

September 9, 2024

The Honorable Rohit Chopra, Director
Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, D.C. 20552

The Honorable Lina Khan, Chair
The Honorable Rebecca Kelly Slaughter, Commissioner
The Honorable Alvaro Bedoya, Commissioner
The Honorable Melissa Holyoak, Commissioner
The Honorable Andrew N. Ferguson, Commissioner
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Request for guidance regarding Tariffed On-Bill (TOB), Inclusive Utility Investment (IUI) and Pay As You Save (PAYS)

Dear Director Chopra, Chair Khan, and Commissioners Slaughter, Bedoya, Holyoak, and Ferguson,

The undersigned consumer, community, housing, and civil rights organizations urge the Consumer Financial Protection Bureau (CFPB) and Federal Trade Commission (FTC) to issue guidance on Inclusive Utility Investment (IUI)/Tariffed On-Bill Financing/Pay As You Save (PAYS) (referred to jointly as “TOB”) loans. These products are growing substantially in the market and, without clear consumer protections, pose significant challenges to consumers’ financial and housing stability, while threatening their access to essential utility services. In light of these concerns, we hereby make the following requests:

1. The Bureau should clarify that TOB is a credit product and is subject to the Truth in Lending Act (TILA); and
2. The CFPB and FTC should issue guidance on TOB sales, marketing and product structure based on the deception and unfairness doctrines.

TOB, IUI, and PAYS¹ products share the following features:

- Electric and gas utilities make loans to their customers, often through third-party implementers and using either their own capital or, more often, capital from a third party. The loans support residential (single and multifamily) energy-related home improvement projects and equipment purchases, including solar panels and battery storage. Renter eligibility requires written landlord consent. Often, the implementer will develop the product and handle the marketing and sales, as well as interfacing with the actual contractors doing the retrofits.
- Borrowers repay the loan as a separate line item on their monthly utility bills, following a straight-line, fully amortized payment schedule. Repayments go directly to the utility, and are passed through in the case of a third-party capital provider.
- In most IUI/PAYS programs, the monthly loan payment is not supposed to exceed 80 percent of the projected energy savings on an annual basis (although in practice it often does).² If the 80% portion of projected savings is not sufficient to cover the loan payments based on the full project cost according to initial calculations, borrowers also must make a down payment (referred to as a “copayment”) sufficient to reduce the loan payments below 80% of projected savings.
- The utility does not perform a traditional credit check. Borrowers are approved on the basis of their utility bill payment history and whether energy savings are projected to exceed loan payments.
- Borrowers are required to make repayments as long as they remain in the home and there is an outstanding repayment balance.
- Nonpayment can result in disconnection of essential utility service.
- Any arrearages stay with the previous occupant even after they move and may impact their ability to connect utility service in their next home until arrearages accumulated through the date of disconnection are paid off.
- If the borrower vacates the home, future payments are automatically transferred to the next occupant, with no consent required from the subsequent occupant (and generally with inadequate notice of the obligation to that subsequent occupant). There also is no reassessment of savings projections based on the new occupant’s energy usage patterns. Nonpayment by the subsequent occupant also can result in utility shut-off.
- Consumers generally are told these products are not debt and that savings will exceed payments due (and we discuss below that the product does constitute credit and that savings

¹ Pay As You Save and PAYS are registered trademarks owned by the Energy Efficiency Institute, whereas TOB and IUI are generic terms. The term “PAYS” is used in utility programs implemented by a PAYS licensee. TOB and IUI can be used interchangeably. While all share many features, there are also some differences.

² Projected savings are not required to exceed monthly payments (which vary seasonally). Projected savings are based on contractor modeling and are not guaranteed. The PAYS model requires that loan payments be capped at 80% of projected savings; other versions of TOB/IUI may require a different “buffer.”

often do not materialize). There is also a risk consumers will forgo subsidized programs in favor of these products under the assumption they are essentially no-cost.

TOB products are loans placed on the utility bill without the protections required for traditional installment debt.

