



## Board of County Commissioners

September 10, 2010

Dear ClimateSmart Loan Program Participants:

Earlier this year, our third round of residential ClimateSmart loans was put on hold while we worked with the White House and the Department of Energy to address their newly-issued guidelines for Property Assessed Clean Energy (PACE) programs, like the ClimateSmart Loan Program. We modified the program slightly to comply with this new guidance—guidance that did not impact the debt remaining with the property in accordance with local and state law.

However, other recent decisions at the federal level have changed the way existing ClimateSmart loans and other similar loan programs around the country are being administered. The most significant change to current loan participants involves new restrictions put in place by the Federal Home Finance Administration (FHFA). These new rules make it more difficult to refinance or sell a property with a PACE loan without paying off the loan at closing. In a letter dated August 31, 2010, from the FHFA Administrator to various members of Congress, FHFA indicated that it would no longer pursue any accommodations of PACE programs nor the guidelines suggested by the U.S. Department of Energy supporting PACE programs.

One of the important features of the ClimateSmart Loan Program was that the cost of the improvements remained with the property upon sale. When the county decided to put a measure on the ballot in 2008 to authorize the sale of bonds to fund our ClimateSmart Loan Program, we did so knowing that this program was developed in compliance with state laws and decades of precedent throughout the country using special assessments to repay property specific investments (like street lighting, alley repairs, sidewalks, water treatment plants, etc.). Specifically, in the 2008 legislative session, the Colorado General Assembly passed, and the Governor signed, House Bill 1350, which specifically allowed for PACE programs in Colorado. In addition to the widespread use of special assessments for property specific improvements, the federal government had never usurped state law with regard to how these types of programs were administered. Please be assured that the program was launched in compliance with local, state, and federal laws and regulations that allowed the debt to remain with the property as was discussed at the workshops.

However, after we issued two rounds of residential financing the federal government (through FHFA, Fannie Mae, and Freddie Mac) disregarded longstanding state and local laws and regulations which allow special assessments to hold a priority position (like property taxes) over first mortgages. The priority position of these assessments has never been raised as an issue by the lender agencies in the past. And, in fact, there are many special assessments – for roads and sidewalks, water and sewer improvements – which continue to be treated as having priority over first mortgages. Only PACE assessments are being subjected to these new regulations.

FHFA issued the attached communications to lenders which have suddenly changed the rules and put PACE programs in Colorado and 21 other states in jeopardy. Because of these Lender Letters, PACE programs have been placed on hold and borrowers - like yourself - have been put in an unfortunate position.

**Cindy Domenico** *County Commissioner*    **Ben Pearlman** *County Commissioner*    **Will Toor** *County Commissioner*

Boulder County Courthouse • 1325 Pearl Street • Boulder, Colorado 80302 • Tel: 303.441.3500 • Fax: 303.441.4525  
Mailing Address: P.O. Box 471 • Boulder, Colorado 80306 • [www.bouldercounty.org](http://www.bouldercounty.org) • [commissioners@bouldercounty.org](mailto:commissioners@bouldercounty.org)

These new rules require that homeowners must clear (pay off) the loan when a property is sold, in order for the new mortgage to be eligible for purchase by Fannie Mae and Freddie Mac. In the case of refinancing, the loan must be repaid, if there is sufficient equity to do so. If there is not sufficient equity in the property, the refinance can proceed with the loan still attached to the property. The letters from Fannie Mae and Freddie Mace are attached for your reference.

In response to this action by FHFA, we and our staff have been actively working with the Colorado federal congressional delegation to look for solutions. In particular, Representatives Polis and Perlmutter and Senator Bennet have been very active in both trying to work with FHFA on a solution and introducing legislation which would return these special assessments to the treatment these type of property improvement assessments have always enjoyed. We, along with other impacted local governments, have been working with the White House and the Department of Energy to look for a solution and will continue to do so. Additionally, the State of California has filed a lawsuit against FHFA over their actions, and we will participate in that legal action as appropriate.

The County is looking at available options that may assist homeowners who are attempting to sell their properties and are now subject to the new FHFA rules. This is a priority issue for us and our staff, however, we do need to examine the legal and other implications of all of the options available before we can provide relief to impacted borrowers. We appreciate your patience as we work hard to move forward as quickly as possible. In the meantime, we are happy to help explain the situation to your lender or potential lenders.

If you have questions, concerns, or issues with your lender(s) please call 303.441.3492.

Sincerely,



Cindy Domenico, Chair  
Boulder County Commissioners



Ben Pearlman, Vice Chair  
Boulder County Commissioners



Will Toor  
Boulder County Commissioner