FOR PUBLICATION

In the

United States Court of Appeals

For the Eleventh Circuit

No. 25-14109

BUILDING RESILIENT INFRASTRUCTURE & DEVELOPING GREATER EQUITY, INC.,

Plaintiff-Appellant,

versus

CONSUMER FINANCIAL PROTECTION BUREAU, ACTING DIRECTOR, CONSUMER FINANCIAL PROTECTION BUREAU,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:25-cv-01367-TPB-NHA

No. 26-10508

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Before WILLIAM PRYOR, Chief Judge, GRANT, and LUCK, Circuit Judges.

WILLIAM PRYOR, Chief Judge:

These consolidated appeals require us to decide whether the Consumer Financial Protection Bureau exceeded its statutory authority, acted arbitrarily or capriciously, or violated the Tenth Amendment when it regulated certain home-improvement loans offered by local governments. For many years, the Bureau excluded tax assessments and liens from the definition of credit under

the Truth in Lending Act. After local governments began offering residents home-improvement loans, which the residents repay with their property taxes, and Congress directed the Bureau to regulate the loans, the Bureau promulgated a rule treating the loans as consumer credit transactions. Building Resilient Infrastructure & Developing Greater Equity, Inc., sued to challenge the regulation. The district court denied a preliminary injunction to stop enforcing the rule and later granted summary judgment in favor of the Bureau. Because the loans are consumer credit transactions, the Bureau reasonably relied on available data in crafting its rule, and the loans are not an exercise of state taxing authority, we affirm the summary judgment and dismiss the appeal of the denial of the preliminary injunction as moot.

I. BACKGROUND

We divide the background of these appeals into three parts. First, we describe the residential home-improvement loans that local governments offer. Then, we describe the federal regulation of lending and the rule promulgated by the Bureau. Finally, we recount this litigation.

A. Residential Home-Improvement Financing Programs

Property Assessed Clean Energy loans provide "financing to cover the costs of home improvements that results in a tax assessment on the real property of the consumer." 15 U.S.C. § 1639c(b)(3)(C)(i). The home improvements "promote energy efficiency" and "help prepare for natural disasters." Residential Property Assessed Clean Energy Financing (Regulation Z), 90 Fed. Reg.

2434, 2434–35 (Jan. 10, 2025) (to be codified at 12 C.F.R. pt. 1026). Examples include installation of solar panels, impact windows, impact doors, and energy-efficient roofs. To fund the improvements, homeowners and local governments enter "voluntary financing agreements," through which the local government covers the cost of the improvements and then collects repayment with interest "through the same process as real property taxes." *Id.* at 2435, 2449. The lenders may be municipalities or "intergovernmental organizations whose membership consists of multiple local governments." *Id.* at 2435 n.3. The loans range from five-year terms to thirty-year terms, but "most often" have twenty-year terms. *Id.* at 2435. And the loans have "relatively high interest rates compared to primary mortgages." SIOBHAN MCALISTER & RYAN SANDLER, CONSUMER FIN. PROT. BUREAU, PROPERTY ASSESSED CLEAN ENERGY (PACE) FINANCING AND CONSUMER FINANCIAL OUTCOMES 13 (2023) [hereinafter PACE REPORT].

To secure the loans, local governments obtain liens on improved properties. Regulation Z, 90 Fed. Reg. at 2435. The liens ordinarily enjoy a priority status superior even to earlier mortgages on the properties. *Id.* As a result, if an encumbered property is sold at a foreclosure or tax sale, the proceeds first settle outstanding debt from the home-improvement loan. *Id.* at 2435–36. And the loan repayment obligations are "tied to the property, not the property owner," so the loan "technically remains with the property" through ownership transfers. *Id.* But "most home buyers are unwilling to take on the remaining payment obligation for [these loans], or their mortgage lender prohibits them from doing so." *Id.*

at 2436. The federal entities that purchase residential mortgages to increase lenders' funds refuse to purchase mortgages for properties encumbered by these first-priority loans. *Id.* at n.20; *see* FANNIE MAE, SELLING GUIDE: FANNIE MAE SINGLE FAMILY 758 (2026); FREDDIE MAC SINGLE-FAMILY, *Refinancing and Energy Retrofit Programs*, https://perma.cc/7C6A-UJJ9; *see also Montgomery Cnty. Comm'n v. Fed. Hous. Fin. Agency*, 776 F.3d 1247, 1251–52 (11th Cir. 2015) (describing these entities). And the Federal Housing Administration does not insure mortgages on the encumbered properties. Regulation Z, 90 Fed. Reg. at 2436 n.20; U.S. DEP'T OF HOUS. & URBAN DEV., *Handbook 4000.1: FHA Single Family Policy Handbook* 169 (2026). So the homeowners must ordinarily satisfy the loans before they can sell the encumbered properties. *See* Regulation Z, 90 Fed. Reg. at 2436.

At least nineteen states and the District of Columbia have enabling legislation for these loans, but only a few states, including California, Florida, and Missouri, have implemented programs, which vary by state. *See id.* at 2435. At least some of the states with enabling legislation declined to create statewide programs and chose instead to let each county and municipality opt in through appropriate local action. *See, e.g.*, FLA. STAT. § 163.081(1)(a); CAL. STS. & HIGH. CODE § 5898.20(a)(2). In some states, counties and municipalities may impose requirements on the loans beyond what state law requires. *See, e.g.*, FLA. STAT. § 163.081(1)(a). And at least two states regulate the loans. *See, e.g.*, *id.* § 163.081(4)(a)(1)–(4) (requiring written disclosures of the estimated amount to be financed, the term of the financing agreement, the interest charged, and the

estimated annual percentage rate); CAL. STS. & HIGH. CODE §§ 5898.16 (imposing a right to cancel and a maximum financing-to-property-value ratio), 5898.17 (requiring disclosures).

