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Housing Finance & Regulatory Affairs

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Federal Housing Finance Agency
Office of Policy Analysis and Research
400 7th Street, SW
Washington, DC 20024

Re: State-Level Guarantee Fee Pricing

Submitted via Electronic Delivery to: *gfeeinput@fhfa.gov*

Dear Sir or Madam:

On behalf of the National Association of Home Builders (NAHB), I appreciate the opportunity to submit comments on the Federal Housing Finance Agency's notice of State-Level Guarantee Fee Pricing.

NAHB is a Washington-based trade association representing more than 140,000 members involved in all aspects of single-family and multifamily residential construction. The ability of the home building industry to meet the demand for housing, including addressing affordable housing needs, and contribute significantly to the nation's economic growth is dependent on an efficiently operating housing finance system that offers home buyers access to affordable mortgage financing at reasonable interest rates through all business conditions.

The Federal Housing Finance Agency (FHFA) is seeking input on its plans to require Fannie Mae and Freddie Mac (the "Enterprises") to increase guarantee fees charged on residential mortgage loans originated in Connecticut, Florida, Illinois, New Jersey and New York. FHFA cites these five states as "statistical outliers" from the rest of the country with regard to total default-related carrying costs, i.e. their default-related carrying costs significantly exceed the national average. The pricing adjustments will take effect in 2013.

While recovering a portion of the exceptionally high mortgage default costs the Enterprises incur in these states directly from the citizens of these states may appear to FHFA to be a practical and sound decision based on its obligations as conservator of the Enterprises to preserve and conserve the Enterprises' assets, NAHB opposes the proposal for the following reasons:

- The Enterprises still are bound to fulfill a public mission, but FHFA is driving the Enterprises to price mortgage loans as though they are private entities, without Congressional direction to do so.

- A federal agency is penalizing consumers to effect change to state laws that provide consumer protections.

- FHFA does not explain fully its calculations nor reveal its methodology for establishing when a state has default-related carrying costs that will trigger increased guarantee fees.

- FHFA offers no analysis of the estimated costs that will be recovered. NAHB is concerned home buyers will be harmed more than the Enterprises will benefit.

- Increased costs to consumers will reduce credit affordability in the affected states and new borrowers will pay for a problem they did not cause.

Background

The Enterprises charge guarantee fees on mortgage loans they purchase from their lenders and seller/servicers. The primary purpose of the guarantee fees is to cover the risk that a borrower will default on his or her mortgage loan. In the case of mortgage-backed securities (MBS) issued by the Enterprises, the existence of the credit risk guarantee supports the liquidity of the securities which benefits all market participants by lowering mortgage interest rates nationwide.

The crisis in the mortgage and housing markets highlighted the fact that the Enterprises had not charged adequate guarantee fees to cover the costs of the defaults and foreclosures they have experienced on mortgage loans in their portfolios and in the MBS they guaranteed. This realization at the start of the market downturn in 2007 led the Enterprises to begin increasing fees to better price for credit risk. In August 2007, the Enterprises introduced loan-level risk-based delivery fees. Over the years, price adjustments and delivery fees based on credit scores, loan-to-values, market conditions, property type and loan type all have been utilized. Ultimately, all these fees made credit increasingly expensive and less available for home buyers.

Directly related to the significant volume of mortgage defaults and foreclosures is an ongoing lack of confidence in the mortgage markets. The private label MBS market suffered a particularly severe setback, and continues to be practically nonexistent due primarily to its lack of a government backstop which has made private label MBS very expensive compared to agency MBS. The private label MBS market cannot compete with the agency MBS market and therefore, even in conservatorship, Fannie Mae and Freddie Mac remain the dominant institutions in the mortgage market. Together with Ginnie Mae, these agencies issue and/or guarantee almost 100 percent of all MBS. In the third quarter of 2012, non-agency issuance of MBS was .4 percent.

NAHB Opposes FHFA's Increase in Guarantee Fees in Five States

The Enterprises still are bound to fulfill a public mission, but FHFA is driving the Enterprises to price mortgage loans as though they are private entities absent Congressional direction

It is the opinion of some that Fannie Mae and Freddie Mac should increase their guarantee fees to bring their pricing closer to that which a private label MBS issuer would need to charge and thereby incent private label MBS issuers to return to the marketplace.