On-bill financing allows customers to repay energy efficiency and renewable energy upgrades through their utility bills, with the loan tied to the customer (traditional model) or to the home meter (tariff-based model).³ While under TOB the debt is tied to the meter and is marketed as a utility expense rather than a loan, it operates similarly to other non-recourse loans that defer payment to future installments. Standard credit disclosures and remedies are not provided because the TOB programs declare that these products are not loans.⁴

Unlike traditional on-bill financing loans, TOB requires no credit check, basing approvals on utility payment history and a requirement that projected energy savings exceed loan payments. TOB promoters point to the lack of credit underwriting as a way to serve low- and moderate-income (LMI) consumers and underserved communities,⁵ but the lack of credit information provides little guidance on a consumer's credit history (and the reliance on modeled savings does not ensure ability to repay). Depending on the suite of energy efficiency, renewable energy or other clean technology measures financed, the monthly payment obligation for TOB loans can run for 10 to 15 years or longer, during which time the consumer is obligated to pay as long as they remain in their home. Collection for non-payment is enforced through disconnection of essential utility service.⁶ TOB programs typically do not track disconnection for nonpayment of loan charges, per se, as such charges are treated as only one element of the overall utility bill.

³ Berneta Haynes, National Consumer Law Center, *Tariff-based On-Bill Financing: Assessing the Risks for Low-Income Consumers* (Feb. 2023), at <https://www.nclc.org/resources/tariff-based-on-bill-financing-assessing-the-risks-for-low-income-consumers/>.

⁴ *See, e.g.*, Holmes Hummel and Harlan Lachman, "What is inclusive financing for energy efficiency, and why are some of the largest states in the country calling for it now?," ACEEE Summer Study on Energy Efficiency in Buildings 13-3 (2018) ("A PAYS program participant does not take on a new debt obligation and, therefore, does not face the liability or the risk of disqualification due to underwriting criteria required in the banking sector. Like a loan, PAYS allows for payment over time, but unlike a loan, the PAYS obligation ends with the customer's occupancy, at which point cost recovery continues with a successor customer.").

⁵ *See, e.g.*, U.S. EPA, *Reaching Underserved Communities*, at <https://www.epa.gov/statelocalenergy/inclusive-utility-investments-tariffed-bill-programs#communities>; EETILITY, *Everyone Saves with PAYS* at <https://www.eetility.com/pays>.

⁶ *See, e.g.*, Pay As You Save® Model Tariff, developed by Energy Efficiency Institute, Inc., at <https://www.seealliance.org/wp-content/uploads/EEL-Model-Tariff-Language-04.13.20.pdf> ("Disconnection for Non-Payment: Without regard to any other Commission or utility rules or policies, the Service Charges shall be considered as an essential part of the customer's bill for electric service, and the utility may disconnect the metered structure for nonpayment of Service Charges under the same provisions as for any other electric service. If service is disconnected for customers on pre-paid payment plans, Service Charges will be prorated by the day."). *See also* 2024 Virginia Laws Ch. 607 (S.B. 737).

TOB marketing and product design obscure the nature of the debt and the financial risks to consumers.

In TOB marketing, consumers purchasing TOB products are told that they are not taking on a loan. Moreover, they are told that the savings will exceed financing payments.⁷ Yet, consumers may end up with higher energy bills, and are obligated to make payments even if the energy savings are less than the amount due in a particular month.

The structure of the TOB product can make monthly energy bills less affordable for low-income households. The typical TOB product calculates the consumer's repayment obligation in a manner that is supposed to ensure that the energy savings outweigh the project cost. The annual TOB service charge usually cannot exceed 80% of the value of the estimated annual savings from the energy project. To calculate the repayment amount, the annual TOB service charge is divided by 12, to determine the monthly TOB surcharge that will be added to the customer's electric bill. In theory, consumers would then pocket the remaining 20% of savings over that period. In reality, some customers may see savings and others may experience no savings and may have even higher utility bills. Adding to consumer risk exposure, TOB programs often require up-front lump sum payments (the TOB "co-pay") in order to keep the monthly amounts at the 80/20 percent level, an obligation that may result in additional consumer debt if the customer finances the copayment separately, particularly if the consumer relies on a high-cost lending product.

