

MARY JO LANZAFAME
ASSISTANT CITY ATTORNEY

TIMOTHY J. FITZPATRICK
DEPUTY CITY ATTORNEY

OFFICE OF

THE CITY ATTORNEY

CITY OF SAN DIEGO

Jan I. Goldsmith

CITY ATTORNEY

1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178

TELEPHONE (619) 236-6220

FAX (619) 236-7215

May 19, 2010

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

SAN DIEGO CLEAN GENERATION PROGRAM (PROGRAM)

On May 4, 2010 the Council considered the Administrative Services Agreement with Renewable Funding, LLC. The meeting was continued to May 25, 2010 to address additional issues raised at the meeting. This Report provides an update on material events that have occurred since our Report to Council dated May 4, 2010, regarding the San Diego Clean Generation Program (Report).

I. FANNIE MAE AND FREDDIE MAC ISSUED NEW LENDER LETTERS THAT MAY EFFECTIVELY TERMINATE PACE PROGRAMS.

In our Report, we advised that Property Assessed Clean Energy (PACE) programs are untested legally, may violate the US and the California Constitutions and may also violate Fannie Mae legal documents. On May 5, 2010, Fannie Mae and Freddie Mac issued lender letters (Lender Letters) that may effectively terminate PACE programs until the issues they raised are favorably resolved. A copy of the letters are attached as Exhibits A-1 and A-2.

In summary, the Lender Letters argue that the senior lien status of the tax liens for PACE programs violates the security instruments of Fannie and Freddie. Therefore, Fannie and Freddie believe that participation in a PACE program violates the terms of their mortgage documents. Moreover, a homeowner could be interpreted to be in immediate default of their Fannie and Freddie mortgage loan documents just by participating in a PACE program such as the one proposed by the City. Under this interpretation, Fannie and Freddie could accelerate all of the principal and interest owed by the homeowners on the mortgages they hold because of this default and then demand immediate payment in full of the mortgages. The Lender Letters may also be interpreted to allow Fannie and Freddie to prevent homeowners with PACE encumbrances from refinancing or selling homes with Fannie and Freddie mortgages unless the PACE encumbrances were removed. Finally, Fannie and Freddie may not buy or sell mortgages which contain PACE liens as a result of the Lender Letters. *See* Wall Street Journal article of May 17, 2010 attached as Exhibit B.

Since Fannie and Freddie control about two-thirds of all mortgage lending in the U.S., this could effectively terminate the PACE programs. Fannie and Freddie, as well as the participating homeowners, could take legal action against the City if the City proceeds with its Program absent a favorable resolution of the Lender Letters. Also, the City may not be able to collect existing or future tax assessments under the Program without such a favorable resolution. Finally, even if there is a favorable resolution of the issues raised in the Lender Letters, the same constitutional issues identified in our Report would remain unresolved.

On May 7, 2010, Pace Now, Renewable Funding and a number of other interested PACE participants and interested parties sent a letter to Vice President Biden requesting a withdrawal or modification of the Lender Letters and stating that unless changed, it “will effectively eliminate PACE programs.” The letter is attached as Exhibit C. We believe this letter speaks for itself in terms of the risks of proceeding with a PACE program until the Lender Letters are favorably resolved.

II. OTHER CITIES AND COUNTIES ARE SUSPENDING OR CONSIDERING SUSPENDING THEIR PACE PROGRAMS IN VIEW OF LENDER LETTERS.

On May 7, 2010 Sonoma County sent a letter to Fannie Mae which is attached as Exhibit D. The letter states, among other things, that Sonoma County may consider suspending all activity under their PACE program until the Lender Letter is favorably resolved. The Sonoma County letter also expresses concern for more than 800 homeowners who may face problems selling their homes due to the Fannie Lender Letter.

On May 14, 2010, the Boulder County Business Report states that Boulder, Colorado has suspended its PACE program pending a favorable resolution of the Lender Letters. Please see the article attached as Exhibit E.

Moreover, we believe it is likely that many if not most municipalities will suspend their PACE programs just like Boulder, Colorado did until the Lender Letters issues are resolved. In support of this view, the Wall Street Journal article of May 17, 2010 attached as Exhibit B quotes the Boulder County Commissioner, Will Toor, as saying that his discussions with other local governments indicate that “pretty much every residential PACE financing program in the country will be on hold until the Fannie Mae issue is resolved.”

Likewise, we believe it is reasonable to assume that San Francisco will review its options and may make changes to its program such as, for example, requiring the written consent of the mortgage lenders (which we recommended in our Report to limit the liability to lenders) or follow other municipalities and suspend the future operation of its PACE program pending a favorable resolution of the Lender Letters. We also understand that the Administrative Services Agreement, the Terms and Conditions and the financing documents for San Francisco’s PACE program have not yet been finally approved by all parties or signed.