FHFA has adopted this position. Though the Enterprises have been increasing guarantee fees steadily since being placed in conservatorship in September 2008, in September 2011, Acting Director DeMarco began to warn of continued increases to better reflect the fees for credit risk that would be demanded by the participants in a private, competitive marketplace. FHFA believes that to move the Enterprises to a sound and stable financial condition, as per its responsibility as Conservator, further consideration should be given to pricing and to other forms of risk sharing that employ private sector disciplines within Enterprise operations to better reflect what might be expected of them as private companies not in conservatorship.

At the end of 2011, FHFA also began to note the vast differences in foreclosure laws across the states and how foreclosure timelines and processes vary considerably among states. Again, Acting Director DeMarco suggested private sector participants in the mortgage market would likely take these credit risk factors into consideration and price the risk accordingly whereas the Enterprises, in conservatorship with a government backstop, are less compelled to price in this manner.

FHFA's Conservatorship Scorecard released in March 2012 includes an objective to price for the effect of state laws on mortgage credit losses due to mortgage defaults and foreclosures. The Scorecard's plan proposes risk-based pricing by state with a state-level pricing grid to be completed by the end of 3Q 2012.

NAHB views this increase in guarantee fees in five states as another method of encouraging the Enterprises to think and act like private companies. Though, in implementing the guarantee fee increase per the Temporary Payroll Tax Cut Continuation Act of 2011, Congress directed FHFA's Director to appropriately reflect the risk of loss, as well the cost of capital allocated to similar assets held by other fully private regulated financial institutions, NAHB does not believe this is a mandate from Congress for the future. Until Congress has decided the fate of the Enterprises, it is premature for FHFA to require the Enterprises to price as though they are private companies. At this point, they are not private companies and they still have a public mission to make home ownership affordable. Further, the Enterprises still are required to meet affordable housing goals and make credit available to low-income and very low-income families at all times under all economic conditions.

NAHB believes this mandate applies to all geographic areas and it is not up to FHFA to force the Enterprises to make credit more available and more affordable in the states in which it is less expensive for them to operate. NAHB is concerned that the act of increasing guarantee fees in Illinois, Connecticut, New York, New Jersey and Florida, even in gradual increments, will unfairly affect the affordability of credit to home buyers in these states – in opposition to the spirit of the Enterprises public mission.

A federal agency is penalizing consumers to effect change to state laws that provide consumer protections

FHFA acknowledges that certain state laws contribute to increased default costs. NAHB notes that legal requirements governing foreclosure timelines and number of days to obtain marketable title, etc. have been put in place to offer home owners a level of protection from loss of their homes. Taxing homeownership for all new home buyers in states with high default-related costs penalizes all new home buyers to try to incent states to change their consumer protection laws. FHFA offers the states an unfair choice: higher homeownership costs or less protection for consumers from foreclosure.

FHFA does not fully explain its calculations nor reveal its methodology for establishing when a state has default-related carrying costs that will trigger increased guarantee fees

FHFA has declared that the five states in which it intends to increase guarantee fees have default costs that "significantly exceed" the national average and therefore they are "statistical outliers" from the rest of the country. In the notice, FHFA determined that states with standard deviations greater than one and one-half from the national average default-related carrying costs of 10 basis points "significantly exceed" the national average and therefore the Enterprises are justified in charging higher guarantee fees in these states.

However, it is unclear how FHFA has calculated the default carrying costs of each state so it is difficult for a state to challenge FHFA's assertions that it is a "statistical outlier." Without being able to review the complete data FHFA utilized to arrive at its price adjustments for the five states, NAHB is unable to determine whether FHFA fully considered any special circumstances that may have led to the increased foreclosure timelines and high carry costs for which it is penalizing home buyers in Connecticut, Florida, Illinois, New Jersey and New York. Foreclosure moratoriums, requirements for offering loan modifications, excessive volume of defaulting mortgages, etc. all have played a role in the time it takes for a mortgage in default to move through foreclosure. NAHB questions whether there were special circumstances that led these states to be statistical outliers that may not have been appropriately considered by FHFA.

NAHB agrees that one and one-half standard deviations above mean is considered statistically significant. If FHFA moves forward with this approach, NAHB would want assurance that the standard deviation is not going to be changed arbitrarily should FHFA decide it wants to increase guarantee fees in additional states or raise the fees in the current five states if they continue to be outliers in terms of default costs.

FHFA asks whether states should be assessed an upfront credit or fee based on the relationship of its default-related costs. NAHB believes the logistics and burden of determining and monitoring this process would unnecessarily complicate the sale of loans to the Enterprises.