The TOB model does not guarantee energy savings, and estimates of projected energy savings may be inaccurate. The modeling software used to estimate savings can vary in accuracy, leaving consumers to bear the risk of overestimated savings.⁸ Data on an existing TOB program indicate that monthly payments exceed savings in about half of the cases.⁹ Projected savings may not materialize for a range of reasons. Energy bills vary with weather, household energy usage, and other factors including energy costs. There is no readjustment or loan modification mechanism for

⁷ Ashley Muspratt and Jon Blair, Center for EcoTechnology, Ipswich Electric Light Department, Utility Led Acceleration of Residential Efficiency & Electrification Retrofits a Feasibility Study of Tariffed On-Bill Financing in Ipswich, Massachusetts 1 (Aug. 2022) ("Imagine your utility told you they wanted to invest in state-of-the-art technology for your home. No taking on debt, no credit checks, no matter if you're a renter, and no matter if you plan to move soon. . . . This is TOB. Unlike traditional on-bill financing, where a utility makes a loan to a property owner, thus requiring adequate credit history, willingness to take on debt, etc., TOB decouples capital improvements from the individual resident or business.").

⁸ The Energy Efficiency Institute, which originated the PAYS® model makes clear that forecasted energy savings are not guaranteed even while assuring participants will save annually. *See* Energy Efficiency Institute, Inc., PAYS® and Participant Savings (June 2020) ("What happens to the PAYS® charge if a participant does not realize savings through no fault of their own? The simple answer to this question is that the PAYS system assures program participants that the estimated annual savings from their upgrades significantly exceed the utility's cost recovery charges. PAYS does not guarantee savings.").

⁹ *See, e.g.*, Lawrence Berkeley National Laboratory, Energy Markets & Policy, Berkeley Lab reviews participant outcomes in Pay-As-You-Save® (PAYS®) programs (Apr. 18, 2024), at <https://emp.lbl.gov/news/berkeley-lab-reviews-participant-outcomes-pay-you-saver-paysr-programs> ("About half of Midwest Energy PAYS® participants have reduced energy bills." In other words, the forecasted energy screen didn't work for half the participants of the largest PAYS® program in the country.).

changes in energy prices, household composition, or other factors. Energy bills also vary throughout the year, even though the TOB surcharge is uniform across the months. When the projected monthly savings fall short of the actual savings, a customer faces higher utility bills for that month.

Moreover, consumers with lower credit scores face a higher risk of delinquency and therefore of utility disconnection, even if projected savings are accounted for in the underwriting process. For example, NYSERDA's Green Jobs Green New York program has a public database of over 12,000 on-bill loans, which require that projected savings meet or exceed loan payments, on top of a traditional credit check. Even with this additional project screening in place, the cumulative 120-day delinquency rate for customers with a credit score below 680 (16.53%) is about three times higher than that of customers with scores above 680 (5.52%).¹⁰ Unlike the NYSERDA program, however, TOB programs have no way of knowing which customers are at higher risk of nonpayment and disconnection of their essential utility service because nonpayment is not tracked separately.

Because the monthly repayment obligation stays with the meter, the successor occupant, including any renter, has no assurance that the modeling that went into the TOB loan for the first occupant will provide savings for the successor, as energy usage profiles for the next occupants will likely differ. In addition, there is no assurance that timely, clear notice of this obligation will be provided to a successor occupant, renter or homeowner. For tenants in subsidized housing (who may be eligible for free Weatherization and other programs in any event), maintenance of utility service is often a condition of the lease; disconnection of utility service could lead to eviction and the loss of affordable housing.¹¹ An additional issue is how the tariff would affect the tenant's utility allowance. There is a concern that tariffs will not be included in utility allowance calculations and may increase tenant-paid expenses in subsidized housing.¹² Moreover, any arrearage accrues on the

¹⁰ N.Y. State, Green Jobs, Green New York (GJGNY) Residential Loan Portfolio: Beginning November 2010, *at* https://data.ny.gov/Energy-Environment/Green-Jobs-Green-New-York-GJGNY-Residential-Loan-P/9evn-drxk/data_preview.