Most participating governments enlist private companies to market and sell the loans, "make underwriting and eligibility determinations," and manage the programs. Regulation Z, 90 Fed. Reg. at 2435. These companies "often rely heavily on home[-]improvement contractors" that market the loans while selling their services door-to-door. *Id.* These contractors are often "the primary point of contact" with homeowners deciding whether to seek a loan. *Id.* Sometimes companies purchase bonds from the local governments, which fund the programs. *Id.* But some local governments run the programs without the aid of private companies. *Id.*

B. Federal Regulation of the Home-Improvement Financing Programs

The home-improvement financing programs arose against a backdrop of longstanding federal regulation. For example, Congress passed the Truth in Lending Act to promote "[t]he informed use of credit . . . by consumers" in consumer credit transactions. 15 U.S.C. § 1601(a). The Act requires creditors to make certain disclosures to debtors when lending credit, grants debtors rights to rescind agreements, and sets minimum standards for residential mortgage loans. *See id.* §§ 1631(a), 1635(a), 1639(a), 1639c. It defines "credit" as "the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment." *Id.* § 1602(f). And it imposes requirements on "consumer" credit transactions,

defined as transactions "in which the party to whom credit is offered or extended is a natural person" and the credit offered is "primarily for personal, family, or household purposes." *Id.* § 1602(i).

For many years, the Act did not apply to this category of home-improvement loans. When Congress passed the Act, it "delegated expansive authority to the Federal Reserve Board . . . to enact appropriate regulations" to implement the Act. *Household Credit Servs., Inc. v. Pfennig*, 541 U.S. 232, 235 (2004). Under that authority, the Board interpreted the meaning of "credit" to exempt certain transactions. In a public staff letter, the Board explained that credit "necessarily assumes the right to avoid incurring debt" because "the debt must arise from a contractual relationship, voluntarily entered into, between the debtor and creditor." "Tax liens" and "tax assessments" could not be credit because they "do not involve the voluntary incurring of debt" or "do not involve the *right* to defer a debt." Truth in Lending; Revised Regulation Z, 46 Fed. Reg. 20848, 20851 (Apr. 7, 1981). The Board then issued "official staff commentary to Regulation Z," the implementing regulation, to confirm the exclusion for tax liens and assessments. *See* Truth in Lending; Official Staff Commentary, 46 Fed. Reg. 50288, 50288, 50292 (Oct. 9, 1981); 12 C.F.R. § 226 supp. I § 226.2 cmt. 2(a)(14)(1)(ii) (2025). Because of this commentary, some courts concluded that the loans were not subject to the Act. *See, e.g.*, *In re Hero Loan Litig.*, No. CV 1602478, 2017 WL 3038250, at *3 (C.D. Cal. July 17, 2017) (relying on the staff commentary as an "[i]ndependently dispositive" reason for holding that the loans could not be credit under the Act). The only limits on the loans were state

and local regulations and "voluntary consumer protection policy principles." Regulation Z, 90 Fed. Reg. at 2438.

Congress later amended the Truth in Lending Act in the Dodd-Frank Act, which prohibits creditors from extending residential mortgage loans until the creditor ensures, through "verified and documented information," that "the consumer has a reasonable ability to repay the loan." *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 1411(a)(2), 124 Stat. 1376, 2142 (2010) (codified at 15 U.S.C. § 1639c(a)(1)). The implementing regulations require creditors to consider eight underwriting factors. 12 C.F.R. § 1026.43(c)(2) (2025). Creditors that violate these underwriting requirements may be civilly liable to consumers under the Truth in Lending Act. *See* 15 U.S.C. § 1640(a).

The Dodd-Frank Act also created the Consumer Financial Protection Bureau and transferred to it the authority to promulgate and enforce regulations to implement the Truth in Lending Act. *See* §§ 1021–22, 124 Stat. 1979–85 (codified at 12 U.S.C. §§ 5511, 5512); *see* 12 U.S.C. § 5481(12)(O), (14). A year later, the Bureau adopted the official commentary of the Federal Reserve Board, "pending further [Bureau] action." Identification of Enforceable Rules and Orders, 76 Fed. Reg. 43569, 43570 (July 21, 2011). The Bureau republished Regulation Z and its official commentary in an interim final rule, which kept the exception for tax assessments and liens. Truth in Lending (Regulation Z), 76 Fed. Reg. 79768, 79918 (Dec. 22, 2011).

In 2018, Congress again amended the Truth in Lending Act—this time to subject the home-improvement loans to federal regulation. Economic Growth, Regulatory Relief, and Consumer Protection Act, Pub. L. No. 115-174, § 307, 132 Stat. 1296, 1347 (2018) (codified at 15 U.S.C. § 1639c(b)(3)(C)). In section 307 of the Economic Growth, Regulatory Relief, and Consumer Protection Act, Congress directed the Bureau to "prescribe regulations that carry out the purposes" and apply two provisions of the Truth in Lending Act "with respect to" the loans: (1) the ability-to-repay provision and (2) the civil-liability provision. *Id.* (codified at 15 U.S.C. § 1639c(b)(3)(C)(ii)); *see* 15 U.S.C. §§ 1639c(a), 1640. Congress mandated that the regulations "account for the unique nature" of these municipal programs. 15 U.S.C. § 1639c(b)(3)(C)(ii). And Congress authorized the Bureau to "collect such information and data that the Bureau determines is necessary" to prescribe the regulations. *Id.* § 1639c(b)(3)(C)(iii)(I).