FHFA offers no analysis of the estimated costs that will be recovered. NAHB is concerned home buyers will be harmed more than the Enterprises will benefit

NAHB consistently has opposed fee increases by the Enterprises at the expense of affordable mortgage credit for home buyers. NAHB believes that while fee increases may provide some benefit to the Enterprises, the broader impact is a detrimental effect on mortgage affordability for home buyers and an impediment to the mortgage market and economic recovery.

FHFA offers no analysis of the estimated costs that will be recovered by implementing this fee increase. NAHB is concerned that the amount of money collected will be minimal and while it may help recover a portion of the high costs that the Enterprises incur throughout the default process in these states, NAHB believes home buyers will be harmed more than the Enterprises will benefit.

Increased costs to consumers will reduce credit affordability and new borrowers will pay for a problem they did not cause

As mentioned above, fees charged by the Enterprises have been steadily increasing since 2007. When FHFA released its annual report on single-family guarantee fees for years 2010-2011, it showed an increase in guarantee fees to an average of 28 basis points in 2011 from 26 basis points in 2010.

The Enterprises have been directed to increase guarantee fees twice in 2012. In December 2011, through the Temporary Payroll Tax Cut Continuation Act of 2011, Congress directed FHFA to increase guarantee fees by at least an average of 10 basis points to take effect in April 2012. In August 2012, FHFA directed the Enterprises to raise guarantee fees on single-family mortgages by an average of 10 basis points with the intent to "…move Fannie Mae and Freddie Mac pricing closer to the level one might expect to see if mortgage credit risk was borne solely by private capital." For loans exchanged for MBS, the increase will be effective with settlements starting Dec. 1, 2012. For loans sold for cash, the increases were effective with commitments starting Nov. 1, 2012. Congress also encouraged FHFA to require guarantee fee changes that reduce cross-subsidization of relatively risky loans and eliminate differences in fees across lenders that are not clearly based on cost or risk.

While FHFA's increases in this notice may seem very small, the fact remains that the cost of credit has been increasing nationwide since Conservatorship and credit availability remains tight. Though the increases in FHFA's notice would apply only to five states, these increases should be considered in concert with other recent guarantee fee increases and loan level risk-based pricing by the Enterprises that are impacting credit availability and affordability. NAHB believes FHFA and the Enterprises should be finding ways to increase credit availability and affordability to credit worthy home buyers rather than making it harder for them to qualify for homeownership.

NAHB believes home buyers in all states should be treated equally. We are opposed to this plan to increase guarantee fees to lenders which will lead to an increase in mortgage costs for home buyers who did not contribute to the increased default costs currently facing the Enterprises. We especially do not think consumers and home buyers in five states should be targeted to pay this penalty.

NAHB Recommendation

NAHB urges FHFA to withdraw this plan. FHFA should not increase the guarantee fees in Illinois, Connecticut, New Jersey, New York and Florida thereby increasing the cost of homeownership for home buyers or home owners seeking mortgage loans in these five states. Even though current state laws and practices may cause default costs to be significantly higher for the Enterprises in these five states than in other states, NAHB believes another increase in the cost of homeownership at this critical point in the housing recovery would be detrimental nationwide. Rather, NAHB encourages FHFA to work with the industry to find other solutions that could mitigate significantly higher default-related costs in certain states.

Development of national, uniform foreclosure processes and procedures would be a more long-term, equitable solution than raising the cost of home ownership for some home buyers. Unclear, complex default and foreclosure processes that vary from state to state continue to hamper and slow the foreclosure process, and impede an economic recovery. NAHB believes that efforts to establish uniform national foreclosure processes and procedures that include clear procedures for handling non-performing loans would benefit the entire industry.

Conclusion

NAHB opposes FHFA's plan to increase guarantee fees in specific states based on default costs FHFA considers excessive. We do not believe this is an appropriate policy for FHFA to require of the Enterprises. The Enterprises still are subject to meeting their public mission of supporting a liquid secondary market that supports affordable and available credit nationwide. While the Enterprises operate under their Congressional charters and until there is clear direction from Congress, they should not be encouraged to operate as private companies.

Thank you for your consideration of NAHB's comments. If you have questions, please contact Becky Froass, Director, Financial Institutions and Capital Markets, at 202-266-8529 or rfroass@nahb.org.

Sincerely,

David L. Ledford

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