III. U.S. DEPARTMENT OF ENERGY ISSUES NEW GUIDELINES FOR PILOT PACE FINANCING PROGRAMS.

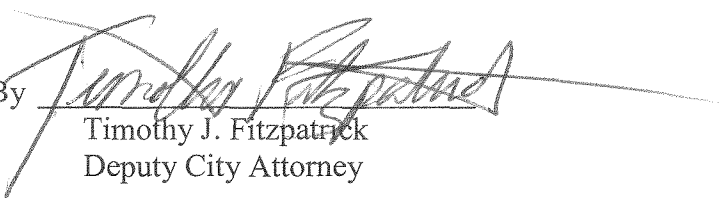
On May 7, 2010, the U.S. Department of Energy issued best practice guidelines for PACE programs (U.S. DOE Guidelines) which are attached as Exhibit F. For example, the U.S. DOE Guidelines at page 6 states:

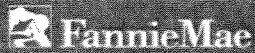
Estimated property value should be in excess of property owner's public and private debt on the property, including mortgages, home equity lines of credit (HELOCS), and the addition of the PACE assessment, to ensure the property owners have sufficient equity to support the PACE assessment. Local governments should be cautious about piloting the PACE model in areas with large numbers of "underwater" mortgages.

The City's Program as currently structured does not appear to meet this requirement. This is because a property could be valued at up to 10% less than the value of its outstanding debt (i.e. 10% underwater), even before the PACE assessment, and still qualify for the City's Program. Even if the Fannie and Freddie issues are resolved, we recommend that the City consider requiring that each homeowner have a reasonable and minimum amount of equity in their home to qualify for the Program. This change will materially decrease the risks to the City as previously discussed in our May 4, 2010 Report. It would also help avoid the appearance that the Program includes some of the features that led to the sub-prime mortgage collapse.

Respectfully submitted,

JAN I. GOLDSMITH, City Attorney

By 
Timothy J. Fitzpatrick
Deputy City Attorney



Lender Letter LL-2010-06

May 5, 2010

TO: All Fannie Mae Single-Family Sellers and Servicers

Property Assessed Clean Energy Loans

Fannie Mae has received a number of questions from seller-servicers regarding government-sponsored energy loans, sometimes referred to as Property Assessed Clean Energy (PACE) loans. PACE loans generally have automatic first lien priority over previously recorded mortgages. The terms of the Fannie Mae/Freddie Mac Uniform Security Instruments prohibit loans that have senior lien status to a mortgage. As PACE programs progress through the experimental phase and beyond, Fannie Mae will issue additional guidance to lenders as may be needed from time to time.

Fannie Mae supports energy-efficiency initiatives, and is willing to engage with federal and state agencies as they consider sustainable programs to facilitate lending for energy-efficiency home retrofits, while preserving the status of mortgage loans originated as first liens.

Questions should be directed to Resource_Center@fanniemae.com with the subject line "PACE." Lenders may also wish to consult with their federal regulators, who share concerns about PACE programs.

Marianne E. Sullivan
Senior Vice President
Single-Family Chief Risk Officer



Industry Letter

TO: Freddie Mac Seller/Serviceers

May 5, 2010

SUBJECT: First Lien Mortgages and Energy Efficient Loans

Several states have recently enacted laws that authorize localities to create new energy efficient loan programs that generally rely on the placement of a first priority lien to secure energy efficient home improvements. Programs under these laws are sometimes referred to as Energy Loan Tax Assessment Programs or Property Assessed Clean Energy programs. Freddie Mac has begun to receive questions about these new energy loan programs.

The purpose of this Industry Letter is to remind Seller/Serviceers that an energy-related lien may not be senior to any Mortgage delivered to Freddie Mac. Seller/Serviceers should determine whether a state or locality in which they originate mortgages has an energy loan program, and whether a first priority lien is permitted. Freddie Mac will provide additional guidance in the event that these energy loan programs move beyond the experimental stage.

Freddie Mac supports the goal of encouraging responsible financing of energy efficient and renewable energy home improvements. We continue to work with federal and state agencies and with Seller/Serviceers on initiatives for developing workable energy retrofit programs.

CONCLUSION

Please contact your Freddie Mac representative or call (800) FREDDIE if you have any questions. Seller/Serviceers may also wish to contact their federal regulators, who share concerns about energy liens.

Sincerely,

A handwritten signature in black ink, appearing to read "Patricia J. McClung".

Patricia J. McClung
Vice President
Offerings Management



NEW
Get stocks, mutual funds, asset allocation,
and overall market timing picks.

MarketWatch
HULBERT ON MARKETS
WHAT'S WORKING NOW
FREE 4-WEEK TRIAL ▶

THE WALL STREET JOURNAL

WSJ.com

MAY 17, 2010, 10:25 AM ET

Fannie, Freddie Freeze Out Energy-Efficiency Loan Initiative

Fannie Mae and Freddie Mac are giving the cold shoulder to a White House-backed effort to encourage Americans to make their homes more energy efficient.

The initiative, called Property Assessed Clean Energy, or PACE, aims to eliminate the high upfront costs that have kept homeowners from making cost-saving energy retrofits on their homes. Under the program, property owners borrow money from their local government to pay for the retrofits, repaying cities over 15 to 20 years through a special assessment that is added to their property-tax bills. Local governments fund the programs by selling municipal bonds to investors.

But the programs are raising the blood pressure of mortgage investors, including Fannie Mae, Freddie Mac, and their regulator, because PACE liens become senior to existing mortgage debt. That allows PACE lenders to be paid before mortgage lenders if the homeowner defaults and goes into foreclosure.

