TO: Principals and Staff at —

August 6, 2024

The Consumer Financial Protection Bureau
The Environmental Protection Agency
The Federal Trade Commission
The U.S. Department of Energy
The U.S. Department of the Treasury

Equitable and Just Green Lending Starts with Strong Consumer Protections

Surging public and private investment in consumer-facing green lending products[1] promises to lower household energy bills, improve environmental quality and health, combat climate change, and better protect families from climate impacts. The inrush of capital and new products can also expose families to predatory financing, unsuitable products, and outright fraud. The urgency to deploy capital for climate mitigation and resilience projects must not overshadow the need for consumer protections. To ensure that Inflation Reduction Act (IRA) resources deliver the intended positive outcomes for vulnerable consumers and communities and effectively mitigate climate change, the government must implement robust consumer protections for green lending products.

Due to growing demand and new federal incentives, millions more consumers will choose to begin green projects (e.g., retrofitting homes to be more energy efficient and resilient) and buy green products (e.g., electric vehicles) in the coming years. With limited grant funding available, and where public funds are unable to cover the full cost of the products, many products will be financed with loans that could pose risks to household financial stability. New lenders and contractors, as well as established lenders with limited experience in financing green projects, will emerge to capitalize on the rapid influx of resources to facilitate green

[1] For the purposes of this letter, we use the term "green lending" or "green lending products" to refer both to financing to consumers for climate-related projects from traditional lenders (i.e., from a financial institution to a household or small business) as well as products that involve other types of lenders (and their contractors) such as a utility company, car dealer, or solar company. Examples of green lending can include, but are not limited to: home improvement loans, including for home hardening, energy and water efficiency, and electrification; loans for residential rooftop solar and battery storage; financing for community solar; green mortgages (single and multifamily); and, loans for electric vehicles as well as charging stations and infrastructure.

lending. Many IRA programs specifically target vulnerable communities and communities of color as recipients of these products, and as has often been the case, bad actors are more likely to target these communities with predatory practices to pad profits. Agencies must establish strong consumer protections to head off potential fraud and predatory practices as well as unsustainable lending.

Green lending products designed to decrease energy burdens, improve health outcomes, and provide other benefits must be provided in a safe, equitable, and non-predatory way. For example, Black, Latine, and Native American households face higher energy burdens and energy insecurity due to systemic inequalities. Low-income and BIPOC households and communities desperately need opportunities to access energy savings, lower pollution levels, and clean energy jobs without being subjected to further financial harm.

The green lending residential property assessed clean energy (rPACE) financing programs have sometimes brought consumer harms including substantial debts and even foreclosures, particularly to vulnerable homeowners, many of whom were limited English proficient and elderly. As a result of those harms, the Consumer Financial Protection Bureau (CFPB) proposed a rule in 2023 to guard against unscrupulous practices and prevent unnecessary mortgage foreclosures in states that are operating rPACE programs, currently California, Florida, and Missouri.

An additional consideration is that solar fraud and the bankruptcies of solar companies are becoming more commonplace. The uncertainty involved in predicting energy savings and the predatory door-to-door sales practices deployed by bad actors have in many cases resulted in substantial household financial losses. Not only is this an unfair and unacceptable outcome for families, it also reduces public trust in clean energy technologies and undermines federal efforts to expand their uptake to combat climate change.

Common Challenges with Green Lending Products
The current state of the green lending marketplace illuminates some key challenges across the ecosystem:

(1) Affordability and Accessibility: Particularly for low-income households, green lending products may not be designed with their circumstances in mind (i.e., tax credits when households may not have sufficient tax liability to qualify). Additionally, products may have high interest rates or include burdensome terms and conditions that make it unlikely for a household, especially a low-income household, to be able to safely choose, qualify for, and benefit from the product.
(2) Needs of Underserved Communities: For green lending products to successfully reach underserved households and communities, programs need to be developed in concert with communities and creative structures need to be considered. Green lending

programs need to provide opportunities for community-level investments—such as community solar, or electric vehicle charging stations—so the benefits can extend to multiple households.

