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Congress of the United States
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November 20, 2012

The Honorable Edward DeMarco
Acting Director
Federal Housing Finance Agency
400 7th Street, SW
Washington, D.C. 20024

Dear Acting Director DeMarco,

I would like to express my concerns regarding the Federal Housing Finance Agency's (FHFA) notice entered into the Federal Register on September 20, 2012 which seeks to adjust Fannie Mae and Freddie Mac's approach to State Level Guarantee Fee (g-fee) Pricing.

The notice (No. 2012-N-13) indicates that the FHFA plans to single out five states – New York, New Jersey, Connecticut, Florida and Illinois – by charging higher upfront g-fees on new single-family home mortgages acquired by Fannie Mae and Freddie Mac. This one-time fee will vary by state from 15 to 30 basis points, with New York borrowers sustaining the highest fee of 30 basis points. These states were chosen because, according to your notice, they have "total carrying costs that significantly exceed the national average" between when a default occurs and when Fannie and Freddie receive a marketable title to a foreclosed property.

I would like to raise several concerns I have with this proposal:

1. The calculation used to determine the new fee does not take into account the rate of foreclosure by state. According to your notice, "the estimation assumes that loans originated in each state will default at the national average default rate." This masks true state-by-state costs. The targeted states by no means had the highest rates of foreclosure in recent years, but are being asked to carry a disproportionate share of guarantee fees. As recent figures from Realty Trac indicate, 1 in 2,500 New York homes are in foreclosure compared to states like Arizona and Nevada where the numbers average roughly 1 in 350. By ignoring foreclosure rates, the proposal ignores evidence that certain regions were much more susceptible to originating non-performing loans.

2. Implementing a policy as soon as 2013 could further depress home sales in a weak housing market, and penalize a state for taking steps to help homeowners facing foreclosure. Some consumer protection policies delay foreclosure and succeed in getting a borrower back on track – preventing the servicer from having to take on the cost of a non-performing loan. The benefit of these programs should not be written off. If a g-fee increase is needed, it should be delayed until at least 2014 to give states adequate time to evaluate – and if necessary reform – foreclosure assistance programs, tax rates, the judicial review process and other policies that affect carrying costs to ensure effectiveness. In turn, the FHFA may be warranted to take into consideration foreclosure rates in its fee calculation to acknowledge the impact of productive consumer protections.

3. Finally, selecting just five states to bear the burden of the new fee seems skewed – and could drive lending and liquidity out of these states. Not only would borrowers in New York experience higher upfront costs, they may also find it more difficult to get a loan. Furthermore, it's unclear if New Yorkers would see this fee change year to year, or if all 50 states might one day be subject to a state-tailored g-fee. Your notice indicates that "FHFA intends to periodically reassess state-level pricing based on updated [Fannie Mae and Freddie Mac] data." Does that mean the new fee could a) be applied to new states as carrying costs change, b) vary by year of loan origination, or c) result in a reshuffling of the five targeted states over time (e.g. removing Connecticut and adding Nevada)? Is this uncertainty fair to borrowers or lenders? Did the FHFA take into consideration how this might impact community lending?

I would greatly appreciate your taking the above concerns into consideration as you assess the fee proposal. I understand and respect the FHFA's mandate to recover the Government Sponsored Enterprises losses and protect taxpayers from future costs. I want to commend your efforts in this direction, but also ask that prospective homeowners in the states of New York, New Jersey, Connecticut, Florida and Illinois not be unfairly penalized.

Thank you in advance for your prompt consideration of this matter; I look forward to working with you going forward. If you have any questions or need additional information, please contact my Legislative Director, Erin Ingraham, at 202-225-7896 or erin.ingraham@mail.house.gov.

Sincerely,

PETER T. KING
Member of Congress