In somewhat-cryptic letters that Fannie and Freddie sent to lenders earlier this month, the companies reminded banks that their agreements don't allow them to purchase loans that have a senior lien. "An energy-related lien may not be senior to any Mortgage delivered to Freddie Mac," the company said. Both firms said they would provide "additional guidance" if the PACE programs move beyond the "experimental stage."

The letters suggest that Fannie and Freddie won't allow borrowers with a PACE lien to refinance or sell their properties unless the liens are paid off. Proponents say the liens need to be senior or they won't attract sufficient interest from bond investors. The Department of Energy, meanwhile, issued revised guidelines for municipalities that use the program.

Fannie and Freddie control around two-thirds of all mortgage lending in the country right now, with the remainder largely shouldered by government agencies such as the Federal Housing Administration. That means that their rules have a particularly wide reach.

Officials in Aspen, Colo., told the Aspen Times that their PACE program would be "effectively shut down" if Fannie and Freddie continue to take such a view.

Colorado's Boulder County has suspended its energy-loan program in order to insure compliance with the new Energy Department guidelines and to clarify what Fannie and Freddie's guidance means for their programs. In an email, Boulder County Commissioner Will Toor said that his discussions with other local governments indicate that "pretty much every residential PACE financing program in the country will be on hold until the Fannie Mae issue is resolved," said Mr. Toor in an email.

A spokeswoman for Sonoma County, which has one of the country's largest programs, says that they haven't had to suspend their programs for now because they fund their own loans through the county before selling them to bond investors. They also don't use federal stimulus funds, which means they won't have to follow federal guidelines.

"There are a heck of a lot of people who really need that new furnace but have no equity. Thank God we have a program like this," said Amy Boltzen, the county spokeswoman.

It's a delicate dance for Fannie and Freddie because the companies are owned by the government, and the current

administration has supported the fledgling PACE lien initiative. Fannie and Freddie aren't allowed to lobby or take positions on public policy matters, but have raised concerns with other government agencies and with their regulator, the Federal Housing Finance Agency, which also opposes the senior-lien structure of PACE programs.

Proponents have hailed the programs as novel ways to bring market mechanisms to bear on energy retrofiting. But critics say that the programs don't do enough to ensure that borrowers can repay their loans because municipalities don't do any underwriting. They also worry that homeowners with little or no equity could ply more debt to their properties.

Energy Department rules released last week urged municipalities to conduct energy audits to ensure that homeowners will see reduced costs as a result of upgrades and said that assessments should be limited to 10% of the property value.

Follow me for more housing and mortgages news on Twitter: [@NickTimiraos](https://twitter.com/NickTimiraos)

Copyright 2008 Dow Jones & Company, Inc. All Rights Reserved

This copy is for your personal, non-commercial use only. Distribution and use of this material are governed by our Subscriber Agreement and by copyright law. For non-personal use or to order multiple copies, please contact Dow Jones Reprints at 1-800-843-0008 or visit www.djreprints.com

May 7, 2010

The Honorable Joseph R. Biden, Jr.
 Vice President of the United States
 The White House
 1600 Pennsylvania Avenue, NW
 Washington, DC 20500

Dear Vice President Biden,

On May 5th, Fannie Mae and Freddie Mac published Lender Letters containing guidance that will effectively eliminate Property Assessed Clean Energy (PACE) programs. The national PACE effort that was successfully championed by your office is at risk. This is especially shocking given that your task force designed thoughtful guidelines that virtually eliminate the risk to the GSEs. Those guidelines are now being incorporated into PACE programs across the country. The following actions must be taken immediately to prevent the elimination of PACE programs:

- **The Administration must act immediately to have the Lender Letters rescinded or revised to protect homeowners in PACE communities**
- **Final underwriting criteria for PACE programs must be approved by all parties (including GSEs and FHFA)**
- **Conforming PACE programs must be exempted from GSE adverse action**

If this situation is not addressed immediately, the Fannie Mae and Freddie Mac Lender Letters will have the following catastrophic consequences:

- The Lender Letters may impact the relationship of homeowners and their lenders to the detriment of the homeowner
- Federally authorized and supported PACE programs across America will shut down, employees will be laid off, and our nation will lose the ability to tap an innovative new means to retrofit homes and buildings
- A significant and troubling precedent will be set by allowing a GSE to curtail the authority of local governments to levy taxes in pursuit of a public purpose. PACE programs utilize tax assessments, not loans. By law, tax assessments have senior lien status to mortgages.

Last year, your office and the White House Middle Class Task Force endorsed PACE financing as a means to create jobs, reduce energy bills and cut greenhouse gas emissions. The White House Policy Framework for PACE programs was released concurrently to guide the development of programs that protect homeowners and lenders. Spurred in part by your announcement, 19 states and the District of Columbia have now passed PACE enabling legislation. **PACE best practices were designed with the clear knowledge of the challenging times for homeowners, mortgage lenders, and the GSEs. The net result is that programs following White House best practices are designed to increase borrower strength while creating no significant risk for mortgage holders.**

The Fannie Mae and Freddie Mac letters appear to assert that homeowners are in default of their mortgages if they finance energy improvements with PACE. These Lender Letters were extraordinarily surprising since Federal, state, and local governments have engaged in a dialogue with lenders and other stakeholders over the past year to eliminate undue risk. Most programs are using federal ARRA funds and incorporating the White House Policy Framework – which help ensure that the borrower’s cash flow increases so that mortgage default risk is reduced. Analysis of these programs has found that PACE financing creates less than \$200 of seniority risk per home for the GSE’s.

