November 21, 2012

Federal Housing Finance Agency
Office of Policy Analysis and Research
400 Seventh Street, SW
Ninth Floor
Washington, D.C. 20024

Via Email: gfeeinput@fhfa.gov

Re: State-Level Guarantee Fee Pricing, No. 2012-N-13

The Association of Mortgage Investors ("AMI") appreciates the opportunity to comment upon the Federal Register notice (September 25, 2012) concerning state-level guarantee pricing. For the reasons discussed below, AMI supports the Federal Housing Finance Agency's (FHFA) efforts to adjust the guarantee fees ("g-fees") such that the Enterprises charge for mortgages that finance "single family" properties to recover a portion of the high costs that are incurred in the case of mortgage default arising in certain states.

Introduction

The AMI was organized as the primary trade association representing investors in mortgage-backed securities, including university endowments and pension funds. The AMI was founded to play a primary role in the analysis, development, and implementation of mortgage and housing policy to help keep homeowners in their homes and provide a sound framework that promotes continued home purchasing. Since its formation, the AMI has been developing a set of

policy priorities that we believe can contribute to achieving this goal. We are an investor-only group comprised of a significant number of substantial institutional investors in commercial and residential mortgage-backed and other asset-backed securities.

Background

AMI members are investors represent a number of public pension, retirement and tax-payer institutions. It is important to note that mortgage finance has been instrumental in reducing housing costs and helping citizens achieve the American dream of homeownership. The advent of the mortgage-backed securities (MBS) market resulted in de-regionalizing or nationalizing real estate investment risk, increasing liquidity to mortgage originators, and lowering barriers to home ownership. Securitization was a key factor in improving regional real estate markets. New York State is a case in point. In the 1970s, most New York depositories were flush with cash but had a hard interest rate limit on mortgages. The result was a flow of California mortgages to New York and a flow of dollars to California. New York was an unattractive and non-competitive local market. With securitization, the New York market became national and mortgage funds were more readily available. Since the 1970s, mortgage-backed securities have increased lending levels, with even state housing agencies benefiting from the mortgage securities structuring techniques. Today, however, we witness the PLS market become frozen, leaving the Enterprises dominating the single-family origination and lending market. Accordingly, we support FHFA's effort to have the Enterprises charge g-fees in a more rational and responsive manner relative to the economic reality among the states. This will help restore an efficient national market, spur home mortgage lending, and bring private capital back to the mortgage market.

Today, the U.S. mortgage market is slowly recovering, but remains fragile. The state of the mortgage market limits credit opportunities and makes lending more expensive, especially for communities of color. This hurts prospective borrowers nationwide. Investors face challenges from legal and political challenges, as described in the FHFA notice, leading to higher costs and diminishing the availability of credit. Additionally, investors face numerous other legal and economic challenges, such as the ill-conceived use of eminent domain as a foreclosure mitigation

tool. FHFA's proposal for state-level g-fee pricing is a common-sense, fair method of allocating costs and risks that are localized by state.

Mortgage investors are aligned with both homeowners and the government in our shared goals of keeping Americans in their homes and rebuilding and maintaining a vibrant real estate market. As AMI has testified before Congress, *"[W]e are not saying no to principal modifications. Servicers have the right and obligation to make modifications to mortgages that they service. Further, the servicers should do so irrespective of the settlement. However, servicers certainly should not be able to reduce the cost of the settlement by modifying mortgages that they service, rather than the ones they own."*[1] However, fairness dictates that the g-fees must be charged so as to correspond with the costs and risk which state policies and legal regimes impose.

FHFA Request for Input

Pursuant to the Federal Register notice, we wish to address the three questions raised.

1. *Is the standard deviation a reasonable basis for identifying those states that are significantly more costly than the national average?*

In sum, AMI strongly agrees that the standard deviation basis is a reasonable basis for identifying those states whose policies and legal systems impose significantly higher costs on mortgage finance. However, it is certainly one of several choices, and not the exclusive means, for such a decision. As stated previously, AMI believes that this is an issue of fairness to all stakeholders, including taxpayers, pension plans and retirements systems, and first-time home-owners.

[1] Testimony of Vincent A. Fiorillo, *before the* House Financial Services Subcommittee on House Financial Services Subcommittee on Capital Markets and Government Sponsored Enterprises, *Investor Protection: The Need to Protect Investors from the Government*, 112th Cong. 2d sess. (June 7th, 2012).

Further, AMI advocates for a broader, more holistic review of all 50 states and the costs which their mortgage and foreclosure system impose, on a periodic basis, to determine the true costs on the mortgage finance system. We realize that FHFA's focus is to identify "the small number of states that have average total carrying costs that significantly exceed the national average, and therefore, impose the greatest costs on [the Enterprises]." Toward that goal, FHFA's periodic review, for example on a semi-annual basis, *of all 50 states*, their policies, and case law decisions, would ensure that such information is timely, accurate, and reflects costs imposed on the mortgage marketplace in relation to the national average.

2. Should finer distinctions be made between states than the approach described here?

Following up on the previous answer to Question One, AMI agrees that finer distinctions among states are possible and we encourage their incorporation into FHFA's forthcoming approach. The ultimate FHFA approach must be objective and transparent, so that it measures concrete, tangible, and quantifiable state-based policies or legal effects which impose those significant costs. From the onset, it is well-known within the mortgage industry that some factors are clear and uncontested that impact costs, *for example*, the judicial vs. non-judicial foreclosure states, the availability and effectiveness of recourse in light of a default, bankruptcy law and policy (*e.g.,* the applicability of a homestead exemption), dual-track policies, state-based foreclosure mitigation policies arising from consent decrees and statutory systems, *etc*. AMI does not believe that any borrower should be foreclosed upon merely because of mishandled paperwork. AMI and its members encourage FHFA to seek public input and develop a list of such objective, concrete, tangible, and quantifiable factors bearing on increased costs.

3. *Should an upfront fee or an upfront credit be assessed on every state based on its relationship to the national average total carrying cost, such that the net revenue effect on the Enterprises is zero?*

AMI strongly agrees that upfront fees and credits should be assessed based on a state's relative carrying cost profile. We, further, support a proposal which results in a net revenue

effect on the Enterprises of zero. AMI supports a fee structure that recognizes the credit risk profile every state relative to the national average and accordingly makes a g-fee adjustment. This would make the national market place more rational and fair, as it properly assigns the costs relating to credit risk.

We argue that this would help articulate the different risks/costs among states, while helping to protect the taxpayers preserve and recover value; preserving the value of the enterprises; and, it protects state pensions, retirement systems, and charitable endowments, *etc*, maximize their returns for savers against significantly higher costs and risks.

Conclusion

AMI is comprised of large fixed income institutional investors who support the reemergence of a healthy and balanced U.S. mortgage market, including increased lending opportunities for responsible borrowers. We are very keenly aware through our experience and the mortgage market's performance of the past several years of the need to make the market more rational and fair for all stakeholders. We believe that our comments, if properly implemented, will expedite the return of these critical markets by essentially making the mortgage market more transparent, mitigate risk, and more reliably align the consequences for responsible parties and the policies and legal regimes of the respective states.

On behalf of our membership, let me express again our thanks for giving us this opportunity to comment on the proposed approach concerning state-level guarantee fee pricing. Should you or any member of your Staff have any questions with regard to our views, please contact me at 202-327-8100.

Very truly yours,

Chris J. Katopis
Executive Director