¹¹ Tenants whose rent is subsidized by the Housing Choice Voucher (HCV) program are often responsible for ensuring continuous utility service in their residences. *See, e.g.*, Seattle Housing Authority, Housing Choice Voucher Program, Administrative Plan § 5-I C (Family Obligations) (“The family must pay utility bills and provide and maintain any appliances that the owner is not required to provide under the lease [Form HUD-52646, Voucher].”). Failure to do so may result in termination of assistance. *Id. See also* Chicago Housing Authority, Housing Choice Voucher Program, Admin. Plan § 12-I.D, ¶ 16 (Family Obligations) (eff. Feb. 1, 2020). This provision provides: “Maintain the assisted unit in accordance with Housing Quality Standards (HQS). The participant is responsible for keeping the unit in compliance with HQS, including maintaining appliances, paying utility bills and ensuring continuous utility service for any appliances and utilities that the owner is not required to provide under the lease and HAP contract.” *Id.* Tenants in the HCV Program whose leases require tenant-paid utilities who are unable to maintain service are considered in violation of the program rules and can face termination of their housing assistance. *See* 24 C.F.R. § 982.404(b)(1)(i), (b)(3).

¹² Where utilities are tenant-paid, a tenant is entitled to a “utility allowance” to cover reasonable utility costs. The utility allowance is generally credited against the share of rent otherwise payable by the tenant. The treatment of tariffs in determining utility allowances is unclear given the discretion afforded to public housing authorities and in

consumer’s utility bill and follows the consumer, jeopardizing access to essential utility service at a future residence (although future payments remain on the meter).

TOB is a growing energy loan product without sufficient consumer protections.

TOB was initially offered by a handful of smaller utilities—mainly small rural electric cooperatives—to residential utility customers to pay for relatively cost-effective energy efficiency measures.¹³ Measures financed by this early generation of TOB loans included HVAC, insulation, smart thermostats, air sealing and LED lights.¹⁴ Now the TOB loans are being used as a method to pay for a wider array of technologies promoted as cleaner fuel alternatives, rather than energy-saving devices. These technologies, such as electric heat pumps, solar panels, and battery storage, may require increasingly large customer copayments and longer debt terms in order to meet projected savings requirements. There is also a growing interest in adopting TOB to serve low- and moderate- income households for these home improvements.

EPA reports there are 30 IUI/TOB/PAYS programs, mostly through small municipal or rural coops as of 2023, compared to almost 3,000 electric utilities in the US.¹⁵ Currently, there are proceedings in three states—California, Illinois, and South Carolina—exploring how or whether to require the large regulated utilities operating in those states to offer, generally through third parties, TOB to residential customers to pay for a range of energy efficiency and clean energy technologies. It is important for the Bureau to act before consumers add large investments to their monthly utility expenses without adequate consumer protections and as a result face utility disconnection and housing instability.

In California, there are over 11.5 million residential customers served by three of the large investor-owned electric utilities¹⁶ and over 25% (>3 million) of the residential customers of these large electric utilities are enrolled in the low-income discount rate.¹⁷ In Illinois, there are over 4.7 million residential electric customers served by the two large investor-owned electric utilities and of those customers, over 230,000 received bill payment assistance.¹⁸ More states

other multifamily housing programs. 24 C.F.R. §§ 965.501–965.505 (2023) (public housing). Utility allowances are usually calculated by first determining a “consumption allowance” in terms of units of utility consumption.

¹³ See, e.g., Energy Star, Inclusive Utility Investment, at https://www.energystar.gov/products/inclusive_utility_investment.

¹⁴ NARUC, State Approaches to Pay As You Save Programs Call Summary (Mar. 7, 2022), at <https://www.naruc.org/cpi/commission-support/regulator-roundtables/>.