The Bureau issued a notice of proposed rulemaking and solicited information about the loans. Advance Notice of Proposed Rulemaking on Residential Property Assessed Clean Energy Financing, 84 Fed. Reg. 8479 (Mar. 8, 2019). It also solicited opinions on whether other provisions of the Act or Regulation Z should apply to the loans. *Id.* at 8482. The next year, the Bureau requested data from companies that facilitate the loans. Regulation Z, 90 Fed. Reg. at 2440. A national consumer reporting agency also provided credit data for municipal-program loan applicants and participants. *Id.* In total, the Bureau received data about 370,000 program applications submitted to Florida and California from 2014 to 2019. *Id.*

Of those applications, 128,000 led to transaction originations. *Id.* The Bureau also received credit data for about 208,000 of those consumers that accounted for 286,000 applications and 100,000 transactions. *Id.*

With this data, the Bureau reviewed the impact of the municipal-program loans on mortgage delinquency. *Id.* Its PACE Report compared municipal-program loan participants to applicants who were approved for the municipal-program loans but never completed the loan transactions. *Id.* (citing PACE REPORT, *supra*) The Bureau found that the loans "led to an increase in negative credit outcomes." *Id.* The Report found that before receiving such a loan, the average rate of mortgage delinquency was 7.1 percent, and for loan participants, that rate was 2.5 percentage points higher. *Id.* at 2470 (citing PACE REPORT, *supra*, at 26–27). The Report explained that the loans increased the probability of mortgage delinquency by 35 percent. *Id.* (citing PACE REPORT, *supra*, at 27). Finally, the Bureau found that California reforms "improved consumer outcomes while substantially reducing the volume of [program] lending." *Id.* at 2441.

Based on its findings, the Bureau issued a final rule, which it published in early 2025 to take effect on March 1, 2026. *Id.* at 2434. The Rule clarifies that the exception to the credit definition applies only to *involuntary* tax liens and assessments, not to voluntary loan terms. *Id.* at 2443, 2546. So loans that had long been exempt from the Act are now subject to regulation as credit. *See id.* at 2443, 2502. The Bureau explained that the tax exception was always meant to

cover only involuntary taxes, even though the exception had been taken out of context and caused confusion. *Id.* at 2448. It explained that the loans "easily fit" the definition of credit because "[c]onsumers voluntarily incur these financial obligations and are signatories to the financing agreements." *Id.* at 2447. This clarification meant that provisions of the Real Estate Settlement Procedures Act would also apply to the loans because some of its provisions are integrated into the Truth in Lending Act. *Id.* at 2452–55; 15 U.S.C. § 1604(b); *see, e.g.*, 12 C.F.R. §§ 1026.19(e), (f), 1026.37, 1026.38 (2025). These provisions require creditors to give disclosures to consumers and mandate a waiting period between the disclosures and final consummation of a loan. Regulation Z, 90 Fed. Reg. at 2452, 2454–55, 2502; *see* 12 C.F.R. § 1026.19(e), (f)(1)(ii) (2025). The Rule also subjects these loans to the requirements of the Secure and Fair Enforcement for Mortgage Licensing Act, which places obligations on "loan originators," including licensing and training requirements. Regulation Z, 90 Fed. Reg. at 2495–96; 12 C.F.R. § 1026.36(f) (2025) (requiring loan originators to comply with the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 and its implementing regulations); *see generally* 12 U.S.C. §§ 5103, 5104.

The Rule applies the ability-to-repay and civil-liability provisions to the loans. The Bureau acknowledged that the loans "can result in a sharp increase in the consumer's escrow payments," so the Rule requires creditors to consider the timing and amount of these escrow payments when evaluating an applicant's ability to

pay. Regulation Z, 90 Fed. Reg. at 2467, 2503. The Bureau also recognized the extensive use of private companies to administer these loans. *Id.* at 2473. And because local governments are immune from liability under the Act, 15 U.S.C. § 1612(b), the Rule extends civil liability to the private companies "substantially involved" in making the underwriting decision for the loans, Regulation Z, 90 Fed. Reg. at 2473, 2503. The Bureau concluded that private companies must be liable for unlawful activities if loan participants are to have any recourse, as Congress intended. *Id.* at 2473.

C. Litigation

Several months after the Bureau issued the Rule, Building Resilient Infrastructure & Developing Greater Equity, Inc., filed this action. Building Resilient is a trade organization that advocates on behalf of the companies involved in this type of home-improvement loan. On behalf of itself and the industry for this type of home-improvement loan, Building Resilient challenged the Rule under the Administrative Procedure Act on four grounds: (1) the Rule was not submitted to a small business review panel as required, *see* 5 U.S.C. § 706(2)(D); (2) the Rule exceeds the Bureau's statutory authority under section 307, *see id.* § 706(2)(C); (3) the Rule is arbitrary and capricious, *see id.* § 706(2)(A); and (4) the Rule abridges the states' taxing authority and commandeers the states to enforce a federal program in violation of the Tenth Amendment, *see id.* § 706(2)(B).

Building Resilient moved for a preliminary injunction, which the district court denied. Building Resilient filed an interlocutory appeal of the denial. The parties also moved for summary judgment. The district court granted summary judgment in favor of the Bureau. Building Resilient appealed. We consolidated the appeals.

II. STANDARD OF REVIEW

"We review *de novo* a summary judgment." *Green Rock LLC v. Internal Revenue Serv.*, 104 F.4th 220, 225 (11th Cir. 2024). "*De novo* review of a summary judgment [about] agency action is, in effect, a direct review of the agency's decision." *Id.* at 226 (citation modified).

III. DISCUSSION

We divide this discussion into three parts. First, we explain that the Bureau properly exercised its rulemaking authority and that the Rule is consistent with section 307. Second, we explain that the Rule is not arbitrary and capricious because the Bureau reasonably relied on available data. Finally, we explain that the Rule does not violate the Tenth Amendment because it neither infringes the states' taxing authority nor commandeers states to implement or enforce a federal program.

We do not address two matters. We do not address the argument that the Bureau should have convened a small business panel because Building Resilient forfeited it. *See United States v. Campbell*, 26 F.4th 860, 871 (11th Cir. 2022) (en banc) ("[I]ssues not raised in the initial brief on appeal are deemed abandoned."). We

also do not address the denial of the motion for preliminary injunction. "Once a final judgment is rendered, the appeal is properly taken from the final judgment, not the preliminary injunction." *Burton v. Georgia*, 953 F.2d 1266, 1272 n.9 (11th Cir. 1992). The "denial of permanent relief rendered that earlier ruling moot." *Id.*

A. The Rule Did Not Exceed the Bureau's Statutory Authority.

Under the Administrative Procedure Act, agency action is unlawful when such action is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(C). Even though the Rule applies more sections of the Truth in Lending Act than those mentioned by section 307, the Rule was adopted based on the Bureau's longstanding general rulemaking authority under the Truth in Lending Act.