(3) Misleading Sales Practices: While in some instances certain products like energy efficiency measures or rooftop solar can lower utility bills, contractors or salespeople have falsely promised homeowners, for example, that utility bills would disappear or be significantly reduced as a result of consumer energy savings even though such projections are not guaranteed and often do not fully materialize. In other cases, consumers have been told that the costs of green product installation would be offset by federal tax credits even when the homeowner lacks sufficient tax liability to recoup the potential benefit. Without guidance from a trusted independent source, households may be convinced to either accept an inappropriate product, or on the other hand, be reluctant to utilize a green lending product that is appropriate.

(4) Contractor Incentives: The utilization of third parties and contractors, and the volume-based incentives often included in contracts, have facilitated instances of predatory behavior, and at times even fraud. This has been a significant problem in the rPACE program and in the rooftop solar industry. Contractors have mischaracterized household savings opportunities that put families in a bind (for example, by claiming panels are free when in reality the financial incentive is a tax rebate), installed non-functioning or poorly functioning equipment (e.g., solar panels or water heaters) or caused damage to homes during installations. While seeding community acceptance of new products, like rooftop solar, can spread interest by word of mouth or local visibility, contractors that mislead or deceive customers can undermine community acceptance.

(5) Door-to-Door Sales and Electronic Signatures: Following a sales pitch, consumers are often pressured to accept a product on the spot and sign electronically, creating significant risk that consumers do not fully understand the product, financing costs, terms, or the implications of the decision. Electronic signatures also come with the risk that the consumer was unable to read the provided disclosures and meaningfully agree to them and that the consumer may not have received copies of the documents.

(6) Predatory Contract Terms: Contract terms can also be predatory. Lenders or their contractors often hide dealer fees or other junk fees within the costs of a loan, although such fees should be disclosed and included in the calculation of the annual percentage rate. Many contracts also include forced arbitration clauses.[2]

(7) Tenant Challenges: Building owners with tenants are often not incentivized to make energy efficiency and decarbonization retrofits because those savings may be accrued by the tenants, not themselves. Since one-third of U.S. households are renters, this presents a significant challenge to reaching scale with green home lending products.

[2] Forced arbitration clauses are often slipped in as take-it-or-leave-it terms and conditions in consumer contracts, they force consumers to give up their Constitutional right to access the public courts and instead funnel them to a private system, presided over by an arbitrator paid for by the business.

Where landlords do install energy efficient upgrades, tenants may be displaced or face rent increases as landlords attempt to recoup their costs. Some home energy related measures have charges that are "attached to the meter" rather than the customer, and future residents may not be informed of the additional utility charges until after they sign the mortgage or lease and their first bill arrives.

Consumer Protection Principles

Green lending programs offered by governments, nonprofits, lenders, or utilities should be affordable, transparent, and accountable in order to safely and equitably expand access to green lending products. The following principles for guardrails to protect consumers should be applied, consistent with underlying law, for green financing products, including those that receive any federal funding (e.g., grant, rebate, tax incentive, loan guarantee).

(1) Equitable Sequencing and Braiding of Opportunities: Program implementers should support and promote navigators who are independent of lenders and contracting companies, such as HUD-certified housing counselors, to assist borrowers in sequencing financing opportunities and securing the most favorable terms. These trusted, expert navigators must be required to first inform households, especially low-income families, about available no-cost programs, such as the federal Weatherization Assistance Program (WAP), the Low Income Home Energy Assistance Program (LIHEAP), and state or utility-run zero-cost programs, before offering subsequent incentives and low-cost financing.

(2) Energy Assessments: Program implementers or navigators should provide consumers with resources on low-cost, independent energy audits/assessments prior to financing any non-immediate, proactive green home improvement projects, including solar installations, to inform property owners of their property's baseline energy use and their greatest opportunities for energy and cost savings. Independent navigators can share projected energy cost savings with the consumer as a way of communicating benefits of green products, but those projections must also incorporate the cost of ongoing maintenance and repair in calculations and be transparent that those savings may not materialize due to household and market developments. Financial underwriting should also incorporate the fact the projected energy savings might not fully materialize.

(3) Equitable Design and Implementation: Program design and implementation must include considerations of equitable access, language access, and community engagement. For green financing products designed with zero or low interest rates and strong consumer protections, outreach should prioritize low-income homeowners and tenants, and residents of other underserved communities in single-family, multifamily, and manufactured housing.

