

April 24, 2017

The Honorable Tom Cotton  
U.S. Senate  
124 Russell Senate Office Building  
Washington, DC 20510

The Honorable John Boozman  
U.S. Senate  
141 Hart Senate Office Building  
Washington, DC 20510

The Honorable Marco Rubio  
U.S. Senate  
284 Russell Senate Office Building  
Washington DC, 20510

Dear Senators Cotton, Boozman, and Rubio:

The undersigned trade associations—representing collectively real estate professionals, home builders, and mortgage lenders and servicers—write today to express strong support for your recently introduced legislation, S.838, the *Protecting Americans from Credit Entanglements Act of 2017*.

While energy efficient home improvements can be beneficial for homeowners, we have serious concerns with the Property Assessed Clean Energy (PACE) program construct. Residential PACE loans are—in substance—mortgage financing and should be subject to federal consumer protection requirements. S.838 will rightfully provide these loans the same Truth in Lending Act (TILA) consumer protections required of other mortgage products.

As you know, PACE loans were developed to help finance energy efficient retrofits on real property—e.g., solar panels, energy efficient appliances and windows, etc. PACE program specifics vary by state/municipality, but typically these loans are initiated by the private companies approving contractors to make these improvements, with financing from proceeds raised by issuing municipal revenue bonds. The bonds are secured by the payments on the PACE loan obligation; the loan payments are added to the borrower's property tax bill and then paid through property tax installments—typically over 15 or 20 years. The outstanding PACE loan obligation then runs with the property (not the borrower) going forward.

Although PACE loan obligations have all the attributes of a mortgage product, they are not subject to federal consumer protection requirements—as this alternative financing structure has been misclassified as a tax assessment rather than a loan. Consequently, a standardized, comprehensive disclosure framework does not exist for PACE loans. Moreover, there are no requirements for an assessment of a borrower's income, credit history, outstanding credit obligations, or expected monthly payments in connection with PACE products. Instead, PACE

financing today is often based on a borrower's equity in their property and their mortgage and property tax payment history, rather than on their true ability to repay their financial debt.

Moreover, PACE loan interest rates—typically between eight and twelve percent—are exponentially higher than traditional mortgage products and other available financing options, despite the fact that they hold the same priority position as unpaid property taxes. Saleability issues also exist for homes encumbered by a PACE loan,<sup>1</sup> and consumers are complaining—through the *Wall Street Journal*<sup>2</sup> and other media—about a lack of real understanding over what their PACE loan terms entail.

PACE loan consumer protections currently vary from state-to-state, municipality-to-municipality, and above all they do not treat PACE loans like the mortgage financing products they are. If enacted, S.838 would protect American homeowners by requiring federal TILA-rooted requirements and considerations for PACE loans—including the Consumer Financial Protection Bureau's "Ability-to-Repay" and "Know Before You Owe" rules, *Home Ownership and Equity Protection Act* standards, etc.

Again, PACE loans are—in substance—consumer loans secured by real property and should be subject to federal consumer protection requirements, not dependent on a patchwork of limited or non-existent state/municipal laws that do not adequately protect homeowners.

We appreciate your recognition of the need for straightforward, appropriate protections in this space. Thank you again for your introduction of S.838. We look forward to working with you and other members of Congress to advance this important legislation.

Sincerely,

American Bankers Association  
American Land Title Association  
Appraisal Institute  
Arkansas Land Title Association  
California Association of REALTORS®  
California Bankers Association  
California Credit Union League  
California Land Title Association  
California Mortgage Bankers Association  
Connecticut Mortgage Bankers Association

---

<sup>1</sup> Although outstanding PACE loan obligations technically "run with the property," real estate professionals report that many subsequent purchasers of these homes reject the presence of a PACE loan obligation and insist that the seller extinguish the PACE financing before consummating the purchase. This leaves the original borrowers with a closing table surprise and far less in sale proceeds than they anticipated. The presence of the PACE loan obligation may also negatively impact home values, especially in foreclosure situations.

<sup>2</sup> See e.g., "America's Fastest-Growing Loan Category Has Eerie Echoes of Subprime Crisis" (available at [https://www.wsj.com/articles/americas-fastest-growing-loan-category-has-erie-echoes-of-subprime-crisis-1484060984?mod=itp&mod=djemITP\\_h](https://www.wsj.com/articles/americas-fastest-growing-loan-category-has-erie-echoes-of-subprime-crisis-1484060984?mod=itp&mod=djemITP_h)); and "Renovate America Masked Borrower Debt Woes" (available at <https://www.wsj.com/articles/renovate-america-one-of-americas-fastest-growing-lenders-didnt-disclose-it-made-payments-to-some-borrowers-1488969001>).

Credit Union National Association  
Florida Land Title Association  
Housing Policy Council of the Financial Services Roundtable  
Independent Community Bankers of America  
Missouri Land Title Association  
Montana Land Title Association  
Mortgage Bankers Association  
Mortgage Bankers Association of Arkansas  
Mortgage Bankers Association of Florida  
Mortgage Bankers Association of Missouri  
National Association of Federally-Insured Credit Unions  
National Association of Hispanic Real Estate Professionals®  
National Association of Home Builders  
National Association of Real Estate Brokers  
National Association of REALTORS®  
New England Land Title Association  
Real Estate Service Providers Council  
The Realty Alliance