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May 7, 2019

The Honorable Kathy Kraninger
Director
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, DC 20552

VIA: PACEFinancingANPR#cfpb.gov and http://www.regulations.gov
RE: Docket No. CFPB-2019-0011 RIN 3170-AA84

Dear Director Kraninger:

The American Bankers Association is pleased to provide comments on the Consumer Financial Protection Bureau's ("the Bureau") advance notice of proposed rulemaking ("ANPR") soliciting information relating to residential Property Assessed Clean Energy (PACE) financing.
The ABA was strongly supportive of Section 307 of the Economic Growth and Regulatory Relief and Consumer Protection Act (EGRRCPA) which mandates that the Bureau prescribe regulations to apply to residential PACE financing the purposes of the Truth in Lending Act's (TILA) Ability to Repay (ATR) requirements as well as the general civil liability provisions of violations of ATR.

On October 15, 2018, ABA joined a number of other trade association and civil rights, and community and consumer advocacy groups in a letter to then acting Director Mulvaney urging the Bureau to promulgate ability to repay regulations for residential PACE loans and to explicitly incorporate residential PACE into TILA's overall mortgage protections.

In that letter we noted:

> PACE loans often have little connection to the promised energy savings either due to overzealous or deceptive marketing, or consumer usage patterns that undermine the expected cost saving. While these problems exist in the home improvement market generally, consumers that use home improvement lending products benefit from consumer protections that do not apply to PACE loans. As this is a form of consumer credit, PACE loans should be subject to the same rules as all other forms of consumer credit used for home improvement, especially when the consumer uses their home as collateral for the loan.

RESIDENTIAL PACE LOANS ARE SUBJECT TO ALL OF TRUTH IN LENDING, NOT JUST ABILITY TO REPAY

As explained in our letter of October, 2018, residential PACE loans are "consumer credit" under TILA and its implementing regulation, Regulation Z and should be subject to Regulation Z generally, including its disclosure and right of rescission provision. While residential PACE's repayment mechanism differs from a traditional loan, it is beyond dispute that the *raison d'etre* for residential PACE is to finance a consumer product for home improvement. The method of repayment does not change the underlying nature of the transaction - credit, which Regulation Z defines as "the right to defer payment of debt"[1] The fact that the indebtedness attaches to the property rather than to the borrower makes the loan akin to an assumable property-collateralized loan.

The 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 credit terms available to him and avoid the uninformed use of credit…"[2] In addition, Congress specifically found that "economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit."[3] Clearly, residential PACE loans are promoted and function as credit for consumer purposes, and consumers would benefit from the ability to understand the PACE loan terms and to compare those terms with alternative credit. Clearly, the ability to compare would promote competition, as Congress envisioned. In addition, given that failure to repay a residential PACE loan can result in a significant loss to consumers — loss of their home — it is imperative that consumer protections and disclosures on par with those provided to loan types subject to TILA also apply to residential PACE loans.

Our colleagues at the National Consumer Law Center (one of the other co-signers of the October 15, 2018 letter) have done considerable research and analysis to support the conclusion that PACE loans are consumer credit subject to Regulation Z. We agree with their findings, analysis, and conclusion, and we include their analysis as an attachment to this letter. In summary, they make clear that PACE loans are "consumer credit" under Regulation Z. They distinguish residential PACE loans from tax liens and tax assessments, which are excluded from Regulation Z's definition of credit, pointing out that, unlike tax assessments, residential PACE loans are voluntary transactions. Congressional intent in passing Section 307 of EGRRCPA was to clarify that the Bureau, in applying the ATR provisions to residential PACE loans, should take into account "the unique nature of Property Assessed Clean Energy financing." Simply put, the intent was not to limit TILA's application only to ATR requirements, but to address the unique features of residential PACE loans when applying the ATR aspects of TILA.

