

Congress of the United States
Washington, DC 20510

November 13, 2012

The Honorable Edward J. DeMarco
Acting Director
Federal Housing Finance Agency
Washington, District of Columbia 20024

Dear Acting Director DeMarco:

We are writing to urge the Federal Housing Finance Agency (“FHFA” or “the Agency”) to withdraw its September 25 proposal to increase the guarantee fee (“g-fee”) assessed by the Federal National Mortgage Agency (“Fannie Mae”) and the Federal Home Loan Mortgage Corporation (“Freddie Mac”) (collectively, the “Government Sponsored Enterprises” or “Enterprises”). FHFA’s proposal punishes states like Connecticut that provide a fair and equitable foreclosure process that helps banks and homeowners work out a solution enabling homeowners to keep their homes.

States have often proved to be effective laboratories that address vexing problems when an inability to reach agreement has stymied the efforts of national policy makers. We strongly believe this to be the case here. Connecticut is successfully addressing the problems that have arisen during the foreclosure crisis to provide its citizens additional protections. These actions were taken after careful public deliberations by elected representatives and should be respected. Rather than penalizing Connecticut, FHFA should leave room for our state’s officials to address the state’s challenges in our own way.

Connecticut foreclosure laws ensure that foreclosure is a last resort remedy. The proposed rule perversely encourages more foreclosures by incentivizing rushed foreclosure proceedings with less due process for homeowners, resulting in the needless eviction of families from their homes and increased numbers of foreclosed homes negatively impacting housing values and becoming blighted properties in the community. Further, FHFA ignores the fact that absent and unprepared financial institutions and their servicers are responsible for the most significant amount of the very delay which FHFA finds so costly.

As members of Congress representing Connecticut, we oppose FHFA’s efforts to punish our state for doing the right thing. The Agency’s proposal should be withdrawn and rethought. While we are skeptical of any attempt to raise fees in particular states based on the length of the states’ foreclosure process, this letter focuses particularly on provisions of FHFA’s proposal that fundamentally misunderstand what is happening on the ground in Connecticut.

I. Foreclosure mediation works in Connecticut and saves millions each year.

FHFA's proposal assumes that the costs imposed on Fannie Mae and Freddie Mac rise in proportion to the time period from a homeowner's last mortgage payment to the point when an Enterprise obtains marketable title.¹ It ignores the possibility that a state program could increase the time it takes for an Enterprise to receive marketable title, but at the same time reduce costs by reducing the incidence of foreclosure. This error leads to a misunderstanding of the dynamics at play in a state like Connecticut, which has a highly successful pre-foreclosure mediation program.

Before a Connecticut homeowner can be foreclosed on, they have a right to negotiate with their lender or loan servicer in an effort to find a mutually beneficial alternative to foreclosure. Two-thirds of mediations conducted pursuant to this rule result in the homeowner remaining in their home. In these cases, the homeowner avoids the disruption of moving and the risk of homelessness; the community has one less vacant building and avoids the costs that come with it;² and the foreclosing owner avoids the costs associated with foreclosure, property ownership, and the need to sell a property in a down market. According to FHFA's own numbers, the Enterprises save an average of almost \$12,000 each time they find a mutually beneficial alternative to foreclosure.³ In the four years from July 1, 2008 through May 31, 2012, mediation resulted in 9,313 Connecticut homeowners remaining in their homes,⁴ for an estimated savings to *foreclosing owners* of more than \$27.6 million each year. An additional 15 percent of Connecticut mediations—or 2,049 mediations over four years⁵—resulted in a short sale, a deed in lieu of foreclosure, or another alternative to foreclosure. In these cases, both parties avoid the substantial transaction costs involved with completing the judicial foreclosure process. The foreclosing lender can also sell the property for an average of almost \$30,000 more than it would receive if the property had gone through foreclosure.⁶ Thus, in 82 percent of Connecticut mediations both parties end up better off than they would have been if the mortgagee had simply proceeded to foreclosure. Overall, the Connecticut foreclosure mediation process saves foreclosing owners about \$42.6 million per year.

Yet, FHFA's proposal entirely ignores this 82 percent of cases and focuses only on the 18 percent that eventually end in foreclosure. Because its main variable is the length of time from a homeowner's last payment to the time of foreclosure, FHFA's method for calculating excessive costs ignores the benefits to be gained when no foreclosure occurs. As a result, FHFA has concluded that the Connecticut mediation process produces \$14.9 million in excessive costs each

¹ See State Level Guarantee Fee Pricing, 77 Fed. Reg. 58991 (proposed Sept. 25, 2012).

² One study of Chicago showed that a single foreclosure can impose almost \$20,000 in costs on a community—or up to \$34,000 if a foreclosure-related vacancy leads to a fire. See WILLIAM APGAR & MARK DUDA, THE MUNICIPAL COST OF FORECLOSURES: A CHICAGO CASE STUDY 23-29 (2005).

