

Mortgage questions halt funds for solar upgrades

MICHAEL SHAW | STAFF WRITER

Placer County has been forced to halt an estimated \$1.5 million in residential remodels for solar panels or other energy-efficiency upgrades after federal authorities questioned whether the financing method violates mortgage rules.

The underlying dispute goes well beyond Placer County.

State officials say it has put a statewide damper on what's known as Property Assessed Clean Energy, or PACE, programs — a new concept touted as an effective way to reduce household and commercial energy consumption.

The county's program, which launched in March, was one of the first PACE programs in the state to be up and running and had received applications, though it hadn't yet distributed funds. Others that had been ramping up also were in limbo, including a Sacramento county pilot program backed by stimulus funds that plans to offer \$16.5 million in energy-efficiency upgrades.

These programs work by offering

PACE | PAGE 29

PACE | California officials say millions of dollars in limbo as new programs are suspended

FROM PAGE 2

property owners funds up front for approved energy-efficiency upgrades. The money is paid back with interest through a property tax assessment over an agreed period of time, up to 20 years under Placer County's program. The assessments stay with the property if it is sold.

Everything seemed fine until last month, when federal government-sponsored enterprises Fannie Mae and Freddie Mac issued letters suggesting these arrangements could violate their rules. Officials say the agencies are supportive of energy initiatives but claim there are deep concerns with the way some of the programs are set up, including Placer County's.

Fannie and Freddie purchase mortgages from lenders to free up lending capital and have an interest in about half of the county's residential mortgages.

The two sides also disagree over whether there had been tacit approval of these programs.

"This really hit us out of the blue," said Janell Richards, a supervising deputy attorney general in Jerry Brown's office. "Last year they indicated they were fully supportive of PACE programs here in California."

Richards said FHFA's stance jeopardizes millions of dollars throughout the state to be issued through these programs, including stimulus funds slated for energy efficiency. California lawmakers authorized PACE as

a funding mechanism two years ago to allow homeowners a financing option for upgrades such as solar panels, reflective roofs and efficient heating and cooling systems. Similar programs are up and running in 19 states, though not all of them have come in to question by the federal authorities.

LOANS, NOT ASSESSMENTS

Fannie Mae and Freddie Mac are overseen by the Federal Housing Finance Agency. The FHFA has since reiterated Fannie's and Freddie's stance that it is "concerned" about these programs.

So what's the rub?

PACE property assessments come with a lien that takes a "superior" position to a home's mortgage. "The terms of the Fannie Mae/Freddie Mac Uniform Security Instruments prohibit loans that have senior lien status to a mortgage," Fannie Mae said in its letter.

That indicates the agencies believe the PACE programs to be loans, not assessments.

Local officials say federal agencies did not seem to have a problem with the PACE liens coexisting with a Fannie or Freddie mortgage when they reviewed the situation last year and claim that attitude has shifted.

"They have said in the past that these programs are in accordance with the law," Placer County Treasurer-Tax Collector Jenine Windshausen said. "Have they reversed their position? I would say so."

California officials have jumped into the fray seeking clarification, including members of Congress and Gov. Arnold Schwarzenegger. So far, there has been no resolution.

But officials at the FHFA say there was never an approval of these programs if they included a superior lien status.

"The FHFA, Fannie Mae and Freddie Mac and the bank regulators have had concerns with these programs for over a year," said Alfred Pollard, general council at FHFA. He said Fannie and Freddie alerted mortgage servicers to those concerns and gave them instructions how to operate in cases where such programs were already up and running, but never endorsed these programs.

The two sides disagree whether the programs constitute loans or property assessments.

"It's our view these are clearly loans," Pollard said, noting that tax assessments don't come with interest payments, as the Placer County's PACE program and several others do.

Richards from the Attorney General's office said they had been promised a swift response to their inquiries.

"So far, it's been nothing but silence," she said.

GOING FORWARD

Pollard did not address what a solution might entail.

"We are working to address their requests

for resolution," he said. "We want to be very careful. We're coming out of a mortgage crisis. We don't want to put homeowners in a problem situation."

For now, programs such as Placer County's can't process applications from the majority of homeowners. Property owners had applied for more than \$4.7 million of the county program's initial funding of \$33 million. Windshausen said the county is still processing applications from commercial and agricultural property owners wanting upgrades, but so far they have accounted for just seven of the 138 applications.

The county's program, which goes by the name mPower Placer, can also accept applications from homeowners who have non-conforming loans, such as junior loans or those with private lenders. Residents with Fannie- and Freddie-conforming loans applied for \$1.6 million from the program. Those applications are now in limbo.

"It's really disheartening," said Rick Larky, director of workforce development at the North State Building Industry Association. As homebuilding has slowed dramatically during the past few years, the building association has looked for other areas for its members to find work.

"This (program) was a benefit to the community in terms of energy conservation and it created jobs," he said.

mshaw@bizjournals.com | 916-558-7861