¹⁵ See, e.g., U.S. EPA, Inclusive Utility Investments: Tariffed On-Bill Programs, at <https://www.epa.gov/statelocalenergy/inclusive-utility-investments-tariffed-bill-programs>; U.S. Energy Information Administration, Investor-owned utilities served 72% of U.S. electricity customers in 2017 (Aug. 15, 2019), at <https://www.eia.gov/todayinenergy/detail.php?id=40913>.

¹⁶ NCLC analysis of the customer counts and low-income customers from the utility disconnection and arrearage reporting data for PG&E, SCE and SDG&E from February 2024 required in CPUC R.18-07-005.

¹⁷ *Id.*

¹⁸ NCLC analysis of the customer counts and low-income customers from the utility disconnection and arrearage reporting data ComEd and Ameren from the Credit, Collections and Arrearages monthly reporting.

may consider TOB, particularly if combined with programs funded by the Inflation Reduction Act (IRA). Notably, IRA Home Energy Rebates Program guidelines specifically exempt TOB and other forms of on-bill financing from state consumer protection plan requirements that apply to other forms of financing used in conjunction with home energy rebate projects.¹⁹ This especially creates risks for consumers who decline rebates and other subsidized programs in favor of an option they perceive as no-cost, but which may in-fact be quite costly.

Timely oversight of TOB is needed.

The transition to clean energy technologies in the home is one of the critical policy matters of our time. Yet, that urgency only heightens the need to ensure robust consumer protections for energy financing products like TOB. *In light of the serious concerns regarding the risk exposure to consumers, we urge the CFPB and FTC to issue guidance on Inclusive Utility Investment (IUI)/Tariffed On-Bill/PAYS products based on the doctrines of deception and unfairness, and the CFPB to clarify that TOB falls under the definition of credit in the Truth in Lending Act (TILA).* We recommend this work be coordinated with other agencies engaged on this issue²⁰ as well as with any broader efforts to issue consumer protections on green lending.²¹

The CFPB should issue guidance clarifying that TOB programs are “credit” subject to TILA.

TILA applies to a transaction when four conditions are met: the credit is offered or extended to consumers; the creditor extends credit regularly; the credit is subject to a finance charge or is payable by written agreement in more than four installments; and the credit is primarily for personal, family, or household purposes.²²

TOB contracts meet all of these requirements and should be regulated as credit. Some of the conditions are obvious. Contracts are offered to residential customers, who are consumers. The purpose of the contract is to make the consumer’s home more efficient, so they are for household purposes. Others require more explanation. As explained below, the company offering the payment arrangement—usually the utility—will be a “creditor” and the transaction will meet the

¹⁹ DOE Home Energy Rebates FAQ #16, “Are on-bill tariff models considered ‘financing’ for the purpose of the consumer protection plan?,” at <https://www.energy.gov/scep/home-energy-rebates-frequently-asked-questions>. See also DOE IRA Home Energy Rebates Guidance ver. 2 § 4.2.5, at 79 (June 17, 2024), at <https://www.energy.gov/scep/home-energy-rebates-application-guidance>.

²⁰ As noted above, DOE has excluded TOB from its IRA rebate state consumer protection plan requirements. EPA also has been supportive of this product. See U.S. EPA, Energy Resources for State and Local Governments, Inclusive Utility Investments: Tariffed On-Bill Programs, available at <https://www.epa.gov/statelocalenergy/inclusive-utility-investments-tariffed-bill-programs>.

²¹ See Coalition Memo to Federal Agencies Urging Consumer Protections for Green Lending (Aug. 6, 2024), available at <https://www.nclc.org/resources/coalition-memo-to-federal-agencies-urging-consumer-protections-for-green-lending/>.

²² Reg. Z, 12 C.F.R. § 1026.1(c)(1).

definition of “credit” and also constitutes installment credit. While TILA has an exemption for public utilities, it does not apply to transactions for durable goods or home improvements.²³

For TILA purposes, a “creditor” is one who regularly extends consumer credit that is subject to a finance charge or payable by written agreement in more than four installments; and to whom the obligation is initially payable. A “person” can be a natural person or an organization.²⁴ TOB contracts are always written for and always require more than four installment payments. The creditor will be said to “regularly” enter into these contracts as long as it does so more than 25 times in one year.²⁵

TOB financing is credit despite its non-traditional structure.