1. The Rule Is a Permissible Exercise of the Bureau's General Rulemaking Authority.

The Truth in Lending Act gives the Bureau authority to "prescribe regulations to carry out the purposes" of the Act and to "provide for such adjustments and exceptions . . . as in the judgment of the Bureau are necessary or proper to effectuate th[ose] purposes." 15 U.S.C. § 1604(a). The Act covers consumer credit transactions, so to fall within the Bureau's rulemaking authority, the loans must meet the Act's definition of those transactions. *See id.* § 1602(f), (g), (i). It defines credit as "the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment." *Id.* § 1602(f). A creditor is a person who "(1) regularly extends . . . consumer credit which is payable by agreement in

more than four installments or for which the payment of a finance charge is or may be required, and (2) is the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness or . . . by agreement." *Id.* § 1602(g). A "person" can mean either a natural person or an organization. *Id.* § 1602(e). And a consumer credit transaction is "one in which the party to whom credit is offered or extended is a natural person, and the money, property, or services which are the subject of the transaction are primarily for personal, family, or household purposes." *Id.* § 1602(i).

The loans are consumer credit transactions under these definitions. The local governments grant homeowners a right "to defer payment of debt or to incur debt and defer its payment." *See id.* § 1602(f). The homeowner is a natural person, and the money is "primarily for personal, family, or household purposes." *See id.* § 1602(i). The local governments are creditors because they regularly extend credit payable by more than four installments and the debts are initially payable to them. *See id.* § 1602(g).

Section 307 supports the reading that these loans are consumer credit transactions. Congress placed its directions in a part of the Act that regulates credit, which would be unusual if the loans were not credit. And section 307 instructed the Bureau to apply the civil-liability provision to any loan that violates the ability-to-repay requirement. *See id.* § 1639c(b)(3)(C)(ii). But there can be no violation of the ability-to-repay requirement—and resulting civil liability—unless there is a consumer credit transaction. *See id.*

§ 1639c(a)(1) ("[N]o creditor may make a residential mortgage loan unless . . . ."); *id.* § 1602(dd)(5) ("The term 'residential mortgage loan' means any *consumer credit transaction* that is secured by a mortgage . . . or other . . . consensual security interest on a dwelling or on residential real property . . . ." (emphasis added)). So the loans must involve consumer credit transactions for Congress's instruction to make sense.

Building Resilient responds that the text of section 307 is an "express recognition" that the loans are "a tax assessment." But Congress did not define the loans as a tax assessment; it defined the loans as "financing . . . that results in a tax assessment." *Id.* § 1639c(b)(3)(C)(i).

Building Resilient objects that certain characteristics of the loans exclude them from the definition of credit. For example, the loans "do not appear on consumer[s'] credit reports" and "do not constitute personal debt under state law." Building Resilient contends that because the loans attach to the property and do not follow the homeowners, the owners "cannot possibly be" debtors. *See* Regulation Z, 90 Fed. Reg. at 2465 (explaining that program loans are nonrecourse). It cites unpublished California district court opinions supposedly "easily reject[ing] th[e] theory" that the homeowners are debtors such that the loans are credit.

These objections are meritless for two reasons. First, the Act applies to other nonrecourse obligations. *See* 12 C.F.R. § 1026.33(a) (2025) (applying the Act's requirements to reverse mortgage transactions, which are "nonrecourse consumer credit obligation[s]").

That the "owner has no personal liability" for the loan does not disqualify the loan from meeting the definition of credit. Second, at least some of the program contracts state, "The Property Owner acknowledges that it is responsible for paying the Assessments." In signing the loan agreement, the "Property Owner agrees to pay the Assessments levied under [the loan contract] to pay for the cost of the Project" and the "rights and obligations, including the obligation to pay the Assessments," are the "rights and obligations of the Property Owner and all future owners," even if those rights and obligations "run with the land." Building Resilient is wrong to argue that the program participant "is [not] legally obligated to repay" the loans.

According to Building Resilient, signing an agreement does not make the homeowner a debtor because the homeowner incurs no personal liability—instead, the transferable "property owner[]" position incurs the responsibility. Building Resilient rejects "functional responsibility" that assigns the debt to the contract signatory because the signatory is "functionally responsible" for the debt. It contends that these transactions have no debtor. We disagree.

The homeowner incurs the debt and accepts responsibility for repaying it. Even if the obligation to repay the assessment is a transferable function of ownership, the homeowner still has an obligation to pay the loan or suffer the consequences, regardless of whether those consequences are nonrecourse. And even if the debt remains with the land for future homeowners, "[m]ost home buyers are unwilling to take on the remaining payment obligation for

[these loans], or their mortgage lender prohibits them from doing so." Regulation Z, 90 Fed. Reg. at 2449 n.121. And beyond buyer preference, the federal entities that purchase residential mortgages refuse to "purchase . . . mortgages on properties with outstanding" first-priority liens for these home-improvement loans. *Id.* So the debtors "typically must pay off" these liens before they sell or refinance their homes. *Id.* at 2449. Building Resilient ignores where the true responsibility to repay falls: the homeowner. The loans fall within the definition of consumer credit transactions, so the Bureau can regulate them under its general rulemaking authority.

2. The Rule Is Consistent with Section 307.

Building Resilient responds that if "credit" under the Act covers these programs, section 307 is superfluous. It maintains that this dispute "has nothing to do with [the Bureau's] general rulemaking authority." Instead, it contends that this case presents a question of statutory interpretation that requires us to consider the relationship between the Act's general rulemaking authority and the more specific section 307. In its view, if the Bureau's general rulemaking authority permitted the Rule, section 307 would be superfluous. *Cf. Bilski v. Kappos*, 561 U.S. 593, 607–08 (2010) (rejecting an interpretation of a statute that would render a related statute "meaningless" or "superfluous"). We again disagree.

