PACE financing is financing to cover the costs of home improvements. It results in a tax assessment on the homeowner's property. Borrowers pay the loans through increased property tax payments over time. PACE lending is authorized by local governments. However, private companies typically administer the programs, which can include marketing of the loans, managing originations, and making the lending decisions.

- Advocacy questioned the factual basis for the CFPB's certification under the Regulatory Flexibility Act. Specifically, Advocacy questioned the CFPB's inability to provide information about the number of small entities that may be impacted by the proposal and the estimated costs of the proposal.
- Advocacy asserted that the CFPB understated the percentage of small entities that may be impacted by the rulemaking because it was based on a universe of all home improvement contractors rather than limiting it to the businesses that participate in the PACE program. Likewise, the CFPB analyzed all small governmental entities that are in PACE jurisdictions rather than only those that participate in the PACE program.
- The CFPB provided no information about the potential costs. Advocacy recommended that the agency analyze the potential costs to determine the economic impact of the rulemaking.
- Advocacy recommended that the CFPB perform a threshold analysis on the impact of the rulemaking and use the information garnered to provide a factual basis for a certification, if appropriate. If a certification is not appropriate, Advocacy recommended that the CFPB convene a Small Business Regulatory Enforcement Fairness Act panel and perform an initial regulatory flexibility analysis before preparing a final regulatory flexibility analysis for the final rule.
- Advocacy encouraged the CFPB to provide guidance to assist small entities in complying with the requirements of the rulemaking.

A complete copy of [Advocacy's letter to the CFPB](#) is available. For more information, please contact Jennifer A. Smith, Assistant Chief Counsel, at [Jennifer.Smith@sba.gov](mailto:Jennifer.Smith@sba.gov).