³ This figure likely significantly underestimates the savings for each avoided foreclosure. It represents the total savings FHFA believes could be achieved by offering a loan modification whenever a modification would achieve a higher net present value than a foreclosure (loans that are "NPV-positive"), divided by the total number of mortgages backed by the Enterprises. The correct analysis would involve dividing the total savings by the number of mortgages that would be modified because they are NPV positive. Given that the correct denominator is almost certainly significantly smaller than the denominator used in our analysis, the savings per property achieved through a mortgage modification is almost certainly significantly larger than the \$11,867 figure used here. In conversations with FHFA staff, we were unable to get the data needed to do the more accurate analysis.

⁴ CONN. JUD. BRANCH, FORECLOSURE MEDIATION PROGRAM RESULTS (2012), available at http://www.jud.ct.gov/statistics/FMP/FMP_pie.pdf.

⁵ *Id.*

⁶ See REALTYTRAC, 2Q 2012 U.S. FORECLOSURE SALES REPORT, available at <http://www.realtytrac.com/content/foreclosure-market-report/q2-2012-us-foreclosure-sales-report-7363> (reporting an average price of \$155,892 for a post-foreclosure sale and \$185,062 for a pre-foreclosure sale).

year. Even if this figure is accurate,⁷ Connecticut's mediation process appears to save the Enterprises more by keeping families in their homes than it costs them by slowing the foreclosure process.⁸ Thus, punishing Connecticut for its mediation program would not only hurt Connecticut homeowners and communities; it would hurt taxpayers.

II. Delays in the Connecticut foreclosure process cannot properly be blamed on state policies, officials, or homeowners.

FHFA has concluded that if states like Connecticut "were to adjust their laws and requirements sufficiently" they could shorten their foreclosure timelines and avoid the Agency's fee increase. In effect, the Agency appears to assume that a fee increase on future borrowers in states with long foreclosure timelines properly puts the cost of foreclosure on the party most able to reduce that cost—the state and its citizens. This assumption does not reflect the reality on the ground in our state.

Connecticut homeowners are only entitled to a sixty day mediation period. If loan servicers participated in the mediation process in good faith and quickly demonstrated their legal right to foreclose, the foreclosure process could be fairly short even in those cases when mediation did not make foreclosure unnecessary. Unfortunately, servicers do not do what it takes to move the process towards completion. We frequently hear stories about loan servicers who fail to attend mediation sessions, lose paperwork, and otherwise delay the judicial process. Conversations with Connecticut Judicial Department staff confirm that servicers are generally the cause of delays in the foreclosure process. According to a Judicial Department analysis, when the mediation period is extended it is most often because a mortgage company or loan servicer needs more time to review paperwork for a loss mitigation option. If FHFA wants to reduce costs on the Enterprises, it would be better off penalizing servicers who slow down the judicial process because they are either unprepared or unwilling to work with homeowners. Reining in intransigent servicers would do more than a g-fee increase to put the cost of judicial delays on the party most responsible for those delays and best able to ameliorate those costs.

III. Conclusion

Fannie Mae and Freddie Mac exist to serve an important public purpose: preserving and promoting home ownership. A fee increase that punishes those states that do the most to keep families in their homes is inconsistent with the Enterprises' mission and with the interests of taxpayers. We urge FHFA to immediately withdraw its proposed fee increase. We are open to working with FHFA to reexamine options that would meet the goals of the Agency while protecting the process and homeowners of Connecticut.

⁷ FHFA relies on the national foreclosure rate to estimate the cost of delays in the foreclosure process. Given that Connecticut's foreclosure rate is lower than the national average; its total cost of foreclosure delays should be lower as well. See REALTYTRAC, NATIONAL REAL ESTATE TRENDS, available at <http://www.realtytrac.com/trendcenter/>.

⁸ We do not have numbers for how many of the foreclosures avoided through Connecticut's mediation program involved Fannie Mae or Freddie Mac. However, if at least 35 percent of avoided foreclosures involved the Enterprises—and anecdotal evidence suggests the number far exceeds 35 percent—then the Enterprises actually save money because of the mediation program. Further, the analysis presented here—which relies on numbers made available by FHFA—underestimates the cost savings achieved by Connecticut's mediation process in at least two ways. First, as discussed above, *see supra* note 3, the savings per modified mortgage are likely significantly higher than the \$11, 867 figure used here. Second, this analysis assumes no savings from avoiding the costs associated with litigating a foreclosure through the final judgment rather than agreeing to a short sale or deed in lieu of foreclosure.

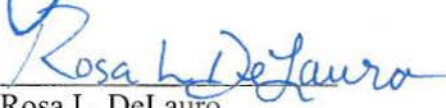
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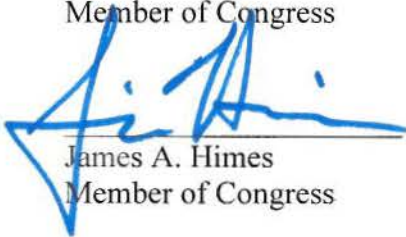
Richard Blumenthal
United States Senate



John B. Larson
Member of Congress



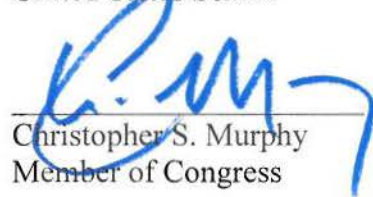
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