[1] 12 CFR 1026.2(14).
[2] 15 USC 1601(a).
[3] *Id.*

THE RIGHT OF RESCISSSION AFFORDED UNDER TRUTH IN LENDING IS A NECESSARY CONSUMER PROTECTION FOR PACE BORROWERS

The three day right of rescission afforded to certain transactions, including opening or extending an open-end credit plan, found at 15 USC Section 1035, applies to (among other products) home equity lines and loans offered by banks and other lenders, and should also be applied to residential PACE financing. It provides a prospective borrower a "cooling off" period as well as time to compare financing costs and features. This is a protection that is especially important for residential PACE loans, which are frequently presented to borrowers in their home, with little time to compare or shop before agreeing to the loan. If PACE advocates truly believe in providing borrowers with affordable and beneficial financing options for energy efficiency and related products and services, they should be willing to provide a borrower with the right to compare financing options as afforded by this important consumer protection set forth by TILA.

We commend the Bureau for issuing an ANPR to gain information on the nature and specifics of PACE financing in the various jurisdictions that have authorized programs. We believe that sound regulation must be based upon a solid knowledge of the products and services being regulated. The ANPR process should provide the Bureau with details on the specific nature of the various programs offered across the nation so that any necessary accommodation can be made for features unique to the various programs. Moreover, the Bureau should use this opportunity in clarifying the application of the ATR provisions of Regulation Z to residential PACE loans to explicitly apply the disclosure and other substantive provisions of TILA and Regulation Z that apply to all other consumer credit. Providing uniform disclosures and other protections will promote the goals and purpose of TILA by informing consumers so they understand and can compare options as well as promote competition.

Thank you for this opportunity to provide comments on this important issue. We stand ready to assist the Bureau as it moves forward with developing a regulation to apply TILA protections to residential PACE borrowers and we urge you to do so expeditiously. If you have questions or wish to discuss any of our comments in greater detail, please contact the undersigned at (202)663-5480 or at JPigg@aba.com.

Sincerely,

Senior Vice President and Sr. Counsel
American Bankers Association

Attachment

The rationale of the tax lien and tax assessment exclusions from "credit" found in the 1981 official staff commentary do not apply to PACE loans. The California HERO "assessment contract" extends "credit" under TILA for several reasons. The fact that a local authority provides the funds to the contractor installing the energy improvements does not affect the application of TILA. A government or governmental subdivision or agency can be a "creditor" under TILA.[451] HERO documents extend "credit" because they create a debt and give the homeowner the right to defer payment of the debt as discussed below. Moreover, the credit constitutes "consumer credit" because the monies provided pay for energy-related home improvements to homes used for family, personal, or household purposes.[452]
The 1969 FRB letters and subsequent comments of the agency provide the rationale for excluding tax liens, tax assessments, and court judgments from the definition of credit in the official staff commentary in 1981.[453] That is, tax liens, tax assessments, and court judgments that constitute involuntary obligations not contracted for between the parties are not "credit" under TILA. The FRB consistently distinguished these types of involuntary obligations from voluntary transactions. If an obligation is voluntary, i.e., consensual, and the obligor is granted the right to defer payment of the debt or incur debt and defer its payment, "credit" is extended.[454] A voluntary contractual assessment under California law is distinct from a tax assessment in that the latter is levied by the local authority without the contractual consent of the homeowner. Consequently, a tax assessment is involuntary.[455] The voluntary PACE contractual assessment program did not exist at the time the FRB issued the 1981 commentary. As a result, the FRB did not address California's use of "assessment" in the context of a voluntary agreement.
The word "debt" is not defined by TILA or Regulation Z. In this situation, the regulation instructs that state law or the contract determines the meaning.[456] The assessment contract does not define "debt" but California common law does: "A sum of money which is certainly and in all events payable is a debt, without regard to the fact whether it be payable now or at a future time. A sum payable upon a contingency, however, is not a debt, or does not become a debt until the contingency has happened."[457] Applying this state law definition, the HERO assessment contract creates a "debt" because it creates a liability for a specific sum of money by agreement that arises at the time the contract is signed.[458] The contract, therefore, meets the TILA definition of "credit" because payment of the debt is deferred over time.
This state law analysis of what constitutes "debt" is supported by the reasoning in *Pollice v. National Tax Funding, L.P.*[459] In the context of the collection of property taxes imposed by the local taxing authority, the court ruled that there was no "debt" and, therefore, there could be no "credit" under TILA. The court looked to the definition of debt in the Fair Debt Collection Practices Act (FDCPA),[460] another federal consumer protection statute, rather than state law. The Third Circuit summarized the FDCPA definition in this way: " 'debt' is created whenever a consumer is obligated to pay money as a result of a transaction whose subject is primarily for personal, family or household purposes."[461] The court determined that a "transaction" suggests an exchange where a monetary obligation arises "as a result of the rendition of a service or purchase of property or other item of value."[462] Regarding property taxes, there is no exchange because the obligation to pay arises from the involuntary levying of taxes.[463] In contrast, the court also ruled that charges imposed for the provision of water and sewer services constituted "debts" at the time they initially were owed to the governmental entity because the obligations arose out of requests for water and sewer services that were incurred primarily for personal, family, or household purposes.[464] Payment plans for water and sewer obligations, therefore, met the TILA definition of "credit."[465]
Employing either the state or federal law definition of "debt," the result is the same. The HERO assessment contract creates a debt because the homeowner voluntarily agrees to repay a sum of money in exchange for the promise of the local governmental agency to pay a contractor to install energy efficient home improvements. Moreover, the homeowner agrees to pay this debt in installments with interest and the agency agrees to defer payment.[466] Thus, a "credit" transaction is born under TILA. The tax lien and tax assessment exclusion does not apply because these HERO transactions "involve the voluntary incurring of debt."[467] In a different context, the Fifth Circuit found that a loan used to pay off delinquent property taxes was not subject to TILA because the loan did not extinguish the tax

