Date: November 22, 2012

Edward J. Demarco
Acting Director

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

Via e-mail: gfeeinput@fhfa.gov

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

Dear Acting Director Demarco:

Aerospace Federal Credit Union (AFCU) wishes to thank the Federal Housing Finance Agency (FHFA) for this opportunity to respond to the proposed "State Level Guarantee Fee Pricing" rule.

The proposed pricing change presents a number of significant questions and issues for the mortgage community at large, and in particular, for borrowers who will be affected by the new fees and for lenders who provide mortgage services in the affected states.

Looking at the mortgage community in general and borrowers and lenders specifically, the following should be addressed, considered, and reconciled before the proposed rule is enacted.

1. The disparity in foreclosure procedures and costs related to those procedures has been a known fact; it is not a recent occurrence as the proposal appears to imply: "Recent experience has shown a wide variation among states in the costs that the Enterprises incur from mortgage defaults. This is due, in large part, to differences among the states and territories in the requirements for lenders or other investors to manage a default, foreclose, and obtain marketable title to the property backing a single family mortgage. Foreclosure takes longer than average in some states as a result of regulatory or judicial actions. Further, in some states the investor cannot market a property for a period after foreclosure is complete."

   The proposal's language makes it appear that the differences in foreclosures processes between states and territories just occurred or occurred in response the recent financial crisis. Neither is true; the differences in foreclosure procedures pre-date Fannie Mae and Freddie Mac's participation in the secondary market. These differences were present when Fannie Mae and Freddie Mac established their "g-fees". These differences were well known to Fannie Mae and Freddie Mac as they were to lenders who made loans regionally or nationally. Thus, it is seems disingenuous to portray these differences as "recent" or unknown.

The proposal further states that these differences "(do) not include the forward-looking impact of recently-enacted state and local laws"; any new actions by states to assist troubled constituents are not part of the proposal. What the proposal seems to be addressing are age-old processes the states have had in place (see Number 2); processes well known to lenders, servicers, and Investors, including Fannie Mae and Freddie Mac. Thus, it would seem to be misleading to portray differences in foreclosures processes between states and territories as "recent" or unknown.

2. The differences in state and territory foreclosure procedures have been contentious, confusing, and challenging for many, many years; Fannie Mae and Freddie Mac and many large national lenders have wanted and sought a national foreclosure process; however, they have not been able to convince the states or Congress that a national foreclosure process is needed.

   Congress has seen fit to let the foreclosure process remain the domain of the states. And, many states have enacted foreclosure legislation they considered necessary for their state over the years (not just the past 5 to 10 years but the past 30, 40, and 50 years).

   This proposal seems to be a furtive attempt to undo a time-honored process Congress deems appropriate: states have the right to set their own foreclosure procedures without interference from outside parties. The proposal does this quite divisively: "(Fannie Mae and Freddie Mac) set their g-fees nationally, accounting for expected default costs only in the aggregate, borrowers in states with lower default-related carrying costs are effectively subsidizing borrowers in states with higher costs."

   Thus, states with shorter and perhaps less cumbersome foreclosure processes may look at this proposal and support the idea that states with longer, more cumbersome foreclosure processes should be charged more. However, Fannie Mae and Freddie Mac established their "g-fees" knowing about the differences in state foreclosure processes. These differences have not impaired the ability of Fannie Mae or Freddie Mac to offer borrowers the best mortgage interest rates available.

   And, importantly, the proposal does not:

   - Announce (or even suggest) lower "g-fees" if the new fees are enacted (i.e., Fannie Mae and Freddie Mac collect the new fees and keep "g-fees" the same—the consumer simply pays more);
   - Provide any recompense for states with shorter, less cumbersome foreclosure processes (only pressure if such processes are lengthened, tightened, or become more costly);
   - Prevent other states from being charged the new fees at a later date (see "unusual costs" below);
   - Declare that the new fees will not be increased: FHFA could continue to raise fees until state legislatures in the affected states (including any new states) change their foreclosure processes;
   - proposal does not explicitly set up a national foreclosure standard; instead, it uses a national foreclosure average (see below), which changes by how states enact laws affecting foreclosure timelines and costs, to define what becomes a de facto national foreclosure standard.

   Finally, the proposal makes an attempt to directly influence how states enact future foreclosure legislation: "The agency may include the impact of newly-enacted laws if they clearly affect foreclosure timelines or costs, where such costs may be reasonably estimated based on relevant experience."

   Thus, from the FHFA to the states: while you have the right to do what you want, the FHFA also has the right to evaluate your actions and react accordingly (i.e., charge borrowers in your state higher fees if the change represents a longer or more involved or costly foreclosure process).

This declaration is emphasized in the proposal's summary: "The approach recognizes that each state establishes legal requirements governing foreclosure processing that it judges to be appropriate for its residents. It also recognizes that unusual costs associated with practices outside of the norm in the rest of the country should be borne by the citizens of that particular state rather than absorbed by borrowers in other states or by taxpayers." Remarkably, there is no foreclosure norm for the country; the FHFA is attempting to set one up through what it calls the "national average".

The FHFA and a national foreclosure standard:
The proposal does not set up a national foreclosure standard; the proposal does establish the framework for a national foreclosure standard. It does by defining what the FHFA calls "unusual costs" or "practices outside of the norm" and using a chart that lists a state's cost percentage relative to a cost percentage defined by the FHFA as a national average and lists timelines states impose for foreclosure.