We stand ready to work with you to help fulfill the promise of PACE financing and to do so in a manner that helps our nation, homeowners and that provides the proper safeguards for mortgage lenders. We have attached a list of existing and pending PACE programs as well as a partial list of those that are supporting PACE. **Please feel free to contact us through Jeffrey Tannenbaum (jtannenbaum@firtree.com or 212-659-4917).**

Sincerely,

Jeffrey Tannenbaum
Founder, PACE NOW

Greg Hale
Senior Financial Policy Specialist
National Resources Defense Council

Clay G. Nesler
Vice President, Global Energy and Sustainability
Johnson Controls, Inc

Adam Browning
Executive Director
Vote Solar

The Honorable Rod Dole
Treasurer-Tax Collector
Sonoma County, CA

Cisco DeVries
President
Renewable Funding, LLC

Bob Epstein
Co-Founder, E2

David Modi
Vice President, Government Affairs
Trane

The Honorable Cindy Domenico
Chair, Board of County Commissioners
Boulder County, CO

cc: Secretary Steven Chu, U.S. Department of Energy
Secretary Shaun Donovan, U.S. Department of Housing and Urban Development
Secretary Timothy Geithner, U.S. Department of the Treasury
Carol Browner, Director of the White House Office of Energy and Climate Change

Programs Impacted by Lender Letters

Municipality	State	Program Launch Date
Palm Desert	CA	October 2008
Babylon, NY	NY	August 2008
Sonoma County, CA	CA	March 2009
Boulder County, CO	CO	April 2009
Placer County, CA	CA	April 2010
Yucaipa, CA	CA	Q1 2010
San Francisco, CA	CA	April 2010
Santa Barbara County, CA	CA	May 2010
Annapolis, MD	MD	Q3 2010
Santa Fe, NM	NM	Q3 2010
Los Angeles County, CA	CA	Q3 2010
San Diego City, CA	CA	Q3 2010
Alameda County, CA	CA	Q4 2010
Fresno County, CA	CA	Q4 2010
Kern County, CA	CA	Q4 2010
Monterey County, CA	CA	Q4 2010
Sacramento County, CA	CA	Q4 2010
San Benito County, CA	CA	Q4 2010
San Diego County, CA	CA	Q4 2010
San Luis Obispo County, CA	CA	Q4 2010
San Mateo County, CA	CA	Q4 2010
Santa Clara County, CA	CA	Q4 2010
Santa Cruz County, CA	CA	Q4 2010
Solano County, CA	CA	Q4 2010
Ventura County, CA	CA	Q4 2010
Yolo County, CA	CA	Q4 2010
New Orleans	LA	Q4 2010
San Antonio, TX	TX	Q4 2010
Albuquerque, NM	TX	2010
Montgomery County, MD	MD	Q3 2010
Madison, Wisconsin	WI	Q4 2010
Milwaukee, Wisconsin	WI	2010
Cincinnati, OH	OH	2010
New York City, NY	NY	2010
Westchester County, NY	NY	2010
Binghamton, NY	NY	2010
Austin, TX	TX	Q1 2011
Pitkin County, CO	CO	Q3 2010
Eagle County, CO	CO	Q2 2010
Gunnison County, CO	CO	Q3 2010
Ann Arbor, MI	MI	Q1 2010
Orange County, CA	CA	Q4 2010
Riverside County	CA	Q4 2010

Partial List of PACE Supporters

Organized Labor:

International Association of Heat and Frost Insulators and Allied Workers

International Brotherhood of Teamsters

International Union of Painters and Allied Trades (IUPAT)

Laborers International Union of North America (LIUNA)

International Association of Heat and Frost Insulators and Allied Workers

NGO's:

Alliance to Save Energy

American Institute of Architects (AIA)

Americans for Clean Energy

Apollo Alliance

Bipartisan Policy Center

Center for American Progress

Carbon War Room

California Energy Commission

Center for Sustainable Energy

Climate Communities

Clinton Global Initiative

Environmental Defense Fund

Jack D. Hidary Foundation

Living Cities

Milken Institute

National Association of Real Estate Investment Trusts (NAREIT)

Natural Resources Defense Council (NRDC)

Polyiso Insulation Manufacturers Association (PIMA)

Real Estate Roundtable

Renewable and Appropriate Energy Laboratory, University of California, Berkeley

Vermont Energy Investment Corp.

The Vote Solar Initiative

Sierra Club

Solar Energy Industries Association (SEIA)

Stewards for Affordable Housing for the Future (SAHF)

Sustainable Buildings Industry Council

Corporate:

Barclays Capital

Citicorp

Hannon Armstrong

Johnson Controls Inc.