lien. Rather, the lender acquired rights to the involuntary tax lien until the consumer repaid the loan.[468] *Billings* did not address the question of whether a voluntary loan that is collected through the property tax system is credit in the first instance. The HERO program, however, is analogous to the voluntary provision of water and sewer services and resulting debt described in the *Pollice* case to which TILA does apply.[469]

Moreover, bill analyses and comments by various committees of the California legislature during the PACE enactment process in 2008 describe the contractual transactions as "loans."[470] In 2016, the California legislature enacted the PACE Preservation and Consumer Protection Act (A.B. 2693) that amended the 2008 Act to require that a standard financing estimate and disclosure be provided to the homeowner before the contract is signed, along with a notice of the homeowner's right to cancel the transaction. "This bill responds to concerns that PACE financing extends credit secured by a home without providing truth in lending disclosures and without the underwriting safeguards applicable to other consumer loans."[471] Bill analyses and comments by various committees of the California legislature during the amendment process again described the contractual transactions as "loans," "credit secured by the home," and "contractual assessment related debt."[472]

In 2017, the California legislature tightened its regulation of PACE financing by subjecting:

"PACE lenders to similar licensing and regulatory oversight [applicable to those subject to the Finance Lenders Law], including minimum criteria for securing a license, the periodic examination of licensees, and the ability to investigate, issue orders and suspend a license. The legislation also features new underwriting guidelines predicated on an ability-to-pay standard that borrows heavily from other forms of consumer finance."[473]

The ability-to-repay and verification standards enacted in this bill are similar to those enacted by Congress in the Dodd-Frank Act applicable to residential mortgage loans.[474] The Senate and House analyses relied on a *Wall Street Journal* article[475] to support the need for these new rules given the rise in PACE loan defaults noted in the article.[476] In the context of describing how program administrators hired by local governments are paid, these legislative reports note that the cost "is not borne by the local agency, but is built into PACE *loan* financing."[477]

TILA exemptions should be narrowly construed.[478] Courts examine the true nature of the transaction, not the form, to make these decisions.[479] This latter principle is particularly compelling because the voluntary assessment transaction documents walk, talk, create debt, and perform just like credit.[480] It is noteworthy that in 2000, the FRB added payday loans and deferred presentment loans as examples of transactions meeting the definition of "credit."[481] This example appears immediately following the list of exclusions, including the tax lien and tax assessment exclusion. In the supplementary information accompanying its rulemaking, the agency stated:

TILA, as implemented by Regulation Z, reflects the intent of Congress to provide consumers with uniform cost disclosures to promote the informed use of credit and assist consumers in comparison shopping. This purpose is furthered by applying the regulations to transactions, such as payday loans, that fall within the statutory definition of credit, *regardless of how such transactions are treated or regulated under state law*.[482]

This comment supports using an analysis that looks to substance not form when assessing whether a particular transaction constitutes credit under TILA, regardless of the characterization of that transaction under state law.

