United States Senate
WASHINGTON, DC 20510

November 19, 2012

Edward DeMarco
Acting Director
Federal Housing Finance Agency
400 Seventh Street S.W., Eighth Floor
Washington, D.C. 20024

Dear Mr. DeMarco,

We urge you to abandon the proposed Federal Housing Finance Agency (FHFA) rule that would increase the guarantee fees ("g-fees") on loans guaranteed by the Enterprises ("GSEs"), Fannie Mae and Freddie Mac, in five states (Connecticut, Florida, Illinois, New Jersey, and New York).

This proposed rule has serious shortcomings and could have negative consequences for homeowners in these five states and across the country.

As you know, certain state and local governments have put in place increased regulatory and judicial scrutiny of foreclosures to protect consumers from mortgage loan servicing and foreclosure abuses. The need for such protective measures is not in dispute. An investigation by all 50 state attorneys general found evidence of rampant foreclosure abuses, including premature and unauthorized evictions based on falsified or deceptive documentation.

The main reason cited by FHFA for its proposed rule, is that state and local policies designed to protect homeowners from improper lending and foreclosure practices and that reduce the likelihood of future defaults, have increased the financial costs faced by the GSEs. However, in its effort to recoup the foreclosure-related costs faced by the GSEs in the short-term, FHFA is creating undue barriers that could undermine vital consumer protections and restrain residential lending.

For the following reasons, FHFA should not move forward with this proposal in any form:

- This proposal creates a disincentive for states to support consumer protections for homeowners, even though the historical lack of adequate homeowner protections is a principal reason why the GSEs are experiencing excess foreclosure-related costs today. It makes no sense for the FHFA, whose Congressional mandate includes fostering "resilient national housing finance markets," to encourage actions by states that could destabilize housing finance markets. Speeding up foreclosures could fail to reduce GSE costs in the long run and lead to serious injustices against homeowners in the short run. It is a wrongheaded approach economically and it is morally objectionable given the significant evidence of such injustices from hearing testimony in the Senate Banking Committee.[1]

[1] See Diane Thompson's NCLC testimony to the Senate Committee on Banking, Housing and Urban Affairs, from November 16, 2010 for examples of these abuses:
http://www.nclc.org/images/pdf/foreclosure_mortgage/mortgage_servicing/testimony-senate-banking.pdf

- States should choose their foreclosure laws without undue pressure from federal agencies. The states in question all had more robust laws on their books prior to the housing crisis, and have not historically been treated any differently by the GSEs because they chose to have stronger versus weaker foreclosure protections for consumers. These are important state-by-state policy choices with concerns much broader than the FHFA's narrow focus on the financial health of the GSEs.

- It is unfair that responsible new homebuyers in our states should have to pay higher g-fees because misconduct by banks and servicers led courts to delay or stop foreclosures on older loans in an effort to uphold the law. It is also unfair that they should be singled out to pay the costs of an increase in foreclosure processing times that occurred in many states and was a consequence of a financial crisis they did not cause. Moreover, given that the housing market has shown signs of recovery and that foreclosure inventories have begun to decrease; establishing a precedent for unequal treatment of homeowners across the country strikes us as particularly unwise.

- This proposal will stifle the already tenuous housing recovery, which is the opposite of what FHFA should be doing. It will reduce the availability of credit as these higher fees will make it even more difficult for otherwise credit-worthy new borrowers to qualify for financing. The economy is counting on these new borrowers, many of them first time homebuyers, to purchase the inventory of new homes, existing homes, and foreclosed homes and assist with the recovery of the real estate market. The FHFA has a duty as conservator to consider not only the impact of its policy choices on the Enterprises themselves, but also to consider the broader economic impact on consumers and homebuyers, taxpayers, and the housing market, which in turn has a significant effect on the financial health of the GSEs.

- This proposal relies on assumptions that may not be satisfied in practice. First, FHFA assumes that borrowers in all states will default at the national average rate. Second, FHFA assumes that the foreclosure cost for every default in a given state will be identical. Instead of relying on such assumptions, FHFA should direct the GSE's to determine the appropriate g-fee for each mortgage pool by calculating the expected foreclosure cost associated with each mortgage loan.[2] Given the availability of financial data and sophisticated tools to analyze that data that now exist, the GSE's should be able to estimate the statistically-expected foreclosure cost on a loan-by-loan basis, regardless of the state the loan is originated in.

- This proposal is the outcome of a biased analysis. The FHFA analysis takes into account only the negative aspects of stronger state consumer protections, not the positive aspects. The FHFA analysis assumes that loans in all states will default at the national average rate, but that is not necessarily the case. It is quite possible that states with higher homebuyer education and protection requirements may experience lower default rates in the future because lenders will take greater care in lending. FHFA should not subject borrowers in our states to higher g-fees since any increase in foreclosure costs may well be offset by lower foreclosure probability.

Based on the reasons outlined in our letter today, we strongly urge the FHFA to abandon its proposed rule to increase guarantee fees in states that choose to protect their consumers more robustly. We are open to

---

[2] A *similar* proposal by Fannie Mae in 2007 (Announcement 07-22: Maximum Financing in Declining Markets), seeking to reduce Loan-to- Value financing levels in 'declining real estate markets' was rescinded after consumer groups posited that the policy was tantamount to 'redlining,' or the practice of restricting credit access along geographic lines. Fannie Mae then determined that place-based credit assessments had become unnecessary due to improvements in their AVM, which makes available to underwriters - risk determinations at the loan level versus more aggregate levels such as the one offered in the proposed placed-based guarantee fees policy.

working with the FHFA to find alternatives to this proposal that do not penalize states with strong consumer protections. Please contact us with any additional questions or concerns. We look forward to your prompt response.

Sincerely,

Robert Menendez (NJ)
U.S. Senator

Bill Nelson (FL)
U.S. Senator

Frank R. Lautenberg (NJ)
U.S. Senator

Kirsten E. Gillibrand

Kirsten Gillibrand (NY)
U.S. Senator

Richard Blumenthal (CT)
U.S Senator

Charles Schumer (NY)
U.S. Senator

Joseph Lieberman (CT)
U.S. Senator