

September 27, 2024

The Honorable Rohit Chopra
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: Recommendations to Address Shared Residential Solar Panel Transaction Concerns

Dear Director Chopra:

Thank you for the Consumer Financial Protection Bureau's continued engagement with the undersigned advocacy organizations on our shared concerns over the consumer protection issues in residential solar panel transactions. We appreciate the Bureau's work on this issue, including the recent Solar Financing Issue Spotlight report and Consumer Advisory. We noted in a previous cross-agency letter¹ supported by a wide range of organizations that residential solar energy systems and other green lending products hold great potential to help consumers in many ways, from lowering household energy bills² to improving environmental quality and health to lessening the impacts of climate change.

The solar panel market is growing at an incredibly fast pace and expanding into lower-income and disadvantaged communities. In a statement accompanying its solar financing issue spotlight, the Bureau noted, "[t]he market for residential solar energy systems continues to grow rapidly, and is shifting toward less affluent communities."³

As demand surges for residential solar panels, the undersigned consumer advocacy organizations have observed a growing pattern of unfair, deceptive, and abusive business practices from the often-intertwined solar panel installers and solar financing companies. Unfortunately, this predatory conduct has left many people on the hook for large surprise loan balances and undisclosed finance fees that can increase the cost of solar transactions by 15 to 30 percent.⁴ Sometimes the solar panels that do not work as promised or even at all and in extreme cases have led to bankruptcies and home foreclosures.⁵ The industry has targeted some of the most vulnerable households, including the elderly, lower income consumers, consumers of color, and those with limited English proficiency.⁶

¹ Letter from Americans for Financial Reform Education Fund and 46 environmental, racial justice, consumer advocacy, community advocacy, and academic organizations to the Consumer Financial Protection Bureau, the Environmental Protection Agency, the Federal Trade Commission, the Department of Energy, and the Department of the Treasury (Aug. 6, 2024), https://ourfinancialsecurity.org/wp-content/uploads/2024/08/Consumer-Protections-for-Green-Lending_AFREF-Sign-On_August-2024.pdf.

² Forrester, S.P., Montañés, C.C., O'Shaughnessy, E. et al. *Modeling the potential effects of rooftop solar on household energy burden in the United States*. 15 NAT. COMM. 4676 (2024).

³ Press release, Consumer Financial Protection Bureau, *CFPB Report Finds Lenders Cramming Markup Fees and Confusing Terms into Solar Energy Loans* (Aug. 7, 2024).

⁴ Press release, Minnesota AG Keith Ellison, *Attorney General Ellison takes actions to protect consumers from deceptive conduct in the solar industry* (Jul. 17, 2024).

⁵ Press release, Center for Responsible Lending, *Widespread Residential Solar Energy Adoption Threatened by Industry Sales and Financing Model That Repeats Disastrous Predatory Subprime Mortgage Lending Practices* (Jul. 30, 2024).

⁶ Jackson Dorsey & Derek C. Wolfson, National Bureau of Economic Research, *Unequal Uptake: Assessing Distributional Disparities in the Residential Solar Market*, NBER Working Paper 32814 (August 2024).

To protect consumers from unsuitable products, predatory financing, and outright fraud, we urge the Bureau to adopt consumer protections to address predatory solar transactions.

1. For all solar financing transactions, the Bureau should define certain practices to be deceptive, including the following types of misrepresentations:

- Claiming that a solar panel system will be “free,” when it is not.
- Claiming that tax credits will be available, when the homeowner may have income too low to owe any taxes, or for other reasons may have no tax liability.
- Claiming that a government program will pay for all or part of the system, when no such program is available, or the seller cannot ascertain that the household will be eligible for such programs.
- Promising that future energy savings will be sufficient to offset the payments that the consumer will have to make for the solar system or offset monthly electrical utility bills, without an unqualified and easily understood written guarantee.
- Threatening that the seller or its assignee will repossess the rooftop solar system through the UCC-1 security interest if the consumer defaults, if the Bureau determines that these security interests are rarely enforced.