Even if these programs are "credit" under the Truth in Lending Act and subject to the Bureau's general rulemaking authority, section 307 still does three things. First, it restricts the Bureau's authority to exempt transactions. The Act gives the Bureau authority

to "exempt . . . any class of transactions." 15 U.S.C. § 1604(f). But section 307 changes that default and requires the Bureau to subject the program transactions to certain provisions of the Act, restricting the Bureau's exemption ability. *See id.* § 1639c(b)(3)(C)(ii). Second, section 307 directs the Bureau to engage in rulemaking to address novel programs. That Congress empowered the Bureau to regulate credit broadly does not render superfluous its later directive requiring the Bureau to regulate a specific kind of credit. *See AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 383 n.9 (1999) (explaining that there is no redundancy in a statute requiring an agency to do something that the agency had been authorized to do). Third, section 307 provides the Bureau authority to tailor the provisions to the unique nature of these loans. For example, the civil-liability provision creates a private right of action against creditors who violate the Act. *See* 15 U.S.C. § 1640. But the creditors are local governments immune from suit. *See id.* § 1612(b). Congress required the Bureau to "account for the unique nature" of the programs when "prescrib[ing] regulations that carry out the purposes" of the ability-to-repay and civil-liability provisions. *See id.* § 1639c(b)(3)(C)(ii). This authority allows the Bureau to enforce the civil-liability provision against the private loan-facilitating companies that might not otherwise meet the definition of creditor. And because there is no conflict between the general rulemaking authority and section 307, there "is no need to engage in a general/specific canon analysis" or an older/more recent canon analysis, despite Building Resilient's attempt to invoke those canons.

See In re 2 Monkey Trading, LLC, 142 F.4th 1323, 1334 (11th Cir. 2025).

Building Resilient insists that because section 307 identified two specific provisions, the Bureau could apply only those two provisions to the program loans and no others. It maintains that Congress phrased section 307 "in [the] light of the uniform understanding that" these loans are not credit under the Act. And, it contends, Congress considered imposing the entire Act on these loans but "took the middle road" and chose to extend the Act "in *one* specific respect."

This argument fails for two reasons. First, Congress directed the Bureau to "carry out the purposes of" the ability-to-repay section while "account[ing] for the unique nature of [the programs]." 15 U.S.C. § 1639c(b)(3)(C)(ii). This broad directive necessarily contemplates authority and discretion to adapt the Act to address a novel situation. And nothing in that language alters the Bureau's existing authority to "prescribe regulations to carry out the purposes of" the Act. *Id.* § 1604(a). Second, "longstanding administrative construction" supports the Rule. *Cf. Monsalvo v. Bondi*, 145 S. Ct. 1232, 1242 (2025) (citation modified). Congress adopted section 307 "against the backdrop of" determinations that tax liens and assessments were not credit under the Act. *Id.* With that understanding, Congress defined "Property Assessed Clean Energy financing" as "financing to cover the costs of home improvements that results in a tax assessment on the real property of the consumer." 15 U.S.C. § 1639c(b)(3)(C)(i). It did not provide that this

financing *is* a tax assessment, which would render the loans exempt; Congress instead provided that this financing *results* in a tax assessment. And it directed the Bureau to bring these loans under the ability-to-repay provision, which by its very terms applies only to consumer credit transactions. *See id.* §§ 1639c(b)(3)(C)(ii), 1639c(a), 1602(dd)(5).

Building Resilient objects to the Bureau's interpretation as betraying a longstanding construction. But the interpretation is not an improper about-face, nor is it a "post-hoc reinterpretation of" the Act. Instead, it is an application of an existing definition to a new form of credit. The Bureau has not "invoke[d] its rulemaking authority to *change* the meaning of [the Act's] statutory text." Instead, the Bureau has clarified that an ambiguous definition applies to a novel situation. It is not fair to say that this interpretation "mean[s] that no one had noticed that every [program] transaction for the last decade was illegal," as Building Resilient contends. The Bureau had not previously enforced the Act against the loans. And the Rule is consistent with the Bureau's mandate to "deal not only with the myriad forms in which credit transactions then occurred, but also with those which would be devised in the future." *Mourning v. Fam. Publ'ns Serv., Inc.*, 411 U.S. 356, 365 (1973).

3. The Bureau Reasonably Accounted for the Unique Characteristics of the Loans.

Section 307 required the Bureau to "account for the unique nature" of this category of home-improvement loans when applying the identified provisions. 15 U.S.C. § 1639c(b)(3)(C)(ii). Building

Resilient argues that the Rule independently fails because the Bureau failed to meet this requirement. That argument is wrong. The Bureau followed Congress's directive and concluded that the ability-to-repay provision "is generally appropriate for [program] transactions, with adjustments to the commentary . . . and the addition of" a new section. Regulation Z, 90 Fed. Reg. at 2464. It addressed several of the "unique" characteristics that commenters identified: existing state regulation, voluntary industry reforms and underwriting practices, the small amounts and margins of the loans, the nonrecourse and no-acceleration nature of the loans, the fixed interest rates of these loans, and the potential energy savings that the loan may provide. *Id.* at 2465. It explained why some of these characteristics did not warrant material changes to the existing ability-to-repay provision and that the other "characteristics . . . are shared by other types of mortgages subject to [the Act's] ability-to-repay regime" and "are not unique to [program] transactions." *Id.* at 2465–66. Two of these unique characteristics did warrant material changes, and the Bureau accounted for those characteristics.

