



November 26, 2012

Edward J. DeMarco, Acting Director
Federal Housing Finance Agency OPAR, 400
Seventh Street SW., Ninth Floor,
Washington, DC 20024

**Re: Comments Regarding State-Level Guarantee Fee Pricing
No.: 2012-N-13**

Dear Acting Director DeMarco:

As the Attorneys General of Illinois, Connecticut, and New York, we write to express our strong opposition to the Federal Housing Finance Authority (FHFA)'s proposal to increase guarantee-fees for mortgage borrowers in the states of Connecticut, Florida, Illinois, New Jersey, and New York. The proposal is a poorly conceived assault on federalist principles and on the rights of homeowners in the affected states, and we urge you to withdraw it.

The agency asserts that the higher fees, which would be passed on to borrowers in the form of higher interest rates, are necessary to offset the increased carrying costs of defaulted mortgages in states where foreclosures take longer than average. In reality, however, the fee increase would impose a penalty on borrowers in states that offer greater statutory protections to homeowners in foreclosure. Further, as the agency acknowledges, the purpose of this penalty is not just to offset costs but to exert pressure on lawmakers in the affected states to amend their foreclosure statutes:

If [the five] states were to adjust their laws and requirements to move their foreclosure timelines and costs more in line with the national average, the state-level, risk-based fees . . . would be eliminated.

FHFA is a taxpayer-funded agency tasked with the important mission of overseeing Fannie Mae and Freddie Mac in the wake of the worst housing crisis in living memory. We find it troubling that the agency would try to leverage its pricing power to influence the legislative processes in our states and others, to the detriment of homeowners. The proposal amounts to a thinly disguised threat, placing the affected states in the untenable position of choosing between higher borrowing costs for their residents or dismantling homeowners' legal protections.

In addition, we find the proposal's central premise – that statutory requirements are the principal drivers of foreclosure delays in the affected states – severely lacking in evidentiary support. In fact, the entire proposal is less than four pages in length and all but ignores a major *known* cause of foreclosure delays: mortgage servicer misconduct.

Mortgage servicers have an extremely poor track record of complying with state foreclosure statutes and other laws, as demonstrated by the recent \$25 billion national settlement with the five largest servicers. And yet the proposal reads as if one of the largest civil law enforcement investigations and settlements in our nation's history never happened. The proposal makes no mention of mortgage servicers' widespread and systemic violations of statutory foreclosure requirements. Nor does it examine the undisputed impact of servicer misconduct on foreclosure timelines – the residual effects of which are still being felt, given that the settlement's reforms have been fully in place for less than two months.

Rather, in a leap of logic that asks us to believe foreclosure timelines operate independently from servicer behavior, the proposal places blame for foreclosure delays entirely on the statutes themselves. In doing so, the proposal effectively absolves servicers of responsibility for their actions and instead arbitrarily punishes borrowers and homeowners.

Furthermore, the proposal neglects to take into account the potential benefits of rigorous foreclosure requirements, not just for distressed homeowners but for Fannie and Freddie and taxpayers as well. Statutory safeguards were put in place to prevent unnecessary foreclosures and provide homeowners every opportunity to save their homes, whether through court mediation or loan modifications or other means. We know from assisting distressed homeowners in our states that these statutory protections do in fact work as intended: they save homes. And in turn, they presumably save Fannie and Freddie (and taxpayers) money.

Unfortunately, it is impossible to gauge the extent to which these savings offset the costs of delays, as the proposal is devoid of any data or findings that would support such an analysis. Before advocating for the repeal of statutory foreclosure protections, the agency should undertake a more thorough inquiry that accounts for their benefits as well as their costs.

We also note with concern that the state-based fee proposal, if adopted, would establish a potentially dangerous precedent for future pricing structures based on irregular geographic variables. In justifying the proposal, the agency argues that higher costs of foreclosure delays in some states should not be borne by borrowers in other states. This argument turns the central risk-spreading purpose of Fannie and Freddie guarantees on its head, and opens the door to future pricing structures based on such geographic variables as high housing prices, foreclosure rates, and unemployment rates, all of which are fair game if local risk-based pricing becomes the norm.

In fact, of all the potential variables, the length of foreclosure provides one of the weaker bases for risk-based pricing, in that foreclosure timelines are cost-neutral to loan guarantors (and

ultimately taxpayers) as long as full recovery on the loan is made upon foreclosure. To be sure, full recovery is not always possible, especially in the current market. It would thus make more sense, under the agency's flawed reasoning, to penalize states with the highest property values, steepest home-price declines, and the largest loan-to-value ratios, as these factors are far greater determinants of foreclosure-related taxpayer losses than are mere foreclosure timelines. A pricing structure based on these factors would be fundamentally unfair, but no more so than the current proposal.

In the end, the most compelling reason for rejecting the state-based fee proposal is also the simplest: it is profoundly anti-homeowner. If the proposal is adopted, homeowners in the affected states will inevitably pay a steep price – in the form of higher interest rates or, if state lawmakers yield to FHFA's demands, diminished legal protections. A pricing policy that creates a lose-lose situation for homeowners is unacceptable to us, and it is unacceptable to the hardworking families and individuals of Illinois, Connecticut, and New York. We urge you to withdraw the proposal.

Sincerely,



Lisa Madigan
Illinois Attorney General



George Jepsen
Connecticut Attorney General



Eric Schneiderman
New York Attorney General