This method of financing qualifies as “credit” for TILA purposes even though it may operate differently from the typical purchase-money financing. TILA defines “credit” as the right granted by a creditor to defer payment of debt or to incur debt and defer its payment.²⁶ The whole point of TOB financing is to defer payment of the full price of the improvement.

All TOB programs create a “debt” because consumers are expected to pay for the efficiency measure and will suffer negative consequences for failing to do so. They will lose their current utility service or access to future service will be affected.

TILA does not provide a definition of “debt” and, instead, defers to state law. However, courts have also looked to federal law or other sources. For example, the Bankruptcy Code defines “debt” as a “liability on a claim.”²⁷ The Code defines a “claim” to mean a “right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.”²⁸ The Fair Debt Collection Practices Act similarly has a broad definition of the word “debt”: “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, whether or not such obligation has been reduced to judgment.”²⁹

It does not matter if the debt is described as non-recourse, i.e., one in which the lender renounces recourse against the consumer personally for repayment. TILA indisputably applies to various

²³ Reg. Z, 12 C.F.R. § 1026.3(c); Off'l Interp. of Reg. Z, 12 C.F.R. pt. 1026, supp. I, § 1026.3(c) cmt. 1-ii.

²⁴ National Consumer Law Center, Truth in Lending § 2.6.2.1 (11th ed. 2023), updated at www.nclc.org/library.

²⁵ Reg. Z, 12 C.F.R. § 1026.2(a)(17)(v). See National Consumer Law Center, Truth in Lending § 2.6.3 (11th ed. 2023), updated at www.nclc.org/library.

²⁶ National Consumer Law Center, Truth in Lending § 2.2.1 (11th ed. 2023), updated at www.nclc.org/library.

²⁷ 11 U.S.C. § 101(12).

²⁸ 11 U.S.C. § 101(5)(A).

²⁹ 5 U.S.C. § 1692a(5).

types of non-recourse debt, such as reverse mortgages and pawn transactions.³⁰ Similarly, the U.S. Supreme Court has held that creditors in bankruptcy still have a “claim” on a “debt” as defined under the Bankruptcy Code even for non-recourse debts.³¹ And a non-recourse debt is still a “debt” for purposes of the FDCPA.³²

The CFPB and FTC should issue guidance on aspects of TOB financing that may constitute deceptive or unfair acts and practices.

Without additional consumer protections, TOB financing is structurally unfair.

TOB financing is a loan often sponsored by public utilities but in many cases administered through third-party implementers. The product is in most cases outside of the usual role of the utility, involving the lending of funds to cover home improvements, although the billing process is then combined with shutoffs of essential utility service used as a collection tool.

An act or practice is generally considered to be “unfair” if it (1) causes or is likely to cause substantial injury to consumers, (2) which is not reasonably avoidable by consumers themselves, and (3) not outweighed by countervailing benefits to consumers or to competition.³³

Without additional protections not currently in place, TOB financing is “unfair” under these criteria. The loss of utility service is a substantial injury because it makes the consumer’s home uninhabitable and, depending on lease terms, may automatically become grounds for eviction. Under certain weather conditions increasingly common around the country, the loss of heat or air conditioning can be fatal.

This injury is not avoidable because consumers cannot control the weather or increases in utility rates—two of the three biggest factors in a utility bill. Consumers can limit their usage, but only to a limited extent. A TOB bill that may sound affordable at origination can easily become unaffordable later if the original estimate of energy savings proves to be inaccurate because the weather changes, the utility increases rates, or usage changes. If that happens, the consumer has no recourse or defense. As discussed above, data on an existing TOB program indicate that monthly payments exceed savings in about half of the cases.³⁴

³⁰ National Consumer Law Center, Truth in Lending § 2.2.2.5 (11th ed. 2023), updated at www.nclc.org/library.

³¹ See, e.g., *Midland Funding, L.L.C. v. Johnson*, 581 U.S. 224, 137 S. Ct. 1407, 1412, 197 L. Ed. 2d 790 (2017); *Johnson v. Home State Bank*, 501 U.S. 78, 83–84, 111 S. Ct. 2150, 115 L. Ed. 2d 66 (1991).