One federal district court recently ruled that PACE contracts in California constitute tax assessments, do not create debt under state law, and fall squarely within the tax lien and tax assessment exclusion from the definition of credit under TILA.[483] In deciding whether the PACE contracts constitute tax assessments, the court failed to address the distinction between a tax assessment and a voluntary contractual assessment. The former is a special assessment that, under California law, "is a charge imposed on particular real property for a local public improvement of direct benefit to that property."[484] If the local authority authorizes the tax assessment, the involuntary tax is imposed on all properties in the assessment district in a proportional amount. In contrast, a voluntary contractual assessment is an alternative procedure for authorizing assessments "to finance the installation [of] energy efficient improvements that are permanently fixed to residential . . . real property."[485] As described more fully in , *supra*, the cost of energy efficiency improvements to a particular property is financed via a voluntary contractual mechanism. The enabling provisions of the statute use the phrase "voluntary contractual assessment" and never the phrase "tax assessment."[486]

As for whether PACE contracts create a "debt," the *In re HERO Loan Litigation* court relied on *City of Huntington Beach v. Superior Court*[487] for the proposition that "[u]nder California law, a tax assessment lien on property does not constitute a personal debt owed by a consumer."[488] The court concluded that PACE contracts do not create a debt because they are assessments against the property. *City of Huntington Beach*, however, did not involve a voluntary contractual assessment. Indeed, the California legislature did not enact the statute authorizing the financing of energy efficiency improvements to residential real property until 2008, thirty years after *City of Huntington Beach* was decided. Rather, that case addressed the distinction between an involuntary transfer tax on

real property[489] and an involuntary real property tax.[490] *City of Huntington Beach* involved a class action suit to recover real property transfer taxes paid by sellers and buyers of real property. A city ordinance declared that the transfer taxes were a debt to the city recoverable by an action against the person owing the tax (as compared to real property taxes that are only secured by the land). Based on the ordinance, the court held that the transfer taxes were excise taxes and not real property taxes (and not subject to a cap that had been exceeded if they were), and thus not recoverable by plaintiffs.[491] The court did not explicitly rule that real property taxes are not debts. Instead, it distinguished them from transfer taxes based on the local ordinance and the different methods of collection applicable to each.

Moreover, the *In re HERO Loan Litigation* court did not address the two 1969 FRB staff letters, the FRB's comments on the issue of "voluntary versus involuntary" liens during the 1981 rulemaking that created the tax exclusions, or the CFPB's validation of the 1969 letters in 2016.[492]

Also glaringly absent from the court's analysis was the characterization of PACE assessment contracts as "loans" by the various committees of the California legislature during the program's enactment in 2008, and the legislature's concerns which led it in 2016 to make the consumer protection amendments to the Act discussed above.

The analysis in this subsection applies to the transactional documents used in California's HERO program. It should extend, however, to any residential PACE program where the enabling state law and PACE contract and disclosures contain the same or similar provisions and features highlighted in and , *supra*. The PACE statute itself may refer to the transaction as a loan in other states.[493]

To summarize, analyzing whether TILA applies to PACE loans consists of several steps:

- ● First, determine the common law definition of "debt" under state law.
- ● Second, review the PACE state statute and related legislative material for mention of "loan," "financing," "debt," "credit," and other words or phrases describing the nature of the transaction and the voluntary nature of the contract.[494]
- ● Third, review all transactional documents for indicia of the voluntary creation and repayment of a sum of money.
- ● Fourth, review all handbooks and other material created by the local authority and the authority's administrator with these issues in mind.

Once TILA covers a transaction, other critical considerations arise. First, one must decide which set of disclosure rules apply to the loan.[495] Next, the right of rescission arises in consumer credit transactions in which *(there is)* a security interest in the consumer's principal dwelling.[496] Important consumer protections apply to consumer credit secured by real property or the consumer's principal dwelling.[497] The regulations defining the scope of coverage of these protections must be carefully assessed.

Footnotes

- 451 15 U.S.C. § 1602(d), (e), (g). *See* , *supra* (discussion of the elements of the definition of "creditor").
- 452 Reg. Z § 1026.2(a)(12).
- 453 *See* , *supra*.
- 454 *See* , *supra*.
- 455 Cal. Const. art. XIIID, §§ 2, 4. *See* , *supra*.
- 456 Reg. Z § 1026.2(b)(3).
- 457 People v. Arguello, 37 Cal. 524, 525 (Cal. 1869).
- 458 *See also Debt*, Black's Law Dictionary (9th ed. 2009).