Jonathan Rose Companies

Jones Lang LaSalle Inc.

Lime/Energy

Masco Home Services

ProLogis

Renewable Funding LLC

Royal Bank of Canada

Serrafix Corp

Siemens Corp

Simon Properties Group

Tishman Speyer

Trane

Wells Fargo

Government:

County of Alameda, CA

Association of Bay Area Governments

City of Berkeley, CA

County of Boulder, CO

City of Palm Desert, CA

City of San Diego, CA

City of San Francisco, CA

City of San Jose, CA

County of Sonoma, CA –

Office of the Attorney General, State of California

Governor Arnold Schwarzenegger, State of California

Governor's Energy Office, State of Colorado

Governor Bill Richardson, State of New Mexico

United States Senator Bernard Sanders

United States Senator Jeff Merkley

United States Senator Michael Bennet

United States Senator Jeff Bingaman

United States Senator Mark Begich

United States Representative Steve Israel

RODNEY A. DOLE
AUDITOR-CONTROLLER
TREASURER-TAX COLLECTOR
COUNTY OF SONOMA
585 FISCAL DRIVE, SUITE 101F
SANTA ROSA, CALIFORNIA 95403-2819
(707) 565-2631



DONNA M. DUNK
ASSISTANT
AUDITOR-CONTROLLER
ROBERT BOITANO
ASSISTANT
TREASURER
PAM JOHNSTON
ASSISTANT
TAX COLLECTOR/AUDITOR

Fannie Mae
3900 Wisconsin Ave. N.W.
Washington, D.C. 20016

ATTN: Marianne E. Sullivan
Senior Vice President, Single-Family Chief Risk Officer

May 7, 2010

Dear Ms. Sullivan

Your lender letter no. LL-2010-06 dated May 5, 2010 has been brought to our attention. We are writing to request your immediate withdrawal of this letter, and reinstatement of your previous advice that PACE assessments be treated as special assessments, set forth in your lender letter no. LL-07-2009 dated September 18, 2009.

We need to make you aware of the immediate, severe consequences your new position may have in our community, and in all communities with existing PACE programs. In Sonoma County, we have funded over 800 energy improvement projects through our PACE programs. In addition to creating significant energy savings, this program has created or saved over hundreds of jobs in our otherwise depressed contractor community, with no negative effect on the mortgage market.

We may not be able continue to operate our program under your current lender letter. Although we verify that all mortgages are current before we accept a participant into the program, based on your Lending Letter a property owner could be interpreted to be in immediate default just by participating in the program. Our 800 existing participants, who entered our program relying on your previous interpretation, may not be able refinance or sell their property without clearing the PACE lien, which they may not be able to do.

Unless your lender letter is immediately withdrawn, or at least modified to recognize property assessments not as "loans" or otherwise modified to protect existing pace program participants, next week we may be forced to consider suspending all activity at our storefront. It may be necessary to take steps to request that our Board of Supervisors officially close the program. We cannot continue to operate in good faith in light of your position that mere participation by a property owner may create a default in their mortgage.

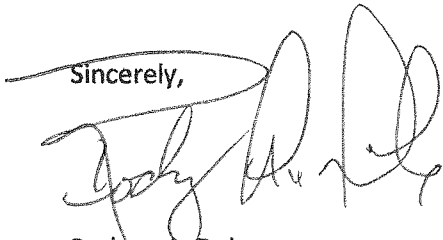
This will have severe, negative effects on our community. We anticipate that the hundreds of contractors that are being supported by our program may fail, resulting potentially in hundreds of real defaults on FNMA-held mortgages. Hundreds of thousands of dollars of public money spent establishing

this program, which would have been recouped over time if the program continued, will have been wasted--this in a time of severe budget shortfall in our jurisdiction. These consequences will be felt to some extent in all communities that have taken steps to implement PACE programs.

We feel your interpreted position reversal by classifying PACE property transactions as "loans" instead of special assessments is particularly unfair in light of the positive direction otherwise coming from the federal government. National policy coming from the White House and Congress has urged communities to establish PACE programs in a responsible manner as a means of creating employment and reducing energy use. States and communities have attempted to implement this national policy. Your lender letter could bring that movement to a grinding halt.

We urge you to reconsider the consequences of this letter, and act immediately to withdraw it.

Sincerely,

A handwritten signature in black ink, appearing to read "Rodney A. Dole", written over a horizontal line.

Rodney A. Dole
County of Sonoma Auditor-Controller-Treasurer-Tax Collector and
Sonoma County Energy Independence Program Administrator

cc:

President Barack Obama
Vice President Joe Biden
Speaker Nancy Pelosi
Governor of California, Arnold Schwarzenegger
Congressman Mike Thompson
Congresswoman Lynn Woolsey
California Attorney General, Jerry Brown
Acting Director FHFA, Edward J. DeMarco
FHFA general counsel

BOULDER COUNTY BUSINESS REPORT

Log In
 Subscribe
 Register For E-Newsletters
 Submit News Or Data
 Search:



Need Sales Leads?
 Search For Valuable Lists,
 Directories And Articles
 Find It. Download It.
 Sort It. Use It.
 And Reap The Benefits.

