



CONFERENCE OF STATE BANK SUPERVISORS

November 26, 2012

Edward J. DeMarco
Acting Director
Federal Housing Finance Agency
400 Seventh Street SW
Ninth Floor
Washington, DC 20024

Dear Acting Director DeMarco,

The Conference of State Bank Supervisors (“CSBS”) supports the Federal Housing Finance Agency (“FHFA”) in its statutory duty to ensure Freddie Mac, Fannie Mae, and the Federal Home Loan Banks (together, “the regulated entities”) operate in a safe and sound manner, foster liquid, efficient, competitive, and resilient national housing finance markets, and operate in the public interest.¹ However, the FHFA proposal to require Freddie Mac and Fannie Mae (together, “the GSEs”) to increase the Guarantee Fee (“g-fee”) in states with longer foreclosure timelines fails to recognize the state-federal balance inherent in property law and housing finance.

The FHFA has proposed to raise the g-fee for five states – Illinois, Florida, Connecticut, New Jersey, and New York – under the premise that the carrying costs for defaulted properties in these states are outside the statistical norm compared to other states.² There is a clear quid pro quo for these states: “If those states were to adjust their laws and requirements sufficiently to move their foreclosure timelines and costs more in line with the national average, the state-level, risk-based fees imposed under the planned approach would be lowered or eliminated.”³ At a basic federalist level, this approach to foreclosure on behalf of the GSEs is unacceptable because it impermissibly infringes on basic state authorities.

Foreclosure laws are inherently local, reflecting trade-offs that maximize utility within property markets. Foreclosure laws reflect the divergence of land use across the country, implementing policy considerations balanced with other areas of law, economic concerns, and varying thresholds for consumer protection. Indeed, state responses to the foreclosure crisis may have prevented significant loss to the GSEs, a factor that is not considered in the proposal.

Addressing slow foreclosure results may facilitate the process of foreclosure for nationwide mortgage holders, but to do so disregards the policy considerations States weigh to maximize utility in their respective jurisdictions. State foreclosure law is determined through policy considerations affecting the utility of land use, a key component of the federalist framework that maximizes the productivity of land within highly diverse jurisdictions across the country. As a result, foreclosure laws and processes are inextricably woven into state laws that govern individuals’ interests and rights in real property.

¹ 12 U.S.C. § 4513.

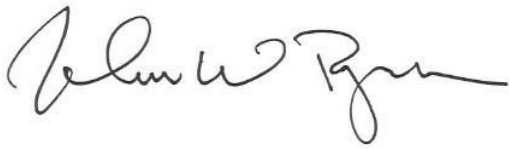
² State-Level Guarantee Fee Pricing, 70 Fed. Reg. 58,991 (Sept. 25, 2012).

³ Id. at 58,994.

Conversely, the national GSE housing finance system is focused on providing housing credit. Acquiring title of defaulted property is only a small portion of this credit equation and must be balanced with local interests.

Our federalist structure ensures that nationwide credit programs supplement, not supplant, local accountability over land. Accordingly, foreclosure should be a part of the broader discussion on housing finance. CSBS and its members look forward to engaging in this discussion with FHFA as we continue to move forward in the housing recovery.

Sincerely,

A handwritten signature in black ink, appearing to read "John W. Ryan". The signature is fluid and cursive, with a long horizontal stroke at the end.

John W. Ryan
President & CEO