- 459 Pollice v. Nat'l Tax Funding, Ltd. P'ship, 225 F.3d 379 (3d Cir. 2000). This case is summarized in , *supra.*

- 460 15 U.S.C. § 1692a(5) ("any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal family, or household purposes").

- 461 Pollice v. Nat'l Tax Funding, 225 F.3d 379, 401 (3d Cir. 2009).

- 462 *Id. See also Transaction,* Black's Law Dictionary (9th ed. 2009) ("The act or an instance of conducting business or other dealings; esp., the formation, performance, or discharge of a contract.").

- 463 Pollice v. Nat'l Tax Funding, 225 F.3d 379, 402 (3d Cir. 2009).

- 464 *Id.* at 400.

- 465 *Id.* at 409–411.

- 466 *See also* Prentiss Cox, *Keeping PACE?: The Case Against Property Assessed Clean Energy Financing Programs*, 83 U. Colo. L. Rev. 83, 106 (2011) ("PACE financing has all the characteristics of a mortgage loan other than the mechanism of billing and payment through property tax. Unlike a public works tax assessment, PACE financing is voluntarily assumed by the homeowner and provides cash to the homeowner for improvements that ultimately will be owned by the homeowner.").

- 467 46 Fed. Reg. 20,848, 20,851 (Apr. 7, 1981). *See* , *supra*.

To track additions to and changes over time in Regulation Z and the Official Interpretations to Regulation Z and the rationale provided for each change, review Appendix B Historical Chart of Regulation Z and Official Interpretations [1], available only online as a digital appendix to this treatise.

- 468 Billings v. Propel Fin. Servs., L.L.C., 821 F.3d 608, 613 (5th Cir. 2016). *See* , *supra*.

- 469 Pollice v. Nat'l Tax Funding, 225 F.3d 379 (3d Cir. 2000).

- 470 *E.g.*, Cal. Assembly Comm. on Local Governments, 2007–2008 Reg. Sess., Rpt. on A.B. 811 [2], at 4 (Jan. 15, 2008), *available at* http://leginfo.legislature.ca.gov; Cal. Assembly, 2007–2008 Reg. Sess., A.B. 811 Assembly Floor Analysis [2] 3 (Jan. 28, 2008), *available at* http://leginfo.legislature.ca.gov; Cal. Senate Local Govt. Comm., 2007–2008 Reg. Sess., Rpt. on A.B. 811 [2], at 3 (May 29, 2008), *available at* http://leginfo.legislature.ca.gov; Cal. Assembly, 2007–2008 Reg. Sess., A.B. 811 Assembly Floor Analysis [2] 3 (June 27, 2008), *available at* http://leginfo.legislature.ca.gov.

Interestingly, legislative documents repeatedly noted that one reason the legislature used contractual assessments to finance energy home improvements, rather than direct loans, was because the California Constitution prohibits the legislature from authorizing "[A] local government to loan money to an individual for the payment of that individual's liabilities. However, this does not prohibit expenditures and disbursements for public purposes, even if a private person incidentally benefits. The courts have generally deferred to the Legislature to determine what constitutes a public purpose so long as it has a reasonable basis." Cal. Assembly Comm. on Local Governments, 2007–2008 Reg. Sess., Rpt. on A.B. 811 [2], at 2 (Jan. 15, 2008), *available at* http://leginfo.legislature.ca.gov; Cal. Senate, 2007–2008 Reg. Sess., A.B. 811 Senate Floor Analysis [2] 4 (June 23, 2008), *available at* http://leginfo.legislature.ca.gov.

- 471 Cal. Senate, 2015–2016 Reg. Sess., A.B. 2693 Senate Floor Analysis [3] 1–4 (Aug. 22, 2016), *available at* http://leginfo.legislature.ca.gov.