³² *Obduskey v. McCarthy & Holthus L.L.P.*, 586 U.S. 466, 139 S. Ct. 1029, 203 L. Ed. 2d 390 (2019).

³³ 12 U.S.C. § 5531(c)(1).

³⁴ See, e.g., Lawrence Berkeley National Laboratory, Energy Markets & Policy, Berkeley Lab reviews participant outcomes in Pay-As-You-Save® (PAYS®) programs (Apr. 18, 2024), at <https://emp.lbl.gov/news/berkeley-lab-reviews-participant-outcomes-pay-you-saver-paysr-programs> (“About half of Midwest Energy PAYS® participants have reduced energy bills.” In other words, the forecasted energy screen didn’t work for half the participants of the largest PAYS® program in the country.).

This is especially unfair and unavoidable for a successor to the original borrower. As explained above, TOB contracts stay with the meter. A subsequent tenant becomes responsible for the same charge. In practice, a new tenant searching for a rental will probably not even know about the TOB bill surcharge until after signing the lease and opening a new utility service account for the unit.

Lastly, there is no countervailing benefit to the consumer. While energy efficiency upgrades with consumer protections can help consumers safely save money on their utility bills, receiving upgrades through TOB that may be unaffordable and without adequate consumer protections is not itself a benefit and indeed can be harmful. As noted above, in about half of the cases in a recent study consumers did not save enough to cover the payments.

TOB marketing may be deceptive.

There is also a high risk that TOB marketing and sales, often run by third-party implementers, will deceive consumers. First, marketers generally state that the financing is not a loan. As explained above, these programs most certainly qualify as loans. Second, these products are predicated on the theory that the work done on the home will generate sufficient savings to pay the cost of the loan. But those savings are not guaranteed. As already discussed, in one PAYS program, Lawrence Berkeley National Laboratory found that only about half of customers realized enough savings to cover the costs of their PAYS loans. To the extent utilities advertise that the savings will cover the cost, or otherwise lead consumers to believe that will be the case or that their utility bills will be much lower,³⁵ TOB marketing deceives consumers into signing contracts under false pretenses. This deception may also cause consumers to forgo low or no-cost programs or IRA rebates under the false conception that TOB is essentially free.

We urge the CFPB and the FTC to act during this crucial time in the TOB product's development. For further discussion, please contact Alys Cohen (acohen@nclc.org) or Olivia Wein (owein@nclc.org).

Sincerely,

National Consumer Law Center (on behalf of its low-income clients)
National Housing Law Project
Center for Accessible Technology
Center for Responsible Lending
(*cont'd*)

³⁵ See, e.g., Ameren Missouri PAY AS YOU SAVE, Frequently Asked Questions, at <https://www.ameren.com/missouri/residential/energy-efficiency/pays> (“What is the benefit of participating in PAYS? ...Through PAYS, you can make a significant energy-saving upgrade while paying less up front. And even though you will pay down the cost over time on your monthly Ameren Missouri electric bill, the energy-saving upgrade will lower your electric bill significantly, which means your average monthly bill will be lower than what you would otherwise have paid without the program.”).

Citizens Action Coalition of IN
Community Legal Services
Consumer Action
Disability Rights Advocates
Energy Outreach Colorado
Georgia Watch
Haven Services dba. Haven Neighborhood Services
Housing and Economic Rights Advocates
Indiana Community Action Association, Inc.
Jacksonville Area Legal Aid, Inc.
National Association of Consumer Advocates
National CAPACD- National Coalition for Asian Pacific American Community Development
National Fair Housing Alliance
New Jersey Citizen Action
Pennsylvania Utility Law Project
Public Citizen, Inc.
Public Counsel
Public Good Law Center
Public Law Center
Texas Utility Law Project
Virginia Citizens Consumer Council
Virginia Organizing
Virginia Poverty Law Center

cc: Samuel Levine, Director, FTC Bureau of Consumer Protection