

Fast Facts: PACE Financing Proposed Rule

Proposed Rule: The Residential Property Assessed Clean Energy Financing (PACE Financing) Proposed Rule would 1) clarify PACE financing coverage under TILA and Regulation Z through amendments to Regulation Z's exclusion for tax assessments and tax liens from the definition of credit, 2) prescribe ability-to-repay requirements for residential PACE financing and 3) make other clarifications and amendments to certain provisions in Regulation Z to make clear how other rules in Regulation Z apply to PACE financing given its unique nature.

Proposed effective date: At least 1 year after the final rule is published in the *Federal Register*, but potentially longer to ensure compliance with a TILA timing requirement.

Comments due: July 26, 2023 or 30 days after publication in the *Federal Register*, whichever is later.

Available at: www.consumerfinance.gov/rules-policy/notice-opportunities-comment/residential-property-assessed-clean-energy-financing-regulation-z/.

About this document: The CFPB has issued a proposal to amend Regulation Z. The proposal seeks public comment on proposed Federal rules governing certain aspects of PACE financing. The rule only applies to *residential* PACE financing. This document provides a high-level overview of the topics covered in the proposal.

Proposed coverage

Description of proposed rule	Location in proposed rule
The proposal would amend commentary on the definition of credit in Regulation Z to clarify that only “involuntary” tax liens and “involuntary” tax assessments are not credit for purposes of the regulation. The proposal would clarify that tax liens and tax assessments that are voluntary are credit if they meet the definition of credit under Regulation Z and are not otherwise excluded from the regulation.	1026.2(a)(14); Comment 2(a)(14)-1.ii
Because PACE financing is voluntary for the consumer, this clarification would make clear that TILA applies generally to PACE financing.	

Proposed PACE ability-to-repay provisions

Description of proposed rule	Location in proposed rule
<p>The proposal would add a definition of “PACE company” and “PACE transaction” for purposes of the Ability-To-Repay/Qualified Mortgage (ATR/QM) Rule. The new definitions would also apply to other provisions in Regulation Z outside the ATR/QM Rule.</p>	1026.43(b)(14) and (15)
<p>The proposal would apply the existing general ability-to-repay standard of the ATR/QM Rule for mortgage products to PACE transactions. The proposal would provide certain amendments to account for the unique nature of PACE transactions, including:</p> <ul style="list-style-type: none">▪ Additional requirement to consider any monthly escrow payments resulting from the PACE transaction that are in excess of the monthly payment amount considered under the “monthly payment” repayment ability factor. The escrow payments considered would include any escrow cushion that may be applied as a result of the PACE transaction, and, depending on the timing of when a servicer is expected to learn of the PACE transaction, the anticipated effect that any escrow shortage or deficiency would have on the consumer’s periodic payment.▪ Application of the ability-to-repay requirements to both creditors of PACE transactions and any “PACE company” (as defined in the proposal) substantially involved in making the credit decision for a PACE transaction.▪ Inclusion of PACE companies, as defined in the proposal, that are substantially involved in making the credit decision for a PACE transaction under the TILA Civil Liability provision for failure to comply with the ability-to-repay requirements.	1026.43(i)
<p>The proposal would exclude PACE transactions from eligibility for the qualified mortgage categories in the ATR/QM Rule.</p>	1026.43(i)(2)

Proposed existing rule clarifications

Existing rule	Proposed rule provisions	Location in proposed rule
Ability to Repay and Qualified Mortgage (ATR/QM) Rule	The proposal would clarify a comment to the definition of “mortgage-related obligation” to make clear that pre-existing PACE transaction payments are considered property taxes for purposes of this definition.	Comment 43(b)(8)-2
Ability to Repay and Qualified Mortgage (ATR/QM) Rule	<p>The proposal would provide additional clarifications related to PACE transactions under the ATR/QM Rule including:</p> <ul style="list-style-type: none"> ▪ Additional “payment obligation” factor guidance that would clarify that a creditor originating a PACE transaction knows or has reason to know of any simultaneous loans that are PACE transactions if the PACE transactions are included in any existing database or registry of PACE transactions that includes the property location’s geographic area and to which the creditor has access. ▪ Clarification of “third-party verification” requirements to specify that a creditor originating a PACE transaction or a non-PACE mortgage that knows or has reason to know a consumer has existing PACE transaction(s) cannot rely solely on government information that does not reflect the transaction. 	Comment 43(c)(2)(iv)-4; Comment 43(c)(3)-5
High-Cost Mortgage (HOEPA) Rule	The proposal would not make any changes to the HOEPA Rule provisions, but the CFPB seeks comment on whether any clarification is required with respect to how the HOEPA Rule’s provisions apply to any PACE transactions that may qualify as a high-cost mortgage.	1026.32 and 34
Higher-Priced Mortgage Loans (HPML) Escrow Rule	The proposal would exempt PACE transactions from the HPML Escrow Rule. Under the proposal, the prohibition against extending certain HPML’s unless an escrow account is established before consummation would not apply to PACE transactions that would otherwise be subject to the HPML Escrow Rule’s escrow requirement.	1026.35(b)(2)(i)(E)

Existing rule	Proposed rule provisions	Location in proposed rule
Mortgage Servicing Rule	The proposal would exempt PACE transactions from the periodic statement requirements of the Mortgage Servicing Rule.	1026.41(e)(7)
TILA-RESPA Integrated Disclosure (TRID) Rule	The proposal would provide a model Loan Estimate form and model Closing Disclosure form for disclosure of PACE transactions.	Appendix H
TILA-RESPA Integrated Disclosure (TRID) Rule	<p>The proposal would include certain modifications, clarifications, and exemptions related to disclosures in the Loan Estimate and Closing Disclosure requirements to account for the unique nature of PACE transactions, including provisions related to:</p> <ul style="list-style-type: none"> ▪ The Projected Payments Tables' escrow account and taxes, insurance, and assessment disclosures to include exemptions and modifications. ▪ The Contact Information Tables to include PACE company contact information. ▪ The Other Considerations Table in the Loan Estimate and the Loan Disclosures Table in the Closing Disclosure to include additional or alternative disclosures related to the "Late Payment," and "Assumptions" disclosure in both forms, the "Servicing" disclosure in the Loan Estimate, and the "Partial Payment" disclosure in the Closing Disclosure. ▪ The Transaction Information disclosures on the Closing Disclosure to add disclosures about the PACE company. ▪ The Other Disclosures Table's "Liability After Foreclosure" disclosure in the Closing Disclosure to provide modifications to the disclosure. ▪ Exemptions from the requirement to provide the Escrow Account Table and related information on Page 4 of the Closing Disclosure. ▪ Exceptions and modifications permitted under the proposed new model PACE Loan Estimate form and 	1026.37(p); 1026.38(u); Appendix H

Existing rule	Proposed rule provisions	Location in proposed rule
	Closing Disclosure form, which would 1) permit applicable unit-period tailoring, such as in the Loan Terms and Projected Payments Tables and 2) permit disclosure of a specific PACE financing program name that will be recognizable to the consumer in place of “PACE” as used in the proposed model form.	

Additional resources

Find more information and sign up for updates about the PACE Financing Proposed Rule at www.consumerfinance.gov/rules-policy/rules-under-development/residential-property-assessed-clean-energy-financing-regulation-z/.