- 472 Cal. Assembly Comm. on Banking & Fin., 2015–2016 Reg. Sess., Rpt. on A.B. 2693 [4], at 5–6, 9 (Apr. 22, 2016), *available at* http://leginfo.legislature.ca.gov; Cal. Assembly Comm. on Local Government, 2015–2016 Reg. Sess., Rpt. on A.B. 2693 [4], at 4–7, 9 (May 3, 2016), *available at*

http://leginfo.legislature.ca.gov; Cal. Assembly, 2015–2016 Reg. Sess., A.B. 2693 Assembly Floor Analysis [4] 1, 3–4, 7 (May 11, 2016), *available at* http://leginfo.legislature.ca.gov; Cal. Senate Comm. on Governance & Fin., 2015–2016 Reg. Sess., Rpt. on A.B. 2693 [4], at 1–2, 5 (June 10, 2016), *available at* http://leginfo.legislature.ca.gov; Cal. Senate Jud. Comm., 2015–2016 Reg. Sess., Rpt. on A.B. 2693 [4], at 1, 3–4 (June 27, 2016), *available at* http://leginfo.legislature.ca.gov; Cal. Senate, 2015–2016 Reg. Sess., A.B. 2693 Senate Floor Analysis [4] 1, 3–5 (Aug. 4, 2016), *available at* http://leginfo.legislature.ca.gov; Cal. Senate, 2015–2016 Reg. Sess., A.B. 2693 Senate Floor Analysis [3] 1–5 (Aug. 22, 2016), *available at* http://leginfo.legislature.ca.gov; Cal. Assembly, 2015–2016 Reg. Sess., A.B. 2693 Assembly Floor Analysis [4] 4 (Aug. 26, 2016), *available at* http://leginfo.legislature.ca.gov.

- 473 Cal. Senate Comm. on Ins., Banking and Fin. Inst., 2017-2018 Reg. Sess., Rpt. on A.B. 1284 [5], at 10 (Sept. 14, 2017), *available at* http://leginfo.legislature.ca.gov (quoting the supporters' summary of the bill's purposes).

- 474 *Compare* 15 U.S.C. § 1639c(a), *and* Reg. Z § 1026.43(c), *with* Cal Fin. Code § 22687 (eff. Apr. 1, 2018).

- 475 Kirsten Grind, *More Borrowers Are Defaulting on Their "Green" PACE Loans*, Wall St. J., Aug. 15, 2017.

- 476 Cal. Assembly Comm. on Local Government, 2017-2018 Reg. Sess., Rpt. on A.B. 1284 [6], at 8 (Sept. 16, 2017) (emphasis added), *available at* http://leginfo.legislature.ca.gov; Cal. Senate Comm. on Ins., Banking and Fin. Inst., 2017-2018 Reg. Sess., Rpt. on A.B. 1284 [6], at 9 (Sept. 14, 2017) (emphasis added), *available at* http://leginfo.legislature.ca.gov.

- 477 Cal. Assembly Comm. on Local Government, 2017-2018 Reg. Sess., Rpt. on A.B. 1284 [6], at 7 (Sept. 16, 2017) (emphasis added), *available at* http://leginfo.legislature.ca.gov; Cal. Senate Comm. on Ins., Banking and Fin. Inst., 2017-2018 Reg. Sess., Rpt. on A.B. 1284 [6], at 7–8 (Sept. 14, 2017) (emphasis added), *available at* http://leginfo.legislature.ca.gov.

- 478 Thomas v. Myers-Dickson Furniture Co., 479 F.2d 740, 745 (5th Cir. 1973).

- 479 *See* , *supra*.

- 480 Justice Mosk of the California Supreme Court stated this general principle and that court has repeated it in a variety of contexts. *In re* Deborah C., 635 P.2d 446, 455 (Cal. 1981) (Mosk, J., concurring) ("if an object looks like a duck, walks like a duck and quacks like a duck, it is likely to be a duck"). *See also* Phillippe v. Shapell Indus., 743 P.2d 1279, 1282 (Cal. 1987) (same).

- 481 Official Interpretations § 1026.2(a)(14)-2; 65 Fed. Reg. 17,129 (Mar. 31, 2000).

The FRB made clear that these transactions involve agreements to defer payment of a debt. As a result, they "fall[] within the existing statutory and regulatory definition of 'credit,' [and] the comment does not represent a change in the law." 65 Fed. Reg. at 17,130. *See also* , *infra*.
To track additions to and changes over time in Regulation Z and the Official Interpretations to Regulation Z and the rationale provided for each change, review Appendix B Historical Chart of Regulation Z and Official Interpretations [1], available only online as a digital appendix to this treatise.