First, the Bureau recognized that "the addition of payments for a [program] transaction can result in a sharp increase in the consumer's escrow payments." *Id.* at 2467. So it required creditors to account for the loan's effect on escrow payments when evaluating the consumer's ability to repay. *Id.* at 2467, 2503. Along with the existing eight ability-to-repay factors, creditors must also consider "any monthly payments that the creditor knows or has reason to know the consumer will have to pay into any escrow account as a result of the [program] transaction that are in excess of the monthly

payment" on the covered transaction. *Id.* The Bureau also "provide[d] additional detail on the factors creditors must take into account when considering [those] monthly payments." *Id.* at 2467; *see id.* at 2503.

Second, the Bureau recognized that creditors are ordinarily governments immune from suit under the Act. *Id.* at 2473. So if the Bureau applied the existing civil-liability provision, which applies only to creditors, "consumers could be limited in their ability to obtain remedies for violations of the ability-to-repay requirements, frustrating [Congress's] purposes." *Id.* To account for this unique characteristic, the Bureau extended the civil-liability provision to cover private companies "substantially involved in making the credit decision" for these home-improvement loans. *Id.* at 2473, 2503. The Bureau also accounted for the unique characteristics of the loans when it applied the Real Estate Settlement Procedures Act and the Secure and Fair Enforcement for Mortgage Licensing Act to them. *See id.* at 2494–96, 2502.

B. The Bureau's Reliance on the Report Was Not Arbitrary or Capricious.

Under the Administrative Procedure Act, agency action is unlawful when it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). The "arbitrary-and-capricious standard requires that agency action be reasonable and reasonably explained." *FCC v. Prometheus Radio Project*, 141 S. Ct. 1150, 1158 (2021). It "ensures that an administrative

agency examined the relevant data and articulated a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *FDA v. Wages & White Lion Invs., L.L.C.*, 145 S. Ct. 898, 917 (2025) (citation modified). "This standard of review is exceedingly deferential and provides the reviewing court with limited discretion to reverse an agency's decision." *City of N. Miami v. FAA*, 47 F.4th 1257, 1266 (11th Cir. 2022) (citation modified). "[R]eviewing courts . . . [may] not substitute their own judgment for that of the agency." *Wages & White Lion Invs.*, 145 S. Ct. at 917. We must "simply ensure[] that the agency has acted within a zone of reasonableness and, in particular, has reasonably considered the relevant issues and reasonably explained the decision." *Prometheus Radio Project*, 141 S. Ct. at 1158.

Building Resilient contends that the Rule is arbitrary and capricious because the Bureau relied on the "fatally flawed" Report to justify it. It challenges three aspects of the Report's methodology: (1) the control group, (2) the purported failure to account for state-level reforms, and (3) the exclusion of applicants whose credit histories could not be located. Beyond methodology, Building Resilient also contends that the difference between control and test-group outcomes was so "negligible" as to render the rule arbitrary. For its part, the Bureau maintains that it did not rely on the Report. But even if it had relied on the Report, none of the methodological choices render the Report so "fatally flawed" that the Rule is arbitrary and capricious, nor can we substitute our judgment for the Bureau's and write off the Report's findings as "negligible."

First, the choice of control group was reasonable and reasonably explained. The Bureau compared program participants with approved program applicants who did not obtain and use a program loan. PACE REPORT, *supra*, at 27. Building Resilient objects to this control group because some consumers might have decided against pursuing home-improvement projects, which means those consumers did not assume an amount of debt comparable to loan participants. Building Resilient contends that the control group should have been loan-approved consumers who financed home-improvement projects through other means. Likewise, commenters objected to the control group on the ground that the Bureau failed to control for preexisting differences between the control group and the loan participants. *See* Regulation Z, 90 Fed. Reg. at 2477. But the Bureau acknowledged these objections and admitted that "small differences exist" between the control group and the loan participants. *Id.* Indeed, the Report admitted that the outcomes could have been affected by those differences. PACE REPORT, *supra*, at 52. But the Report used regression analyses to estimate the effect of these differences, such as credit score and type of home-improvement project. *See id.* at 27–30. These tests gave "assurance" that the chosen control group was "a reasonable assumption," even if "not a perfect control group." *Id.* at 30. The Report also included "robustness checks" exploring alternate control groups, and those results were consistent with the conclusions based on the main control group. *See id.* at 63–65. As a result, the Bureau concluded that members of the selected control group were "much more similar" to the loan participants "than alternate

control groups suggested by commenters or considered in the . . . Report." Regulation Z, 90 Fed. Reg. at 2477. It considered alternate control groups and articulated a satisfactory explanation and a rational connection between the facts found and the choice made. Its explanation was reasonable and reasonably explained. And even if the Bureau's "dataset was less than perfect, imperfection alone does not amount to arbitrary decision-making." *Dist. Hosp. Partners, L.P. v. Burwell*, 786 F.3d 46, 61 (D.C. Cir. 2015); *accord Prometheus Radio Project*, 141 S. Ct. at 1160 (disclaiming the need for "perfect empirical or statistical data"). We will not substitute our judgment for that of the Bureau.

Second, Building Resilient contends that the Report cannot be trusted because it examined consumers "before state-level reforms took effect," so the Report painted a bleaker picture from "the previous, less regulated period." It is true that the 2023 Report could not have considered the 2024 Florida reforms. *See* PACE REPORT, *supra*; Regulation Z, 90 Fed. Reg. at 2437. But the Bureau explained that even when the Report examined pre- and post-reform data from California, the data showed an "increase [in] primary mortgage delinquency in California during the post-Reform period." Regulation Z, 90 Fed. Reg. at 2478; *see* PACE REPORT, *supra*, at 46. The Report acknowledged that its data was imperfect, "likely to be noisy," and not entirely "statistically precise." PACE REPORT, *supra*, at 47–48. It also recognized that program "outcomes improved significantly in California after that State began requiring [program] companies to consider ability to pay before

making a loan." *Id.* at 52. The Bureau acknowledged that the benefits of the Rule may not be as strong in states with protections overlapping the Rule's protections. Regulation Z, 90 Fed. Reg. at 2478. But it concluded that relying on states to regulate the industry is insufficient. *Id.* at 2449. After all, "some States may not impose consumer protection requirements" at all. *Id.* The Bureau did not fail to examine the relevant data or fail to reasonably consider the relevant issues. It considered the effect of California's reforms and articulated a satisfactory explanation and a rational connection between the facts found and the choice made. The Bureau's consideration of state reforms was reasonable and reasonably explained.

