Consumer Financial Protection Bureau (CFPB) Update to Residential PACE Financing

Background:
In May 2018, Congress passed the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA). This legislation included Section 307, directing the Consumer Financial Protection Bureau (CFPB) to promulgate ability-to-repay (ATR) regulations for residential property assessed clean energy financing.

In March 2019, CFPB opened an Advanced Notice of Proposed Rulemaking towards this effort and the County submitted extensive comments and documents related to the Program. Additionally, as requested by the CFPB rulemaking team in 2020, the County voluntarily submitted encrypted data related to the Program.

At the end of December 2022, CFPB staff requested a meeting with local governments that took place on January 25, 2023. In response to information shared at that meeting, the County submitted additional written comments by the deadline of February 2, 2023.

In summary, staff has shown significant data and results regarding Program participation, the lack of any issues, very low tax delinquency rates, excellent consumer protections, and has requested an exception to ATR requirements for municipal PACE programs, like SCEIP, that do not use private PACE administrators.

CFPB's Proposed Rulemaking:
On May 1, 2023, CFPB issued the proposed rules with a request for public comment. Under the proposed rules, the County would be a "creditor" under the Truth in Lending Act when it offers residential SCEIP financing and would be subjected to similar disclosure and ability to repay requirements applicable to private lenders that originate home mortgages. The proposed regulations would apply to voluntary financing to cover the cost of home improvements that results in a tax assessment on residential property, like residential SCEIP financing. The proposed regulations would not apply to SCEIP financing for commercial properties or apartment complexes with more than four units. Nor would the proposed regulations apply to assessment districts established by the County to fund public improvements.

The proposed changes would mean that the Program would need to make an "ability to repay" determination prior to executing an assessment contract. This would require the Program to consider the property owner's credit history, current income, expected income the property owner is reasonably assured of receiving, current obligations, debt-to-income (DTI) ratio or residual income after paying non-mortgage debt and mortgage-related obligations, employment status, and other financial resources other than equity in the dwelling or real property that secures repayment of the loan.

Currently, the Program does not collect this type of financial information. Rather, the Program underwriting considers, among other things, property-based metrics such as lien-to-value ratio, project-to-value ratio, and assessment-to-value ratio, as well as a property owner's payment history, including property tax payments, mortgage payments and bankruptcy filings. As such, the proposed ability to repay requirements would be a major change for the Program.

On May 1, 2023, CFPB also released a report titled “Property Assessed Clean Energy (PACE) Financing and Consumer Financial Outcomes” that is critical of consumer outcomes for PACE loans. Notably, this report only considered outcomes from two private PACE administrators in California (Renew Financial and Ygrene Energy Fund) and two private PACE administrators in Florida. The report does not consider the outcomes for SCEIP customers despite the fact that the County submitted data to CFPB for this purpose in 2020.

In July 2023 the Bureau accepted the SCEIP Steering Committee request for a Memorandum of Oral Ex Parte Presentation. Staff clearly outlined how and why the Program differs from Third Party PACE providers, also using the opportunity to remind the CFPB of the uniqueness of PACE financing, and siting the benefit our PACE program affords property owners and our County to re rebuild and harden our communities from disasters. The Bureau closed public comment on July 26, 2023, having received in excess of 100 letters, many in support of allowing PACE financing to continue without TILA and Ability to Repay Underwriting regulations, referencing the unique nation of PACE financing as it was originally intended by AB811. As of April 2024, the Bureau has not issued any rule to date.