- 482 65 Fed. Reg. 17,129, 17,130 (Mar. 31, 2000) (emphasis added).

- 483 *In re* HERO Loan Litig., 2017 WL 3038250 (C.D. Cal. July 17, 2017).

- 484 Russ Bldg. P'ship v. City & Cnty. of San Francisco, 750 P.2d 324, 329 (Cal. 1988) (describing an "assessment district," the procedure for creating such districts through local legislative resolutions, and the

hearing rights of affected property owners to block the creation of the district and the resulting imposition of the tax); Cal. Const. art. XIIID, §§ 2, 4.

- 485 Cal. Sts. & High. Code §§ 5898.10, 5898.12 (West).
- 486 *See, e.g.*, Cal. Sts. & High. Code §§ 5898.20, 5898.22, 5898.28, 5898.31 (West).
- 487 144 Cal. Rptr. 236, 240 (Cal. Ct. App. 1978).
- 488 *In re* HERO Loan Litig., 2017 WL 3038250, at *3 (C.D. Cal. July 17, 2017).
- 489 By city ordinance, the transfer tax was declared a debt to the city and recoverable by an action against the person owing the tax. City of Huntington Beach v. Super. Ct., 144 Cal. Rptr. 236, 238 (Cal. Ct. App. 1978).
- 490 *Id*. at 240 (defining a real property tax as a tax "imposed on the ownership of property as such; they recur annually on a fixed date; and no personal liability arises from their nonpayment, the sole security for the taxes being the property itself.").

Whether a tax is collectible by an action against the persons liable or solely through an action against the property is not necessarily relevant as to whether the amount owed is a debt. See definition of debt under California law in People v. Arguello, 37 Cal. 524, 525 (Cal. 1869).

- 491 City of Huntington Beach v. Super. Ct., 144 Cal. Rptr. 236, 240 (Cal. Ct. App. 1978).
- 492 *See* , *supra.*
- 493 *See, e.g.*, Me. Stat. tit. 35-A, § 10153(4); Minn. Stat. §§ 216C.435, 216C.437; Or. Rev. Stat. § 470.500(1); Va. Code Ann. § 15.2-958.3(B).
- 494 Other sources describe the PACE contracts as "loans" or "debts." *See, e.g.*, Fed. Hous. Fin. Agency, FHFA Statement on Certain Energy Retrofit Loan Programs [7] (July 6, 2010) (describing PACE products as "loans" and "obligations"), *available at* www.fhfa.gov; White House, Policy Framework for Pace Financing Programs [8] 2, 4–7 (Oct. 18, 2009) (referring to PACE transactions as "loans"), *available at* http://obamawhitehouse.archives.gov; Offices of the President & Vice President of the United States, Middle Class Task Force, Council on Environmental Quality, Recovery Through Retrofit [9] 8 (Oct. 2009), *available at* http://obamawhitehouse.archives.gov ("PACE provides beneficial financial terms, streamlines the application process with lower application and transaction fees relative to other lending options, and establishes a financing mechanism in which that debt obligation is tied to the property and the owners receiving the energy savings benefits."); Elizabeth Bellis et al., Energy Programs Consortium, R-PACE: Residential Property Assessed Clean Energy [10] 8 nn.9, 15, 24 (Mar. 2017), *available at* www.energyprograms.org (describing PACE products as "loans" and "obligations"). *See also* Cnty. of Sonoma v. Fed. Hous. Fin. Agency, 710 F.3d 987, 990–992 & n.2 (9th Cir. 2013) (citing to several FHFA documents that describe PACE contracts as "loans"; "The FHFA 'grandfathered' in PACE first-priority liens for homeowners who obtained PACE loans before July 6, 2010.").
- 495 *See* , , , *infra*.
- 496 *See* , *infra*. If the PACE documents include a notice of cancellation, , *infra*, should be consulted to determine if the lender complied with the federal TILA rules, in addition to applicable state law.
- 497 *See* , *infra*.

Source: National Consumer Law Center, Truth in Lending [9th ed.], updated at www.nclc.org/library
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[7] http://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Statement-on-Certain-Energy-Retrofit-Loan-Programs.aspx
[8] http://obamawhitehouse.archives.gov/sites/default/files/PACE_Principles.pdf
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