Finally, Building Resilient contends that the Report was fatally flawed because it excluded program applicants for whom it could not locate credit history. The Report stated that 22 percent of the total applications "could not be matched to a credit record." PACE REPORT, *supra*, at 54. It explained that "[t]he matches may be missing non-randomly, which could introduce bias into [the] results." *Id.* So it ran a series of tests to determine whether "there are . . . differences in census tract characteristics between match[ed] and unmatched applications along a few dimensions." *Id.* It "check[ed] the robustness of [the] results" by "weight[ing] the matched individuals such that they have the average census tract characteristics of the matched and unmatched individuals grouped together." *Id.* The Bureau explained that "an imperfect match rate is unsurprising" because of outdated address information or spelling errors but explained that "at least 77 percent of [program]

consumers had other credit options," which supported the Bureau's understanding about the demographics of the research groups. Regulation *Z*, 90 Fed. Reg. at 2479.

Building Resilient contends that the Bureau failed to consider the relevant data because ignoring "nearly a quarter of the relevant dataset . . . inflated the Report's . . . outcome rates." It maintains that these excluded consumers had "characteristics contrary to the . . . Report's assumptions," like credit histories and other sources of credit. We disagree that the Bureau failed to consider the differences.

The Bureau acknowledged these discrepancies. It explained that the objection was unfounded because the loans require homeownership, and "most home purchases are funded by mortgages," which "will remain on a consumer's credit report, potentially indefinitely." *Id.* So it concluded that it is unlikely that these unmatched consumers were truly "credit invisible" as Building Resilient suggests. *See id.*

Based on this record, we cannot say that the Bureau failed to consider the relevant data. Nor can we say that its decision was unsupported by the record or lacked any articulated reasoning. Instead, its methodological choices "reflect a rational attempt" to account for acknowledged data deficiencies and control for error. *See Ctr. for Biological Diversity v. U.S. EPA*, 187 F.4th 1282, 1308 (11th Cir. 2026). "[A]nd those methodological decisions fell well within the [Bureau's] technical discretion." *Id.* "In the absence of addi-

tional data . . . , the [Bureau] made a reasonable predictive judgment based on the evidence it had." *Prometheus Radio Project*, 141 S. Ct. at 1160.

Apart from its objection to methodology, Building Resilient also objects that "there is only a negligible difference between" the control and test group outcomes, "which cannot alone justify [the] overly burdensome Rule." But that consideration falls outside the scope of our review. "Under th[e] deferential and narrow standard" of arbitrary and capricious review, "we will not substitute our judgment for that of the agency." *Gray Television, Inc. v. FCC*, 130 F.4th 1201, 1212 (11th Cir. 2025) (citation modified). "We ask only whether the agency came to a rational conclusion." *Id.* (citation modified). On the record before us, the answer is yes.

C. The Rule Does Not Violate the Tenth Amendment.

Under the Administrative Procedure Act, agency action is unlawful when such action is "contrary to constitutional right, power, privilege, or immunity." 5 U.S.C. § 706(2)(B). Building Resilient contends that the Rule violates the Tenth Amendment in two ways: (1) the Rule infringes on the states' taxing authority and (2) the Rule commandeers state public officials to implement and enforce federal law. We reject each contention in turn.

1. The Rule Does Not Infringe on the States' Taxing Authority.

Building Resilient argues that the Rule violates the Tenth Amendment because "the sovereign taxing power . . . is at the heart

of" the loan programs and the Rule prevents the states from exercising their taxing power unless the loans comply with federal law. The Tenth Amendment states, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. CONST. amend. X. The Supreme Court has long recognized that "the taxing power of a State is one of its attributes of sovereignty." *R.R. Co. v. Peniston*, 85 U.S. (18 Wall.) 5, 29 (1873). But the programs facilitate debts, not taxes.

Building Resilient elevates a managerial technicality above the fundamental nature of the loans. Through these loans, local governments extend credit, and homeowners incur debt. That the governments use tax bills as the vehicle for collecting debt payment does not transform the loans into taxes.

The Supreme Court has long recognized a distinction between debts and taxes. For example, after Congress permitted the use of federal notes as payment for "all debts," the Supreme Court addressed a state law requiring taxes to be paid in silver or gold coin. *See Lane County v. Oregon*, 74 U.S. (7 Wall.) 71, 71–72 (1869) (emphasis omitted). The Court answered that taxes are distinct from debts, so the two statutes did not conflict. *See id.* at 81. It explained that the "ordinary sense of the word" "debts" includes only those "arising out of . . . contracts." *Id.* Several years later, the Supreme Court reiterated that there are fundamental differences between debts and taxes. *Meriwether v. Garrett*, 102 U.S. 472, 513–14 (1880). "Debts are obligations for the payment of money founded

upon contract, express or implied. Taxes are imposts levied for the support of the government, or for some special purpose authorized by it." *Id.* "The consent of the tax-payer is not necessary to [taxes'] enforcement. They operate *in invitum*." *Id.* at 514. And years later, the Court underscored the difference between an "obligation to pay [that] grows out of a private contract between the State and [a] company, [instead of] out of the political relations between a sovereign and his people." *Tompkins v. Little Rock & Fort Smith Ry.*, 125 U.S. 109, 120 (1888). There is a fundamental difference when "[t]he rights of the respective parties depend on the terms of the agreement they have entered into, not on the reciprocal duties between a State in its public capacity and its citizens," and "[t]he object is to collect a debt due, not to require a contribution from the company for the public necessities." *Id.*

That difference is dispositive here. Although loan payments are collected through tax bills, the loan programs facilitate debts, not taxes. The participants incur a voluntary contractual debt that the government would not otherwise levy. The debts do not arise without the homeowners' consent, nor do the debts arise "out of the political relations between a sovereign and his people." *See id.* And the object of the payments "is to collect a debt due, not to require a contribution from the company for . . . public necessities." *See id.* So regulations targeting these loans do not infringe on the states' taxing authority—they target debts, which do not implicate the Tenth Amendment.