MARKETPLACE

BCBR ARTICLE

County suspends ClimateSmart loans

By David Clucas

Share |

May 14, 2010 --

Boulder County officials have temporarily suspended issuing new residential ClimateSmart loans due to new federal guidelines and challenges from the government-backed lending giants Fannie Mae and Freddie Mac.

The Boulder County ClimateSmart Loan Program provides local residents and businesses with affordable financing to make energy efficiency and renewable energy upgrades to their properties. The owner repays the loans via an assessment on the property's annual tax bill, which stays with the property, not the initial borrower, throughout a five- to 15-year period. In November 2008, Boulder County voters authorized the county to issue up to \$40 million in bonds - ultimately funded by outside investors - to support the program. In 2009, Boulder County allocated 612 ClimateSmart loans worth about \$9.8 million in the first two rounds of financing to the residential real-estate sector. A third round of \$12 million available to residential owners began on March 15, with applications due April 28.

The latest round of applications is now on hold, county officials said, due to new guidelines just issued from the U.S. Department of Energy.

"In order to make sure that we are in compliance with these new guidelines, it is necessary to delay our loan application process for 60 days," county officials said in a statement. "This means that our application process will be put on hold until late July. During this period, we are keeping our online application open to allow residents to continue to apply for loans."

At the same time, ClimateSmart is facing challenges from the government-backed lending giants Fannie Mae and Freddie Mac as a type of Property Assessed Clean Energy, or PACE, loan.

Regulators with Fannie and Freddie are questioning the structure of PACE loans being repaid through the property's tax bill. As a property tax, the PACE loans gain seniority over first and second mortgages on the homes. It's a key component for investors backing the PACE loans - it provides them the extra security to offer lower rates.

But for Fannie and Freddie, which own half of the nation's residential mortgages, the risk goes up with PACE ahead of them. If the home were to be foreclosed on, the PACE loan would be repaid prior to the main mortgage (s) on the home.

"The goal of enhancing energy efficiency, which we share, should not overcome the need for prudent underwriting," Alfred Pollard, general counsel for the mortgage companies' regulator, the Federal Housing Finance Agency, told the Wall Street Journal in a recent article.

Residents who have ClimateSmart loans could face the possibility of Fannie and Freddie denying to back future loans on the properties. Another

PODCASTS



DEPARTMENTS

- After Hours
- Awards
- Business Digest
- Corrections
- Economic Indicators
- Editorial Cartoon
- Events
- ExecStyle
- Leads / Public Records
- Letters to Editor
- Nonprofit Network
- On the Job
- Product Update
- Stepping Out
- Stocks

CALENDAR

< May 2010 >

S	M	T	W	T	F	S
25	26	27	28	29	30	1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31	1	2	3	4	5

Submit an event
 Register for an BCBR Event

WEATHER

Boulder, CO
 64°F
 Fair



BCBR Poll

Should local and state governments create laws and codes that require businesses and individuals to adopt energy-efficient practices?

- Yes to both businesses and individuals.
- Yes to businesses

only.

- Yes to individuals only.
- No. The decision should be left to businesses and individuals.

[Results](#) | [More polls](#)

SPECIAL PUBLICATIONS

- About BCBR Daily
- Advertise with BCBR
- Blueprints
- Book of Experts
- Book of Lists
- Economic Indicators
- Event Planning Guide
- Front Range Golf Guide
- Giving Guide
- Privacy Policy
- Terms & Conditions

SERVICES

- About BCBR
- Advertising Info
- Contact Us
- Editorial Calendar
- FAQ
- BCBR Store
- Reprints
- Site Map

Follow us on



possibility could be that Fannie and Freddie, or any other mortgage lender for that matter, could require higher interest rates on future first and second mortgages for properties with any kind PACE loan, such as ClimateSmart in place.

Sixteen states, including Colorado, have allowed their municipalities to institute PACE programs.

[comments \(0\)](#) | [print](#) | [email](#)

COUNTY SUSPENDS CLIMATESMART LOANS

[submit a comment](#)

* denotes a required field

Your Name

Your Email

Your Location

©2010 Boulder County Business Report. All Rights Reserved. | Powered By FLEX360

This Service Is Provided On BCBR's Standard [Terms & Conditions](#).

[Read Our Privacy Policy](#).



Department of Energy
Washington, DC 20585

Guidelines for Pilot PACE Financing Programs

May 7, 2010

This document provides best practice guidelines to help implement the Policy Framework for PACE Financing Programs announced on October 18, 2009.¹ Property Assessed Clean Energy (PACE) financing programs allow state and local governments, where permitted by state law, to extend the use of land-secured financing districts to fund energy efficiency and renewable energy improvements on private property.² PACE programs attach the obligation to repay the cost of improvements to the property, not to the individual borrower. After consultation within the federal government and with other stakeholders, the Department of Energy has prepared the following Best Practices to help ensure prudent financing practices during the current pilot PACE programs.