(4) Contractors and Dealers: Programs should discourage door-to-door marketing for outreach and require that contracting be completed by consumers with assistance from independent navigators, including community-based organizations, to minimize

predatory marketing practice. Program contractors should undergo rigorous pre-approval and, following completion of the work, an independent inspection must approve of the installation and operation before a contractor is paid. A list of vetted contractors should be published with contractors delisted for failed quality control inspections and/or consumer complaints. Any electronic signature on a contract must be in full compliance with federal and state electronic signature requirements.

(5) Legal Pathways: Consumers should receive clear, advance, written disclosures for any contract. Borrowers must be made fully aware of their existing rights under federal consumer protection laws including their right to cancel for a period after the transaction and their options in the event of a dispute. Contracts must comply with existing Federal Trade Commission (FTC) regulation which requires notice in the contract of the preservation of consumers' claims and defenses against any future holder of the contract. Contracts should not include forced arbitration or class action waivers, and program implementers should provide loss mitigation measures and put in place timely dispute-resolution procedures.

Recommendations for Federal Agencies

The success or failure of green programs and products will depend on federal agencies, state agencies, and lenders taking specific action to ensure robust consumer protections.

(1) Clear Consumer Protection Program Guidance: The consumer protection principles listed above should apply to all relevant programs and lending products. The involved federal agencies must collaborate to produce consumer protection plan requirements for all federal programs, like the DOE's consumer protection best practices for the IRA home energy rebates program, and the requirements for each green product type should be aligned as closely as possible across federal programs. Guidance from agencies must include the applicability of relevant consumer protections laws to green lending, including that which is done outside of the purview of federal programs.

(2) Monitoring, Oversight, Accountability, and Enforcement: The CFPB and FTC must be vigilant about potential abuses in new green lending products by scrutinizing new products and services and their impacts, attentively supervising entities engaged in these markets, making sure consumers know how and where to raise concerns, taking swift enforcement action against predatory practices and actors, and developing new guidance and rules as needed.

(3) Direct Consumer Education: In order to minimize predatory lending, scams, and fraud, federal agencies should create a central online resource hub to host FAQs and tip sheets for consumers on green lending products that address common gaps or pitfalls in consumer awareness, ways to identify scams and fraud, local pricing guides, and checklists of required disclosures. It is important for consumers to have direct access to clear information, but this alone will not suffice. It is the responsibility of federal agencies to require consumer protections, including in their programs, to minimize consumer harm.

We look forward to working with you to promote consumer protections across green lending programs and products. For further discussion, please contact Jessica Garcia: jessica@ourfinancialsecurity.org.

Sincerely,

Americans for Financial Reform Education Fund

AKPIRG
Alabama Interfaith Power & Light
American Council for an Energy-Efficient Economy (ACEEE)
Berkeley Center for Consumer Law & Economic Justice
CAMEO Network
Center for Economic Justice
Center for Responsible Lending
Ceres
Citizen Action/Illinois
Consumer Action
Consumer Federation of America
Earth Advantage
Earth Ethics, Inc.
Food & Water Watch
Green America
Hip Hop Caucus
Inclusiv
Institute for Agriculture and Trade Policy
Just Solutions
Maine People's Resource Center
Massachusetts Action for Justice
Mazaska Talks
National Association of Consumer Advocates
National Coalition for Asian Pacific American Community Development (National CAPACD)
National Community Reinvestment Coalition (NCRC)
National Consumer Law Center (on behalf of its low-income clients)
National Council of Asian Pacific Americans (NCAPA)
National Fair Housing Alliance
National Housing Law Project
National Housing Resource Center
Natural Resources Defense Council
Oregon Consumer League
Professor Alysson Snow, University of San Diego School of Law

Public Citizen
Public Justice Center
Revolving Door Project
Rise Economy
South Carolina Appleseed Legal Justice Center
Stand.earth
Texas Campaign for the Environment
The Greenlining Institute
The People's Justice Council
The Phoenix Group
350.Org
350 Wisconsin
350 Yakima Climate Action