

Town of Babylon

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Press Release

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Babylon Files Suit Against Fannie and Freddie in Federal Court for Violating the 10th Amendment

Babylon Asserts States' Rights to Stop Fannie and Freddie from Destroying Money-Saving, Job-Producing Energy Efficiency Programs Across the Country

(October 26, 2010 – Central Islip, NY) Town of Babylon Supervisor Steve Bellone filed legal action in the United States District Court against Federal Home Loan Mortgage Corporation (“Freddie Mac”), Federal National Mortgage Association (“Fannie Mae”), the Federal Housing Finance Agency, and the Office of the Comptroller of the Currency, seeking a judicial declaration that recent changes to mortgage underwriting guidelines are in violation federal and state law. Babylon’s complaint alleges that, “Through the issuances of the rules and by other actions, Defendants improperly attempt to define and regulate local government, special assessments and thus, interfere with the powers reserved by the Tenth Amendment to the states including the State of New York and/or its subdivisions.” Supervisor Bellone elaborated: “If this FHFA ruling is allowed to stand, it could jeopardize the capacity of all localities around the country to finance infrastructure projects. All municipalities should have their counsel evaluate the possible repercussions. This FHFA decree goes far beyond a few so-called PACE programs.”

In July of this year, FHFA issued a letter directing Fannie and Freddie to restrict mortgage lending opportunities for homeowners who live in municipalities that offer home energy retrofit programs, in effect redlining these communities. At the end of August, Fannie and Freddie followed with announcements of their own. These directives are designed to effectively abort various innovative municipal energy retrofit financing programs nationwide, including Babylon’s own Long Island Green Homes program.

“It is disappointing that the Town of Babylon needs to seek federal court relief to prevent Fannie Mae and Freddie Mac from killing the most potent job creation programs we have in this country,” said Supervisor Steve Bellone. “We refuse to let federal housing regulators overstep their bounds and arbitrarily make decisions that will cost thousands of Americans their jobs.”

Supervisor Bellone was joined by Greg Hale of the Natural Resources Defense Council, Michael Gianchetta, Vice Chair of the U.S. Green Building Council – Long Island Chapter and representatives from Goldberg and Connolly of Rockville Centre, the Town’s outside counsel in this action.

“Babylon knows firsthand that PACE programs can help real people in real ways – from lowering electric bills to creating jobs,” said Greg Hale, Senior Financial Policy Specialist at the Natural Resources Defense Council. “PACE energy efficiency renovations can generate millions of dollars in construction projects, the hardest hit sector of our economy. Babylon is a clean energy pioneer, showing the country that PACE programs give homeowners the opportunity to improve their quality of life, fight global warming and lower their energy bills – all in their own homes.”

“US Green Building Council was present at the creation of the Long Island Green Homes program,” said Vince Capogna, chairman of the Long Island chapter. “We have seen it develop into a vital economic source for local building trades and, given that residential housing stock accounts for nearly 40% of Long Island’s carbon footprint, there is no single greater opportunity available to us. More efficient buildings are more valuable, period.”

"No other energy efficiency strategy has been pursued by so many communities, or proven so effective at addressing the barriers homeowners face in tapping energy savings to finance efficiency upgrades," said Stephen Burrington, a principal of Serrafix who advised the Town on the red-lining component of the FHFA decree. "It's vitally important that the right of local government to provide access to PACE finance be protected."

Tenth Amendment Issue

The Tenth Amendment to the United States Constitution expressly reserves to the states all powers not delegated to the United States by the Constitution or prohibited to the states by the Constitution. If this assault by Fannie Mae’s and Freddie Mac’s conservator, FHFA, on the Tenth Amendment remained unchallenged, then the capacity of every state and locality to finance its infrastructure will be in jeopardy. FHFA insists that its prohibition on the acquisition of home mortgages with energy assessments by Fannie Mae and Freddie Mac is not subject to review, even by the judiciary. In effect, if today FHFA can dictate that municipalities cannot seal up its leaky buildings, then tomorrow when sewers are installed, FHFA, citing precedent, can decree that these obligations must also be junior to the mortgage products that they hold.

In addition to flouting the Tenth Amendment to the constitution, FHFA has ignored stipulations of the Administrative Procedure Act, dismissed the need to conduct environmental impact as called for by the National Environmental Policy Act while engaging in tortious interference to the economic detriment of communities throughout the country. In doing so FHFA plays a shell game with their various roles, now the Conservator, now the Regulator, now the ‘Enterprises’ whichever suits FHFA’s purposes.

Fannie Mae and Freddie Mac continue to receive huge infusions of taxpayer dollars to bailout trillions in sub-prime mortgages they guaranteed. On top of that they now have to contend with an inundation of falsely filed foreclosures. No doubt, their conservator, FHFA, faces overwhelming problems. How then do they justify hiring, with taxpayer bailout money, two of the most expensive law firms in the country to press their preoccupation with piddling PACE programs which to date represent .0005% of Fannie’s and Freddie’s total exposure? The core of the FHFA’s posture is their unsubstantiated claim that energy assessments risk the ‘safety and soundness’ of home mortgages which is contrary to the two-year operational experience of the Long Island Green Homes program. Though Babylon reached out to FHFA, Fannie & Freddie on several occasions to seek clarification, no response was forthcoming.

Background - Long Island Green Homes

In the fall of 2008, the Long Island Green Homes program (LIGH) began making houses more energy efficient and saving homeowners over \$1,050 per year on average in the process. From the outset, LIGH has insisted on a loading order by installing the most cost effective energy efficiency measures. Upfront financing provided through the Town’s waste reserve is repaid by the homeowner through a monthly charge. The average obligation is \$9,016.05 repaid over 8.78 years. In the vast majority of cases, the monthly energy savings resulting from the upgrades exceed the monthly charge. The average house retrofitted through the program receives a disciplined selection of upgrades that run a savings-to-investment ratio close to 2.0. Thus the upgrades pay for themselves in half the lifetime of the measures. To put it another way, participating homeowners are realizing a 12% return on investment.

Over 500 homeowners in the Town of Babylon have participated in the LIGH program, with the typical retrofitted house reducing its annual CO₂ emissions by close to 4 tons. The program creates a significant number of jobs in the community, reduces homeowners’ yearly energy bills on average over \$1,000 and provides substantial environmental benefits all at no cost to taxpayers. Supervisor Bellone concluded, “The cruel irony is that the only mortgages placed in jeopardy of default by this FHFA action, are mortgages of the tradesmen being put out of work by the closing of these programs.”

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