2. The Bureau should issue guidance for complying with the federal E-Sign Act in home solicitation transactions, which are a common method solar transactions take place. The guidance should require meaningful compliance with E-Sign’s consumer consent requirements when a business wishes to provide mandatory written disclosures electronically. In particular, E-Sign⁷ requires that the consumer’s consent to receive electronic disclosures must be “in a manner that reasonably demonstrates that the consumer can access information in the electronic form” The Bureau should clarify that this demonstration requirement cannot be met when the consumer is using the seller’s computer or tablet to complete the transaction, or when the seller creates an email address for the consumer in the solar transaction process.⁸

3. The Bureau should issue guidance reminding holders of retail installment sales agreements that they are responsible for compliance obligations of sellers, including for solar transactions. The Bureau should also consider enforcement actions against solar financing companies that are known to repeatedly violate or ignore the Holder Rule.

4. The Bureau should clarify that for solar equipment sales and financing, TILA disclosures and requirements apply to transactions in which the actual cost of the solar system is within TILA coverage limits⁹ and that this amount does not include any extra charges imposed by the seller for arranging financing.

⁷ 15 U.S.C. § 7001(c)(1)(C)(ii).

⁸ *See de Moura Castro by Hilario v. Loanpal, LLC*, No. 3:21-CV-1020 (CSH), 2024 WL 510908, at *4 (D. Conn. Feb. 8, 2024).

⁹ 15 U.S.C. § 1603(3).

5. **The Bureau should clarify that for solar equipment sales and financing, seller-imposed charges for financing must be disclosed as part of the finance charge** unless the charges legitimately meet the definition of seller points in Reg. Z § 1026.4(c)(5).¹⁰
6. **The Bureau should clarify that the Consumer Leasing Act applies to leases of solar equipment.** Additionally, the assignment of residual values in these transactions must be based on legitimate expectations of the future values.
7. **The Bureau should define certain practices in Power Purchase Agreements (PPA)¹¹ to be deceptive,** including making a promise that the homeowner's electric bills will be lower with the PPA arrangement, unless the seller has provided a written guarantee.
8. **The Bureau should investigate reported racial disparities in pricing of rooftop solar systems.** Recent research by the National Bureau of Economic Research found that Black households may be paying more for rooftop solar installations than white households, even when controlling for income.¹² We are concerned that bad actors may push higher fees and financing charges onto households of color.

Thank you for your continued commitment to consumer protections in residential solar panel transactions. We look forward to continued collaboration so that the many benefits of solar energy expansion are not undermined by predatory business practices and repeat offenders in the solar panel installation and financing industries. Please do not hesitate to contact christine@ourfinancialsecurity.org with any additional questions or concerns.

Sincerely,

Americans for Financial Reform Education Fund
Center for Responsible Lending
Consumer Federation of America
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low-income clients)

¹⁰ Note that the common understanding of seller points is that they are paid to reduce the costs of credit for the buyer, and generally are less than 3% of the sales prices. However, in many solar transactions, they are equal to 30 to 40% or more of the sales price. Such charges are not true seller points and are, instead, an evasion of TILA's disclosure rules.

¹¹ In a PPA transaction, the solar company installs solar panels on the consumer's roof which remain owned by the solar provider, and the consumer promises to purchase the electricity that is generated by those solar panels at a specified price, which generally increases by 2% or more each year. The solar power generated by the panels is actually sold to the local utility for a price that is established by tariffs. The price for each kWh that the consumer uses is often higher than the price the consumer would have paid for electricity secured directly from the local utility. These contracts typically are for 20 or more years and allow the solar company to place a UCC-1 security interest on the panels installed on the consumer's roof.

¹² Jackson Dorsey & Derek C. Wolfson, National Bureau of Economic Research, [Unequal Uptake: Assessing Distributional Disparities in the Residential Solar Market](#), NBER Working Paper 32814 (August 2024).