May 16, 2017

The Honorable Tom Cotton
United States Senate
124 Russell Senate Office Building
Washington, DC 20510

The Honorable John Boozman
United States Senate
141 Hart Senate Office Building
Washington, DC 20510

The Honorable Marco Rubio
United States Senate
284 Russell Senate Office Building
Washington, DC 20510

The Honorable Brad Sherman
U.S. House of Representative
2181 Rayburn House Office Building
Washington, DC 20515

Dear Senators Cotton, Boozman and Rubio and Representative Sherman:

On behalf of the nation’s cities and counties, we are writing to express concerns with the Protecting Americans from Credit Expansion Act (S. 838 and H.R. 1958), which would restructure how Property Assessed Clean Energy (PACE) programs operate. While we support efforts to strengthen consumer protections and disclosure requirements for residential PACE programs, we are concerned that these bills would undermine local government authority, and ultimately jeopardize the viability of PACE programs nationally.

The health, well-being and safety of our citizens and communities are top priorities for local governments. Local elected officials are often charged by both federal and state regulators to address environmental and energy goals, such as renewable energy requirements, as well as take voluntary actions to reduce greenhouse gas emissions to meet their own sustainability goals. PACE is an important public policy tool that helps local governments meet these objectives. Local governments use PACE to help residential and commercial property owners finance energy efficiency upgrades or renewable energy installations. By utilizing PACE, local governments are able to remove many barriers to renewable energy and energy efficiency retrofits, such as high upfront costs associated with buying and installing systems. As a result, property owners reduce water and energy costs, which benefits local communities, and the upgrades ultimately save them money on their energy bills.

Additionally, in Florida, property owners can use PACE to obtain wind-resistance upgrades such as new roofs, windows and more that can sustain and decrease the amount of damage from a hurricane. This, in turn, strengthens local communities, helps maintain local property values and reduces insurance premiums. PACE is one of the most important tools state and local governments have to encourage these types of voluntary improvements that save homeowners money and improve the value of their home.
However, PACE programs are often mischaracterized. PACE is a financing tool, not a loan, built on traditional tax assessments, which local governments have managed for over 100 years. Thirty-two states have approved legislation that authorizes local governments to use tax assessments for PACE. These state-authorized, local government assessments are an exercise of the traditional authority of local governments to utilize the tax code for public benefit.

Under S. 838 and H.R. 1958, PACE would be subject to Truth in Lending Act (TILA) requirements, the same requirements that mortgage bankers must follow for home loans. This would hamstring a local government’s ability to use local tax assessments in the manner in which they were designed, taking away another tool in the local government tool box to encourage residential energy improvements. Additionally, the legislation would overburden local tax collections systems by restricting how local governments can bill, credit and collect PACE line items on property taxes, as well as make local governments subject to licensing requirements by reclassifying them as creditors. These complications would likely lead local governments to exit PACE, effectively ending the program.

Moreover, last December, the U.S. Department of Energy (DOE) released Best Practice Guidelines for Residential PACE Financing Programs. These guidelines outline best practices to help state and local governments develop and implement programs and recommend protections that PACE programs should put in place for consumers who voluntarily opt into the service, as well as for lenders that hold mortgages on properties with PACE assessments. DOE also provides additional program design recommendations that address the unique needs and potential vulnerabilities of low-income and elderly households. Cities, towns and counties support these best practice guidelines.

Given these negative outcomes that S. 838 and H.R 1958 pose to local government authority, we call on Congress to consider alternative legislation that focuses on expanding consumer protection and disclosure requirements, without threatening this successful energy financing program. While consumer protections and disclosure requirements are extremely important to ensure the long-term strength of PACE, the current legislation is not the best solution to providing those assurances. We would welcome the opportunity to work with you on legislation for consumer protection and disclosure requirements for residential PACE programs that would build upon the current success of the program.

Sincerely,

Clarence E. Anthony
CEO and Executive Director
National League of Cities

Matthew D. Chase
Executive Director
National Association of Counties

CC: Members of the Senate Committee on Banking, Housing, and Urban Affairs
Members of the House Financial Services Committee