



November 26, 2012

Edward J. DeMarco
Federal Housing Finance Agency
c/o Office of Policy Analysis and Research
400 Seventh Street SW., Ninth Floor,
Washington, DC 20024
gfeeinput@fhfa.gov

Re: State-level g-fee pricing, FR Doc. 2012-23531

Dear Mr. DeMarco:

The National Housing Conference welcomes the opportunity to comment on the Federal Housing Finance Agency's (FHFA) proposal to adjust guarantee fees state by state for some of the risks lenders bear. We recognize that this proposal comes in the larger context of FHFA's strategic plan, which calls for "appropriate risk-based guarantee fee pricing by state." We have several concerns with the proposal, particularly how it may restrict availability of mortgages in areas most in need of capital. Our concerns, explained in more detail below, are:

1. State-by-state risk-based pricing is necessarily about policy change
2. The methodology for measuring risks obscures social benefits and sources of cost and delay
3. Risk-based pricing undermines the liquidity of the national mortgage market
4. The rule needs a process for review and updating

We are concerned that the proposed rule would not encourage best practices, but rather become a tool to undermine essential anti-blight measures and borrower protections. The overly simple, outcome-based methodology could be used to target policies such as mandatory mediation and anti-blight requirements that are essential to communities struggling with foreclosures and their aftermath. Much better would be a set of nationally-recognized best practices for a fair and efficient foreclosure process.

About the National Housing Conference

The National Housing Conference (NHC) represents a diverse membership of housing stakeholders including tenant advocates, mortgage bankers, non-profit and for-profit home builders, property managers, policy practitioners, realtors, equity investors, and more, all of whom share a commitment to a balanced national housing policy. Since 1931, NHC has been dedicated to ensuring safe, decent and affordable housing for all in America—that commitment bringing together our broad-based membership has earned us a reputation as the **United Voice for Housing** engaging in nonpartisan advocacy on housing issues.

What the rule proposes

The rule proposes an adjustment to the guarantee fee that Fannie Mae and Freddie Mac charge for single-family mortgage-backed securities. The fee is an attempt to “recover a portion of the exceptionally high costs that the Enterprises incur in cases of mortgage default.” Currently, Fannie Mae and Freddie Mac set their guarantee fees nationally, averaging the overall costs across the entire market. The proposed adjustment would only apply to certain states—ones that FHFA has determined have exceptionally high delays in the foreclosure process and carrying costs for the lender during that process.

Comments on the proposed rule

The National Housing Conference has several concerns with the proposed rule, particularly as it relates to neighborhoods and housing markets struggling to recover from a wave of foreclosures while preventing further deterioration.

1. State-by-state risk-based pricing is necessarily about policy change

The proposed rule and briefing from the agency present the g-fee as value-neutral, simply reflecting the costs to Fannie Mae and Freddie Mac of the foreclosure process without making specific recommendations for policy. The cost-differentials are clearly designed to encourage states to adjust their policies, however. Setting fees based on state lines rather than, for instance, housing market or metro areas, makes the calculation specifically about the policy choices made by states. Indeed, the final section of the proposed rule notes that the guarantee fees could be revised in the future if state policies change.

Encouraging uniformity of best practices among states can be useful. Efficiencies in the foreclosure process can benefit all, if handled in a way that protects the rights of all parties. If FHFA is going to encourage policy change, however, it should do so transparently and with reference to nationally recognized best practices for managing the foreclosure process. As currently presented, the proposed rule offers no policy prescription for states identified as outliers with high costs to lenders, nor does it take into account the social benefits of foreclosure policies that may slow the process, as discussed below. It would be much more productive for FHFA instead to work toward a set of best practices drawing on the lessons learned from the foreclosure crisis and then encourage adoption by states.

2. The methodology for measuring risks obscures social benefits and sources of cost and delay

The proposed rule takes a straightforward, outcome-based approach to measuring the cost to lenders of the foreclosure process: average time to take title to the property multiplied by the per-day carrying cost. Although easy to quantify, this approach obscures the various reasons for delay and cost. It also ignores any benefits to communities, including the lenders that serve those communities, that come from protections built into the process.

Delay in the foreclosure process can come from many sources, only some of which are policy-related. For instance, local housing markets that saw a severe drop in housing prices have experienced waves of foreclosure far in excess of past levels. A foreclosure process that is reasonably efficient under normal market conditions can break down when overwhelmed—a result not necessarily of failed policy but of a market irregularity. Imposing higher lending costs on such markets will only make it harder for those areas to rebound.

Another source of delay, particularly in judicial foreclosure states or those with required mediation, is controllable by servicers. We hear frequent, if anecdotal, reports of servicers' counsel requesting multiple continuances that delay foreclosure proceedings. Getting all participants in the foreclosure process to align their behavior to speedy resolution is not always controllable by state policy, and the proposed guarantee fee mechanism would do nothing to encourage servicers to expedite the process.

Furthermore, policies that impose carrying costs on lenders are in some cases essential anti-blight measures for maintaining property quality, surrounding property values, and government-provided services to the affected homes. The proposed rule conflates all sources of cost, which makes it difficult to extract lessons for policy.

3. Risk-based pricing undermines the liquidity of the national mortgage market

Creating state-by-state variation in guarantee fees would reduce the efficiency of what is still a liquid, national mortgage market. By imposing higher borrowing costs on states that are struggling to manage a wave of foreclosures, the proposed rule would reduce capital availability in precisely the areas that need it. The proposed increase is a small one, but that cuts against both its effectiveness in motivating policy change and its impact on lending.

Taken to its logical extreme, state-by-state risk-based pricing would fragment our national mortgage market. Many more factors beyond lender costs of recovery could be broken down along state lines. States with weaker economies, populations undergoing demographic transitions, or other factors could see much higher borrowing costs. It would be easier for investors and lenders to cream the higher-return, lower-risk loans based on geography, leaving borrowers in less-favored states to face fewer options and higher costs. The result would be a less-liquid, pro-cyclical mortgage market that would starve economically weaker states for capital during economic downturns.

4. The rule needs a process for review and updating

The proposed rule offers no formal way for changes in state policy to result in changes to guarantee fee adjustments. For the rule to be truly effective in encouraging best practices in the foreclosure process, it should have a mechanism by which states could apply for review and adjustment of the fee based on evidence of the costs and benefits of the policies in place. FHFA should also be required to periodically

review its methodology, analyze the most recent data, and reassess guarantee fee adjustments for all states, regardless of whether states have requested a review.

Conclusion

We are concerned that the proposed rule would not encourage best practices, but rather become a tool to undermine essential anti-blight measures and borrower protections. The overly simple, outcome-based methodology could be used to target policies such as mandatory mediation and anti-blight requirements that are essential to communities struggling with foreclosures and their aftermath. Much better would be a set of nationally-recognized best practices for a fair and efficient foreclosure process.

Once again, we appreciate the opportunity to offer comment on the proposed rule. To discuss any of these comments in further detail, please contact Ethan Handelman, Vice President for Policy and Advocacy, National Housing Conference, (202) 466-2121 x238, ehandelman@nhc.org.

Sincerely,

A handwritten signature in black ink that reads "Chris Estes". The signature is written in a cursive, flowing style.

Chris Estes
President and CEO