It appears that any cost percentages above the national average are "unusual costs" and timelines greater than the national average are "practices outside of the norm". The fluidity of this definition means that some states will always breach the FHFA's "unusual costs" or "practices outside of the norm" rule.

3. Freddie Mac currently charges a 1% fee for mortgage loans that have as security a condominium located in California (see Freddie Mac's Exhibit 19). Fannie Mae does not charge a separate fee for loans that have as security a condominium located in California.

   Freddie Mac's 1.0% fee has been charged since the mid -1990s; Freddie Mac claims it needs this fee because borrowers who have as security a condominium located in California present a much higher risk than borrowers who have condominiums as a security located outside of California (i.e., regardless of the borrower's credit score, income, employment, reserves, or loan to value ratio).

   Thus, as a seller/servicer approved to deliver to both Fannie Mae and Freddie Mac, AFCU delivers loans secured by California condominiums to Fannie Mae. This eliminates having to charge its borrowers the 1.0% fee Freddie Mac requires for such loans. Additionally, AFCU has helped other credit unions who are only Freddie Mac approved seller/servicers set up with correspondent lenders who do not charge the 1.0% fee for California condominiums—this really means is that credit unions lose their members to other lenders but this would occur anyway as most members refuse to pay Freddie Mac's fee.

   When I have asked Freddie Mac about obtaining a waiver for this fee (i.e., several large lenders have such a waiver), Freddie Mac said my loan volume was insufficient to warrant the request. I have made this request several times over the years; my loan volume levels have ranged from $5.0 million a month to $25.0 million a month but these volume levels have never been enough to achieve a waiver.

   Problematically, the proposal does not prohibit the same thing from happening with state level guarantee fees: large lenders (i.e., the nation's top twenty largest lenders) may be able to obtain a fee waiver while small lenders (e.g., credit unions and community banks) will have to impose the new fees (or, as *some* have been suggested, smaller lenders could avoid having to charge the new fee by not participating in markets where such a fee is required).

4. The proposal's approach to how this fee affects the borrower is simplistic and naïve. Expecting that rates will be adjusted by a few basis points simply is not possible, at least not for small lenders who sell loans to Fannie Mae or Freddie Mac through their cash windows. Fannie Mae or Freddie Mac's interest rates are incremented in eighths of a percent (i.e., 0.125%).

Lenders who quote and approve loans on-line will need to change their systems to accommodate state level differences in fees, something Fannie Mae and Freddie Mac, except for the California condominium fee, have not required (of course, lenders could simply pay the fee and not worry about system changes, costs, or borrower reaction—however this would be quite burdensome for small lenders located in the states affected).

One of the unintended consequences to this fee adjustment may be that all lenders (unless they obtain a waiver) will charge a single "foreclosure" related fee for all loans or charge a single "foreclosure" related fee for loans in any state where such a fee is required. Either way, lenders will probably have a static "foreclosure" related fee; this will allow lenders to collect one "foreclosure" related fee and pay any state level fees charged out of the "foreclosure" related fee pot.

5. The selection of states subject to the new fees is a bit perplexing to understand, particularly based on the following (the information below is from the chart in the proposal):

State	Total Time to Acquire Title	Cost per day vs National Avg (%)	Rank Nationally
New York	820	112	54
New Jersey	750	113	53
Connecticut	690	113	52
Florida	660	111	51
Illinois	540	118	50
Maryland	605	97	49
Wisconsin	510	113	48
Vermont	540	113	47
South Dakota	540	105	46
Ohio	480	114	45
Maine	570	95	44
Guam	500	100	38
Puerto Rico	720	68	37
Virginia	510	93	36
Hawaii	590	79	35

While the "Rank Nationally" is self-explanatory, the methodology used is certainly open to interpretation and manipulation, particularly when "estimate" is used as part of the methodology.

If "Cost per Day" is truly a significant factor, then Wisconsin, Vermont, and Ohio should be included with the states that will be affected by the new fee. Likewise, if "Total Time to Acquire Title" is important, then Maryland, Maine, Puerto Rico, and Hawaii should be included.

The rational to adjust the fees for just five states escapes the explanation put forth in the proposal. Additionally, if the reason for the proposal is to eliminate or limit "subsidizing borrowers in states with higher costs" then all of the above states should be included (and perhaps every state should be charged since every state has a requisite foreclosure cost and timeline).

Question: if every state is charged a state level guarantee fee would such charges reduce "g-fees"? If not, why not?

6. The nationalization of Fannie Mae and Freddie Mac through conservatorship has produced a super-agency, the FHFA; this agency has complete power to set mortgage rules, mortgage fees and mortgage securitization practices and processes—it does not need public or Congressional approval to do what it

wants to do. Thus, this proposal, including the de facto national foreclosure standard, will probably be enacted despite any comments received.

Finally, if foreclosure costs are impacting Fannie Mae and Freddie Mac then Fannie Mae and Freddie Mac or the FHFA can impose fees that do not attempt to push states to change laws just because such laws are not responsive to the wishes of Fannie Mae, Freddie Mac or FHFA. Fannie Mae and Freddie Mac already charge a quantity of fees; and, except for Freddie Mac's California condominium fee, these fees are universal: they impact all borrowers in every state equally (and they do not try to influence how state enact legislation).

AFCU wishes to thank the FHFA and Acting Director Demarco for the opportunity to respond to the proposed rule change related to state-level guarantee fees. Hopefully, any action taken by the FHFA will be beneficial to the borrowers affected and in compliance with the wishes of Congress and, more importantly, a national constituency.

Sincerely,

Ed Casanova

Ed Casanova
Vice President
Aerospace Federal Credit Union