These best practice guidelines are significantly more rigorous than the underwriting standards currently applied to land-secured financing districts. Especially in light of the exceptionally challenging economic environment and recovering housing market, the following best practice guidelines for pilot PACE financing programs are important to provide an extra layer of protection to both participants who voluntarily opt into PACE programs, and to lenders who hold mortgages on properties with PACE tax liens. These best practice guidelines may evolve over time as we learn more about the performance of PACE programs and are able to identify new best practices.³ All pilot PACE financing programs are strongly encouraged to follow these best practice guidelines. This document is divided into two sections: Program Design Best Practice Guidelines and Assessment Underwriting Best Practice Guidelines.

¹ The Policy Framework for PACE Financing Programs is available here:
http://www.whitehouse.gov/assets/documents/PACE_Principles.pdf.

² For more information on PACE programs, please visit:
<http://www1.eere.energy.gov/wip/solutioncenter/financialproducts/PACE.html>. PACE programs are paid through a tax lien on the property. Lien priority is a matter of state law, and these best practices do not (and cannot) preempt state law.

³ These best practice guidelines are primarily for the residential market. Different standards may be appropriate in non-residential markets.

Program Design Best Practice Guidelines:

Local governments should consider the following program design features to increase the reliability of energy and economic performance for the benefit of program participants, mortgage holders, and investors.

1. Expected Savings-to-Investment Ratio (SIR) Greater Than One⁴

The primary rationale for PACE programs is to pursue a legally-defined “public purpose”, which generally includes environmental, health, and energy independence benefits.⁵ Although traditional land-secured assessment districts do not require projects to “pay for themselves”, PACE financing should generally be limited to cost effective measures to protect both participants and mortgage holders until PACE program impacts become more widely understood.

The financed package of energy improvements should be designed to pay for itself over the life of the assessment. This program attribute improves the participant’s debt-to-income ratio, increasing the participant’s ability to repay PACE assessments and other debt, such as mortgage payments. Local governments should consider three program design features to ensure that the expected SIR is greater than one:⁶

- An energy audit and modeling of expected savings to identify energy efficiency and renewable energy property improvement measures that are likely to deliver energy and dollar savings in excess of financed costs over the assessment term. Local governments should limit investment to those identified measures.

⁴ SIR = [Estimated savings over the life of the assessment, discounted back to present value using an appropriate discount rate] divided by [Amount financed through PACE assessment]

Savings are defined as the positive impacts of the energy improvements on participant cash flow. Savings can include reduced utility bills as well as any payments for renewable energy credits or other quantifiable environmental and health benefits that can be monetized. Savings should be calculated on an annual basis with an escalator for energy prices based either on the Energy Information Agency (EIA) U.S. forecast or a substantiated local energy price escalator.

⁵ Specific public purposes are defined by the state’s enabling legislation, which may vary somewhat between states. Existing legislation is available here:

<http://www.dsireusa.org/incentives/index.cfm?EE=1&RE=1&SPV=0&ST=0&searchtype=PTFAuth&sh=1>

⁶ These program options are not mutually exclusive and programs should consider deploying them in concert. In addition, these measures could be coordinated with the proposed HOMESTAR’s Silver and Gold guidelines. More Information on HOMESTAR is available here:

<http://www.whitehouse.gov/the-press-office/fact-sheet-homestar-energy-efficiency-retrofit-program>

- In lieu of audits, programs may choose to limit eligibility to those measures with well-documented energy and dollar savings for a given climate zone. There are a number of energy efficiency and renewable energy investments that are most likely to yield a SIR of greater than one for most properties in a region.
- Encourage energy efficiency before renewable energy improvements. The economics of renewable energy investments can be enhanced when packaged with energy efficiency measures. The SIR should be calculated for the entire package of investments, not individual measures.

2. The Term of the Assessment Should Not Exceed the Useful Life of the Improvements

This best practice guidelines document is intended to ensure that a property owner's ability to repay is enhanced throughout the life of the PACE assessment by the energy savings derived from the improvements. It is important to note that the useful life of the measure often exceeds the assessment term.

3. Mortgage Holder of Record Should Receive Notice When PACE Liens Are Placed

Mortgage holders should receive notice when residential property owners fund improvements using a PACE assessment.⁷

4. PACE Lien Non-Acceleration Upon Property Owner Default

In states where non-acceleration of the lien is standard for other special assessments, it should also be standard for PACE assessments. After a foreclosure, the successor owners are responsible for future assessment payments. Non-acceleration is an important mortgage holder protection because liability for the assessment in foreclosure is limited to any amount in arrears at the time; the total outstanding assessed amount is not due in full.

5. The Assessment Should Be Appropriately Sized

PACE assessments should generally not exceed 10% of a property's estimated value (i.e. a property value-to-lien ratio of 10:1). In addition, because of the administrative requirements of administering PACE programs, assessments should generally not be issued for projects below a minimum cost threshold of approximately \$2500. These measures ensure that improvements are "right-sized" for properties and for the administrative costs of piloting PACE programs. PACE programs may also choose to set the maximum assessment relative to median home values.

⁷ A different standard may apply to non-residential properties.

