Via Email to gfeeinput@fhfa.gov

November 26, 2012

Edward J. DeMarco
Acting Director, Federal Housing Finance Authority
c/o FHFA OPAR
400 Seventh Street SW., Ninth Floor
Washington, DC 20024

Dear Mr. DeMarco:

This letter is responsive to the FHFA's request for input as published in the Federal Register on September 25, 2012. The request concerns an FHFA proposal to increase the "g-fee" for certain states, including Connecticut (the "Proposal"). The undersigned, who represent Connecticut lenders and homeowners in foreclosure procedures, strongly urge the FHFA to withdraw the Proposal and consider alternative proposals to address delays associated with foreclosure.

Given the Proposal's attention on the affected states' "laws and requirements," this letter focuses on the role of Connecticut's most prominent law regarding defaulted loans: its courts' Foreclosure Mediation Program (the "Program"). The Proposal reflects a misunderstanding of the Program's benefits for loan investors and, apparently, a continuation of GSE policies the Program was intended to fix.

Connecticut's Foreclosure Mediation Program Has Saved Taxpayer Money

Before the Program was created, Connecticut homeowners in foreclosure usually had difficulty speaking to anyone at their mortgage servicer who was equipped to discuss their account. Servicers simply lacked the resources to handle the sharp increase in loss mitigation requests. This problem was worsened by financial incentives to push to foreclosure with all possible haste, irrespective of each loan's circumstances. Servicers had no financial incentive to hire and train the staff needed to reach outcomes that would benefit both loan investors and homeowners. Workout options, when offered, seldom addressed the financial hardship in a workable, long-term manner. As a result, many otherwise preventable foreclosures flew through the system, causing losses for loan investors, homeowners, their neighbors, and their towns.

Believing that bringing homeowners and investors together would help each reach acceptable, cost-saving and home-saving resolutions, Connecticut instituted the country's first statewide foreclosure mediation program in 2008. As detailed in the November 13, 2012 letter submitted to Mr. DeMarco by Connecticut's federal delegation, the Program has been enormously successful: 82% percent of borrowers who complete the Program obtain a foreclosure alternative, with 67% keeping their home and 15% negotiating a "graceful exit." Given that Connecticut does not require parties to come to an agreement in mediation, these statistics demonstrate that Connecticut's program allows parties to reach resolutions that are more favorable to loan investors – including the taxpayer-backed Fannie Mae and Freddie Mac – than foreclosure in the vast majority of circumstances.

The Proposal Reflects Continued GSE Policy

The Proposal, however, expressly ignores the benefits of this 82%, instead analyzing only the portion of the remaining 18% that "did not qualify for loan modification or other loss mitigation alternatives" and ultimately led to a completed foreclosure. This analysis is obviously incomplete and inadequate, so much so that it reflects a lack of good faith by its proponents. Given the proponent, however, the Proposal is not a surprise.

The mortgage servicing industry's inability to handle the flood of loss mitigation requests that began five years ago, and the lack of incentives to address that inability, were the foreseeable and proximate cause of longstanding GSE policy. Speed was the primary goal of the GSE's default servicing rules. Understanding and regard for the law were never a priority. As a result, cut-rate GSE-approved vendors such as unaccountable providers of "default processing services" and unscrupulous attorneys were rewarded with the lion's share of the GSEs' foreclosure business.[1] Mortgage servicers, who were on the front line of the uptick in foreclosures, were no different. They made their money from foreclosure processing volume rather than successfully achieving cost-saving foreclosure alternatives. The effects of the GSEs' emphasis on speed led, almost inevitably, to the revelation of systematic "robosigning" among mortgage servicers, and the resulting state-federal mortgage settlement.

Were the GSEs interested in "win-win" solutions for struggling homeowners and themselves, they would have made material changes to their default compensation structure soon after the crisis began, monitored their servicers and vendors more closely, and participated in foreclosure diversion initiatives like Connecticut's Program. Compensation structures, however, have not significantly changed. The GSEs seldom monitor their servicers' foreclosure practices, even when incidents of blatant misconduct or neglect are raised by homeowners and advocates.[2] And the GSEs refuse to participate in foreclosure mediation, relying on their misincentivized industry partners, mortgage servicers. Their incompetence and lack of authority to reach resolution inevitably leads to delay and debacles that only enrich the mortgage servicers and the vendors. Connecticut created a mediation program with the intent, and now more than four years' results of, benefitting loan investors. Given the GSEs' failure to engage with the Program, it is amazing the Program has had any success so far.

FHFA Should Consider Other Measures to Reduce Costly Delay

To the extent the GSEs are suffering from losses in their portfolio due to delay, the delay lies primarily with their industry partners. More specifically, the blame lies with certain servicers, as some servicers have been able to adjust to the environment of the past five years far better than

[1] One vendor, the law firm of Florida attorney David J. Stern, closed in 2010 following belated revelations that it routinely sidestepped Florida law. Fannie Mae named Stern its "Attorney of the Year" in 1998 and 1999.

[2] For example, a Branford, CT homeowner with a Fannie Mae loan was told by Citi that a foreclosure sale would go through in August because she had improperly responded to Citi's request for current paystubs by submitting June paystubs. She explained that she was a school bus driver. Citi did not understand why a school bus driver would lack August paystubs, and conducted the sale. Fannie Mae refused to reconsider the homeowner's loan application, finding no fault with Citi, and took title to an underwater condo unit. A few months later, it solicited proposals from the public for addressing its growing REO portfolio.

others.[3] The GSEs should focus on the problem servicers and seek to either address issues with those servicers or promptly change horses.

Connecticut's laws are not the problem. Connecticut has no required pre-foreclosure notice period, and a foreclosing plaintiff can go from start to finish in 63 days if a homeowner does not appear. If a homeowner does appear, but lacks a viable alternative to foreclosure, the process last only 30-90 days longer. Community banks, and certain servicers, have the staff and the credibility with the court system to process unavoidable foreclosures quite quickly. Many of the servicers hired by the GSEs, however, lack this basic competence.

We'd encourage the FHFA to pursue strategies that recognize its partners have been the problem – not state "laws and requirements." The FHFA should study the compensation structure it uses for its partners, and study the performance of its mortgage servicers and other vendors within Connecticut. It makes no sense for the FHFA to blindly pursue anti-homeowner policies like the Proposal on the basis of either (1) an ideological antipathy towards policies that value alternatives to foreclosure over foreclosure itself, or (2) studies that omit more than 80% of the relevant data. American taxpayers deserve better.

Sincerely,

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[3] See Agarwal, Sumit et al., "Policy Intervention in Debt Renegotiation: Evidence from the Home Affordable Modification Program," November 13, 2012. Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2138314. See also Hilley, Justin, "BofA slowest to solve delinquent mortgages," September 16, 2012. Available at http://www.housingwire.com/news/monday-morning-cup-coffee-117.

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