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SENT VIA ELECTRONIC TRANSMISSION TO gfeeinput@fhfa.gov

November 26, 2012

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

RE: Public Input on FHFA [No. 2012-N-13] State-Level Guarantee Fee Pricing

To Whom It May Concern:

The proposed regulation, "State-Level Guarantee Fee Pricing" would allow Fannie Mae and Freddie Mac ("the Enterprises") to adjust guarantee fees ("g-fees") in certain states to recover a portion of alleged "exceptionally high costs that the Enterprises incur in cases of mortgage default in those states." (See Federal Register, Vol. 77, No. 186, p. 58991). By adjusting g-fees, the Enterprises purport to compensate for the credit risks they undertake when they own or guarantee mortgages. The Federal Housing Finance Agency ("FHFA") has a responsibility to ensure that those fees are proper and adequate. In response to the FHFA's invitation for input, Civil Justice, Inc. disagrees with proposed regulation, and provides the following specific responses to the FHFA's questions:

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

Civil Justice does not believe that standard deviation is a reasonable basis for identifying those states that are significantly more costly than the national average. Using a standard deviation statistic does not account for state-based policy approaches to the foreclosure crisis, especially distinctions between the judicial processes that affect the timeline of the foreclosure process. For example, in Maryland, borrowers have two opportunities for mediation before a foreclosure sale occurs (pre-file and post-file mediation). The foreclosure timeline can change based on whether the servicer participates in pre-file mediation or whether the borrower elects to apply his or her right to mediation. Even when mediation results in foreclosure, the borrower can negotiate for an

exit strategy, which better situates the borrower to re-enter the local market as a homeowner in the future. The proposed statistical analysis, which utilizes a standard deviation statistic without appearing to include state-based policies and interventions, in conjunction with a variable on the respective state judicial system, does not account for positive state-based efforts that effectively lengthen the foreclosure process while restoring consumer credit for the future.

Moreover, cities such as Baltimore are among the "hardest hit" areas of the national foreclosure crisis. This is due, in part, to lax servicer guidelines, illegal and deceptive lending practices, and reverse-redlining. Litigating these errors also takes time and lengthens the foreclosure process. For example, at Civil Justice, a foreclosure defense case can last for several years and still result in a foreclosure. As such, including the standard deviation variable as a measure to determine which states should pay higher g-fees may fail to incentivize state governments to protect borrowers. Instead, it might have a negative unintended effect of deterring state governments from challenging harmful practices to the borrowers, as such challenges may delay the foreclosure timelines.

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

Civil Justice opposes any distinctions between states that target the hardest hit states because the cost of this policy transfers to the borrowers in the form of higher monthly payments. While borrower defaults contributed to the foreclosure crisis, they are not ultimately responsible for it. Accordingly, future borrowers should not pay higher state fees in their efforts to become stable homeowners. Stronger lending guidelines and servicing guidelines already have a more substantial effect on foreclosure rates than adjusted g-fees. Thus, the market needs more consumer protections, rather than penalties to future borrowers.

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?

Civil Justice does not believe that upfront fees or credits should be assessed because the "average total carrying cost" is an arbitrary variable. The total carrying cost relies on input from the servicers, who often lack the infrastructure to handle the foreclosure backlogs. Servicers ultimately control the foreclosure timeline. In Maryland, for example, servicers can send a Notice of Intent to Foreclose 90 days after delinquency, but nothing forces a servicer to send the notice and begin the foreclosure process. In areas where the home prices have depreciated, servicers who already cannot handle large backlogs often delay the foreclosure process in order to purse actions in neighborhoods with more home value. The state has no incentive to force people out of their homes to accelerate the foreclosure timeline, and doing so would create a profound drain on the local economies. Applying g-fees or credits will not force an inundated industry to perform at a higher rate, nor is a policy of displaced foreclosure victims necessarily positive for fragile housing markets. Thus, the issue of fees or credits misses the need for stronger federal regulations of servicers.

For these reasons, Civil Justice, Inc. strongly opposes the proposed approach. Please feel free to contact our office with any questions or concerns.

Sincerely,

CIVIL JUSTICE, INC.