6. Quality Assurance and Anti-Fraud Measures

Quality assurance and anti-fraud measures are essential protections for property owners, mortgage holders, investors, and local governments. These measures should include:

- Only validly licensed auditors and contractors that adhere to PACE program terms and conditions should be permitted to conduct PACE energy audits and retrofits. Where feasible or necessary, auditors and contractors should have additional certifications appropriate to the installed measures.
- Inspections should be completed on at least a portion of participating properties upon project completion to ensure that contractors participating in the PACE program are adequately performing work.
- If work is not satisfactorily completed, contractor payment should be withheld until remedied. If not satisfactorily remedied, programs should disqualify contractors from further PACE-related work.
- Property owners should sign-off before payment is issued for the work.

7. Rebates and Tax Credits

The total amount of PACE financing should be net of any expected direct cash rebates for the energy efficiency or renewable energy improvements chosen. However, other non-direct cash incentives can be more difficult to manage. For example, calculating an expected income tax credit can be complicated, as not all participants will have access to the tax credit and there will be time lags between project completion and tax credit monetization. Programs should therefore consider alternative structures for financing this gap, including assignment of rebates and tax credits to repay PACE assessments, short-term assessment additions, and partnering with third party lenders that offer short-term bridge financing. At the minimum, programs should provide full disclosure to participants on the implications and options available for monetizing an income tax credit.

8. Participant Education

PACE may be an unfamiliar financing mechanism to program participants. As such, it is essential that programs educate potential participants on how the PACE model works, whether it is a property owner's most appropriate financing mechanism, and the opportunities and risks PACE program participation creates for property owners. Programs should clearly explain and provide disclosures of the following:

- How PACE financing works

- Basic information on other financing options available to property owners for financing energy efficiency and renewable energy investments, and how PACE compares
- All program fees and how participants will pay for them
- Effective interest rate including all program fees, consistent with the Good Faith Estimate (GFE) of the Real Estate Settlement Procedure Act (RESPA) and the early and final disclosure of the Truth in Lending Act (TILA).
- PACE assessment impact on escrow payments (if applicable)
- Risk that assessment default may trigger foreclosure and property loss
- Information on transferring the assessment at time of sale
- Options for and implications of including tax credits in the financed amount

9. Debt Service Reserve Fund

For those PACE programs that seek third party investors, including investors in a municipal bond to fund the program, an assessment reserve fund should be created to protect investors from late payment or non-payment of PACE assessments.

10. Data Collection

Pilot programs should collect the data necessary to evaluate the efficacy of PACE programs. Examples of typically collected data would include: installed measures, investment amount, default and foreclosure data, expected savings, and actual energy use before and after measures installation. To the extent possible, it's important that programs have access to participant utility bills, ideally for 18 months before and after the improvements are made. The Department of Energy will provide more detailed information on collecting this data, obtaining permission to access utility bills, and how to report program information to enable a national PACE performance evaluation.

Assessment Underwriting Best Practices Guidelines:

Local governments should design underwriting criteria to reduce the risk of default and impairment to the property's mortgage holders. Many best practices for reducing these risks are included in the previous section. In addition, underwriting criteria for individual assessments should include the following:

1. Property Ownership

- Check that applicant has clear title to property and that the property is located in the financing district.

- Check the property title for restrictions such as details about power of attorney, easements, or subordination agreements.

2. Property-Based Debt and Property Valuation

- Estimated property value should be in excess of property owner’s public and private debt on the property, including mortgages, home equity lines of credit (HELOCs), and the addition of the PACE assessment, to ensure that property owners have sufficient equity to support the PACE assessment. Local governments should be cautious about piloting the PACE model in areas with large numbers of “underwater” mortgages.
- To avoid placing an additional tax lien on properties that are in distress, have recently been in distress, or are at risk for distress, the following should be verified:
 - There are no outstanding taxes or involuntary liens on the property in excess of \$1000 (i.e. liens placed on property for failure of the owner to comply with a payment obligation).
Property is not in foreclosure and there have been no recent mortgage or other property-related debt defaults.
- Programs should attain estimated property value by reviewing assessed value. This is typically used in assessment districts. If assessed value appears low or high, programs should review comparable market data to determine the most appropriate valuation. If programs believe the estimated value remains inaccurate or there is a lack sufficient comparable market data to conduct an analysis, they should conduct a desktop appraisal.⁸

3. Property Owner Ability to Pay

PACE programs attach the obligation to repay the cost of improvements to the property (not to the individual borrower). The standard underwriting for other special assessments only consists of examining assessed value to public debt, the total tax rate, and the property tax delinquency rate. However, we deem certain precautions important due to the current vulnerability of mortgage lenders and of the housing market in many regions. These precautions include:

- A Savings-to-Investment Ratio (SIR) greater than one, as described above, to maintain or improve the property owner’s debt-to-income ratio.
- Property owner is current on property taxes and has not been late more than once in the past 3 years, or since the purchase of the house if less than three years.⁹

⁸ A desktop appraisal involves a licensed appraiser estimating the value of a property without a visual inspection. These appraisals cost approximately \$100.

⁹ Applicants that have purchased the property within 3 years have recently undergone rigorous credit analyses that compensate for the short property tax payment history.

- Property owner has not filed for or declared bankruptcy for 7 years.

These best practice guidelines will evolve over time with continued monitoring of the performance of pilot PACE financing programs.