Congress of the United States
Washington, DC 20515

November 26, 2012

Federal Housing Finance Agency
Office of the Director
1700 G Street NW
Washington, D.C. 20552-0003

Dear Acting Director DeMarco:

We write to you today to express our concerns with the recent *Federal Register* Notice [No. 2012-N-13] regarding a proposed change in the approach used by Fannie Mae and Freddie Mac in determining guarantee fees (g-fees) charged on single-family mortgages. In particular, we believe that the Notice's proposed increase in g-fees in states "where costs related to foreclosure practices are statistically higher than the national average" is based on faulty and incomplete analysis and therefore, we are concerned that the result of this proposal is, in part, to target states that have adopted measures to protect the due process rights of borrowers. Further, we find this action to be part of a growing trend whereby the Federal Housing Finance Agency (FHFA) has ignored its responsibility as conservator to minimize foreclosures and help facilitate a robust, national housing market. We therefore request that you withdraw the Notice from the Federal Register.

With this Notice, FHFA has proposed transferring the cost of attenuated foreclosure timelines onto new borrowers in those states FHFA has designated as outliers. We are concerned that this proposal encroaches on individual states' sovereignty over foreclosure laws, and moreover, that FHFA's criteria guiding this proposal are both questionable and selective.

Primary factors cited in the proposal as increasing state foreclosure timelines are "regulatory or judicial actions," and "legal and operational expenses." Yet the Notice contains no analysis of whether the laws and ordinances in place in various states are responsible for the attenuated foreclosure timelines. This approach is particularly misguided given the ample evidence that a significant factor in the lengthy foreclosure timelines across the country is the breakdown in mortgage servicing and foreclosure processing in recent years, in many cases due to the insufficient practices of mortgage servicers that are overseen by the Enterprises, and thus, FHFA as conservator. By failing to adequately supervise the work of the Enterprises, their mortgage servicers and third-party vendors, FHFA arguably bears responsibility for many of the problems in the mortgage servicing industry that have caused foreclosures to slow. For example, at a hearing of the Financial Services Subcommittee on Housing and Community Opportunity in November of 2010, you testified to the fact that you only learned of "foreclosure documentation deficiencies" through news reports.[1] Moreover, as regulator for the Enterprises, FHFA failed to take any action to prevent abuses by "foreclosure mills" working on behalf of mortgage servicers until November

[1] *Robo-Signing, Chain of Title, Loss Mitigation, and Other Issues in Mortgage Servicing: Hearing Before the Subcommittee on Housing and Community Opportunity* (Serial 111-166), 111th Cong. (2010).

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of 2010, despite numerous warnings beginning as early as 2008 that inappropriate foreclosure practices were occurring among certain law firms.[2]

Given the previous challenges faced by the FHFA in ensuring that servicers and their third-party vendors were maintaining the integrity of the foreclosure process, we believe that the laws and ordinances adopted in the states targeted for a proposed g-fee increase are reasonable measures. In fact, these additional state measures should only increase the Enterprises' carrying costs to the extent that previous costs were artificially low on account of the servicers' corner-cutting and misbehavior. For example, a rule adopted by the New York State court system which provides that attorneys will have to take "reasonable steps to verify the accuracy of papers they file to support residential foreclosures" is a common-sense measure, which arguably could have prevented the many abuses perpetrated by one notorious foreclosure mill in that state.[3] If in fact this provision has lengthened foreclosure timelines, it merely reflects the continuing dysfunction among mortgage servicers and their vendors, not the unreasonableness of the New York State court system's provision.

If the continued inadequate and improper practices by the nation's largest mortgage servicers are driving foreclosure delays, we believe that the Enterprises' increased g-fees will only serve to transfer costs onto borrowers that should rightfully be borne by servicers in the form of penalties for failing to follow loss mitigation guidelines. Additionally, FHFA's analysis in the proposed Notice is faulty in that it substantiates the need for a g-fee increase in these states by merely looking at the length of the foreclosure timeline in each state, rather than the overall level of foreclosures. By neglecting this key measure, you ignore the fact that states with strong consumer protection laws may ultimately reduce the carrying costs of the Enterprises by incenting mortgage modifications and other alternatives to foreclosure.

Furthermore, one of the main goals of the securitization model is to increase access to geographic diversity in real estate investments and any appropriately diverse portfolio will contain mortgages from many different areas. If the FHFA sees increased foreclosure timelines as an additional risk on return, an increase in g-fees ought to be borne broadly by all states as that risk is spread across the entire portfolio. State-by-state variations in g-fees are clearly not a risk mitigation tool but an attempt to influence state governments and thus an abuse of FHFA's regulatory powers.

Under the Housing and Economic Recovery Act of 2008, you have the express responsibility to "ensure…that the operations and activities of each [Enterprise] foster liquid, efficient, competitive, and resilient national housing finance markets." Yet you have consistently disregarded this mandate, and have instead focused on very narrow and short-term concerns. Moreover, the state-level adjustments in your most recent Notice run counter to your mandate to establish a *national* housing finance market. In summary, rather than penalizing states for ensuring that foreclosures are in accordance with the rule of law, we feel it would be more effective for your agency to reduce the overall incidence of foreclosure by directing the Enterprises to engage in sustainable loan modification approaches, particularly those involving principal reduction.

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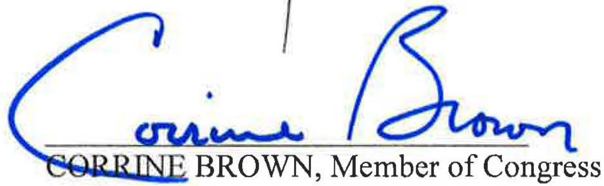
[2] Office of the Inspector General for the Federal Housing Finance Agency. (2011). *FHFA's Oversight of Fannie Mae's Default-Related Legal Services* (AUD 2011-004).
[3] Nocera, Joe. (2011, October 28). What the Costumes Revealed. *New York Times*

For these reasons, we strongly urge you to withdraw your proposed Notice. We look forward to your prompt response to this request.

Sincerely,

MAXINE WATERS, Member of Congress

BARNEY FRANK, Member of Congress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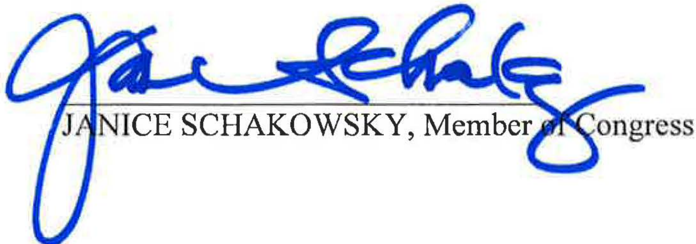
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