Building Resilient objects that the Bureau takes "snippet[s]" out of the limited context of the precedents. For example, *Meriwether* answered whether "taxes previously levied" by a municipality "but not collected" were the municipality's "debts" such that its creditors could recover them. *See* 102 U.S. at 513. And *Lane County* evaluated whether tax liabilities fell under the statutory term "debts." *See* 74 U.S. at 72. But the specific contexts of these cases do not undercut the distinction between taxes and debts.

Building Resilient also argues that the Bureau ignores two important statements in *Meriwether*. First, Building Resilient points to the statement that "[t]axes are imposts levied for the support of the government, or for some special purpose authorized by it." *Meriwether*, 102 U.S. at 513–14. It argues that the loans meet this "test" because the payments are "levied for support of state objectives and for a special purpose the State authorized." But even if a state offers the loans to further a "special purpose" or a "state objective[]," the homeowners' repayment satisfies a voluntarily incurred debt, not an involuntarily imposed tax. Second, Building Resilient contends that *Meriwether* "recognizes a category of taxes" where the tax is intertwined with a contract. But that part of *Meriwether* explained only that certain taxes warrant extra scrutiny under the Contracts Clause when states attempt to repeal them. *Id.* at 514. It implies nothing about the ordinarily clear line between taxes and debts that resolves this appeal.

The Rule regulates only the extension of loans, not the method of payment. The Rule places no restrictions on the use of

tax systems to collect repayment. So even if the Rule regulates the front-end underwriting, disclosures, and lending practices in which private companies also engage, the exercise of sovereign taxing authority to collect payment is not subject to the Rule. Congress recognized this distinction when it defined the loans as "financing . . . that results in a tax assessment on the real property of the consumer." 15 U.S.C. § 1639c(b)(3)(C)(i). The Rule regulates the financing, not the resulting tax assessment.

That the financing-focused Rule may tangentially reduce the potential candidates for the resulting tax assessment does not render the Rule a violation of the Tenth Amendment. Building Resilient maintains that the Rule's downstream effect on taxes violates the Tenth Amendment because it "lead[s] to a federal mandate that States may not impose State tax assessments on property to further their sovereign goals if State . . . programs fail to meet certain federal standards." It contends that Congress must "speak clearly when it intends to . . . preempt traditional state powers such as taxation," *Montgomery Cnty. Comm'n*, 776 F.3d at 1261 (citation modified), and that it has not done that here. But the Rule does not preempt state taxation powers; it regulates governments as market participants voluntarily lending credit. That the governments choose tax assessments as one of many possible methods of collecting repayment does not turn the voluntary lending of credit into an exercise of sovereign taxing authority. If the Rule indirectly reduces the "result[ing] . . . tax assessment," it does not mean that the Rule infringes on the states' taxing authority. *See* 15 U.S.C. § 1639c(b)(3)(C)(i).

2. The Rule Is Not Unlawful Commandeering.

Under "the general 'anti-commandeering' parameters of the Tenth Amendment: (i) Congress may not require a state legislature to enact any laws or regulations and (ii) Congress may not command state officers to administer or enforce a federal regulatory program." *Montgomery Cnty. Comm'n*, 776 F.3d at 1261 (first citing *New York v. United States*, 505 U.S. 144, 162–70 (1992); and then citing *Printz v. United States*, 521 U.S. 898, 935 (1997)). But the Rule does not violate these parameters because of a fundamental principle: "[t]he anticommandeering doctrine does not apply when Congress evenhandedly regulates an activity in which both States and private actors engage." *Murphy v. Nat'l Collegiate Athletic Ass'n*, 584 U.S. 453, 475–76 (2018). In some states, the local governments underwrite and administer the programs without the help of private companies; in other states, private companies underwrite and administer the programs. The Rule regulates the programs evenhandedly, regardless of whether a local government or a private company operates the program.

Building Resilient responds that "private commercial actors could [not] impose the *tax* assessments that form the basis for [the programs]—a unique state function." But this argument misunderstands the nature of the regulation. The Rule does not regulate how local governments may collect or otherwise administer the tax assessments. The Rule instead regulates the "financing . . . that results in a tax assessment on the real property of the consumer." *See* 15 U.S.C. § 1639c(b)(3)(C)(i). Even if private companies do not

participate in the imposition and collection of the tax bill, the private companies "handle the day-to-day operations, including tasks such as marketing [program] financing to consumers, training home improvement contractors to sell [program] financing to consumers, overseeing originations, performing underwriting, and making decisions about whether to extend the loan." Regulation Z, 90 Fed. Reg. at 2435. Those operations are the subject of the Rule; the collection mechanism is not.

The Rule permissibly "regulates state activities." *South Carolina v. Baker*, 485 U.S. 505, 514 (1988). It does not force states "to administer or enforce a federal regulatory program." *See Montgomery Cnty. Comm'n*, 776 F.3d at 1261. Nor does it "seek to control or influence the manner in which States regulate private parties." *Baker*, 485 U.S. at 514. Because the Rule is a generally applicable federal regulation, "[s]uch 'commandeering' is . . . an inevitable consequence of regulating a state activity" because "[a]ny federal regulation demands compliance." *Id.* That governments offering loans "must take administrative . . . action to comply with federal standards regulating that activity is a commonplace that presents no constitutional defect." *Id.* at 514–15.

IV. CONCLUSION

We **AFFIRM** the judgment in favor of the Bureau and **DISMISS** the appeal of the denial of a preliminary judgment as moot.