



Board of County Commissioners

October 13, 2009

The Honorable Barack Obama
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

RE: Concern about Potential FHFA Action Adversely Impacting Local Energy Efficiency/Renewable Energy Assessment Financing (PACE) Programs

Dear President Obama:

It has come to our attention that the Federal Housing Finance Agency proposes to issue guidelines, recommendations, or other rules or regulations that could severely limit the ability of local governments to begin or continue “property-assessed clean energy (PACE)” financing programs. We are writing to seek assistance in ensuring that these popular programs, particularly as implemented by Boulder County, do not have to face insurmountable and unnecessary hurdles created by FHFA or any agency relying on FHFA’s guidance. These concerns are germane not just to Boulder County: Already, three other Colorado counties are moving forward with PACE programs, and we can expect that multiple other cities and counties will soon follow suit.

In order to decrease dependence on fossil fuels, local and state governments are looking for creative ways to provide financial incentives to existing residences and businesses to increase energy efficiency and move to an increased use of renewable energy. It is critical to our state and nation that innovative ways to encourage investment in retrofitting our existing building stock with energy efficiency and renewable energy generating improvements be undertaken. Some existing home and business owners can use private market rate loans to invest in energy efficiency improvements or renewable energy systems. However, for a significant portion of property owners, the ability to use private financing is negatively influenced by several factors: (1) the current declining-value property market; (2) the mobility of the average homeowner and the long term energy payback for these improvements; and (3) limited equity in their properties. The use of creative public financing makes energy efficiency improvements and renewable energy systems more easily affordable for home and business owners.

Boulder County has implemented a very popular program, its “ClimateSmart Loan Program,” under which residential and commercial property owners can obtain reasonably cost-effective financing for energy efficiency and renewable energy improvements to their properties. The funding for these loans is created through voter-approved bond financing, and those bond issues depend for their marketability upon Colorado’s local improvement district law that provides for special assessments imposed for loan repayment via the property tax bill.

An essential part of the existing law, for all types of special assessment districts, is its provision of lien priority for the special assessment lien in the case of default or foreclosure. The special assessment, as is the case for general property taxes, is paid off in priority to other liens on the property. Because the process for collection of unpaid special assessments and property taxes is somewhat cumbersome and occurs only once per year, it is necessary that, in the event of a default, the balance of the outstanding loan be accelerated so that it all gets paid off at once, rather than requiring a separate process every year as the special assessments would otherwise become due.

Cindy Domenico County Commissioner

Ben Pearlman County Commissioner

Will Toor County Commissioner

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Although we were aware of a letter that had previously been sent (dated June 18, 2009) by the Director of FHFA expressing concern about PACE-type programs that have lien priority, only recently did we learn that FHFA is proposing to follow that up with guidance to other agencies, possibly including Fannie Mae and Freddie Mac, that discourages such agencies from buying loans on properties that are subject to newly-created special assessment liens for PACE-type loans. This is an urgent problem, as we have been advised by our bond counsel and our investment banker financial advisor that the removal of the assessment acceleration upon default would reduce our bond financings to below investment-grade. The resulting interest rates would make the program impossible to finance. This action is not justified or reasonable, as is made clear in the attached response letter that was sent by members of the PACE government coalition to the Director of FHFA, dated July 30, 2009.

In addition to these concerns regarding acceleration and priority liens, we have concerns about other proposals that the FHFA is considering, including the following:

- Requiring energy audits and/or HERs ratings creates unnecessary administration burdens and costs, and is not an effective way to measure the impact of many energy efficiency and renewable energy improvements.
- Mandatory cost effectiveness analyses are difficult and costly to perform on individual homes and businesses. A better approach is to develop a list of measures that make sense for specific local jurisdictions; in Boulder County we have carefully designed a list of locally-appropriate and approved measures.

With all this in mind, we respectfully request that you take all action possible to obtain information of FHFA's intentions in this regard, and to assist us in preventing that agency from taking precipitous action that would essentially kill our popular financing program that is successfully assisting in meeting the national policy objective to reduce our dependency on carbon-based energy sources and diminish the factors contributing to global climate change.

Thank you for your time and attention.

Sincerely,



Ben Pearlman, Chair
Boulder County Commissioners



Will Toor
Boulder County Commissioners



Cindy Domenico, Vice Chair
Boulder County Commissioners