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November 26, 2012

Mr. Ed DeMarco
Federal Housing Finance Agency
c/o Office of Policy Analysis and Research
400 7th Street SW
Washington, DC 20024

[Transmitted by email to gfeeinput@fhfa.gov]

RE: FR Doc. 2012–23531, State-Level Guarantee Fee Pricing

Dear Mr. DeMarco:

I am writing on behalf of the over one million members of the National Association of REALTORS® (NAR) to provide comments to the Federal Housing Finance Agency (FHFA) on its proposal to adjust the guarantee fees (g-fees) that Fannie Mae and Freddie Mac (the government sponsored enterprises, or GSEs) charge for mortgages in certain states due to the estimated costs that the GSEs incur in cases of mortgage default in those states.

NAR is America's largest trade association, including our eight affiliated Institutes, Societies and Councils, five of which focus on commercial transactions. REALTORS® are involved in all aspects of the residential and commercial real estate industries and belong to one or more of some 1,400 local associations or boards, and 54 state and territory associations of REALTORS®.

REALTORS® believe that the proposed fee increases are in fact an excessive response to the overwhelming number of cases of foreclosure brought on by the recent housing crisis and delays caused by deficient mortgage servicing practices of the GSEs own mortgage servicers and service providers. Additionally, REALTORS® believe that FHFA, along with other federal agencies, should take a more integrated and coordinated approach to housing policy.

Overview

On September 25th, 2012, the Federal Housing Finance Agency (FHFA) published a notice in the Federal Register setting forth a new approach to the g-fees charged by the GSEs that adjusted the fees in states where FHFA has determined that the foreclosure process takes longer than average due to regulatory or judicial actions that result in higher costs in cases of mortgage default.

FHFA outlined the methodology and factors used to develop the planned approach to state-level g-fee pricing in the notice. The factors include: (1) the expected number of days that it takes the GSEs to foreclose and obtain marketable title to the collateral backing a mortgage in a particular state, (2) the average per-day carrying cost that the GSEs incur in that state, and (3) the expected national average default rate on single-family mortgages acquired by the GSEs. Based on the data, FHFA determined that lenders originating loans to be sold to either Fannie Mae or Freddie Mac in the states of Connecticut, Florida, Illinois, New Jersey, or New York would be charged an additional upfront fee of 15-30 basis points.

Estimation of Foreclosure Timelines and Costs

NAR is concerned that the approach described may overestimate the timelines and costs in these particular states due to the overwhelming cases of foreclosure brought on by the recent housing crisis and delays caused by deficient mortgage servicing practices. The exponential increase in foreclosure starts has overwhelmed many state judicial systems as well as the largest institutions responsible for servicing loans on behalf of the GSEs. The data used by the GSEs to estimate the timelines is based on recent experience and estimation, at a time when mortgage foreclosure filings and seriously delinquent mortgages continue at historically elevated levels. Further, severe deficiencies in mortgage servicing led to self-imposed foreclosure moratoria by several large mortgage servicers and enforcement actions by banking regulators. On April 13, 2011, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Office of Thrift Supervision announced enforcement actions against 14 large residential mortgage servicers and two third-party vendors for unsafe and unsound practices related to residential mortgage servicing and foreclosure processing based on interagency examinations conducted in the fourth quarter of 2010.[1]

Though FHFA indicates that the effects of foreclosure moratoria and other extenuating circumstances have been taken into account, and that actual costs could vary over time, it has not shown how foreclosure timelines in the affected states varied prior to the moratoria and enforcement actions, nor FHFA's own announcement of its four-point policy framework detailing guidance for consistent remediation of identified foreclosure process deficiencies.[2]

NAR recommends that FHFA conduct further study on the effect the large number of mortgage defaults and servicing deficiencies have had on foreclosure timelines and costs, and how the increased credit quality of the GSEs current books of business will reduce the volume and therefore costs of processing foreclosures in the impacted states. NAR also requests that the agency provide evidence that those states impacted by the proposed fee adjustments are in fact statistical outliers.

Need for Federal Regulatory Consistency and Coordination

Since the decline of the housing market as a result of the 2008 financial crisis, NAR has urged policymakers and the lending industry to take every feasible action to keep families in their homes with a loan modification or, in cases where this was not possible, avoid foreclosure through other foreclosure alternatives. Over the last 4 years, the federal government has appropriately offered a consistent response to the ever increasing number of borrowers facing foreclosure. Many federal housing and banking regulators have implemented programs and policies to provide borrowers alternatives to foreclosure. Indeed, most agencies of the federal government have come to acknowledge that losses are mitigated if proper foreclosure prevention standards are implemented and all homeowners have access to a good-faith review of foreclosure alternatives. These efforts go a long way in preventing unnecessary foreclosures and stabilizing neighborhoods. Due to the deficiencies and subsequent enforcement actions previously mentioned, several states implemented many of the same procedures to ensure the proper treatment of delinquent borrowers.

In 2009, the Administration announced the Making Home Affordable (MHA) program, an umbrella program for the Administration's homeowner assistance and foreclosure prevention efforts. MHA is a Treasury program that uses funds from the Troubled Asset Relief Program (TARP) to provide incentives for mortgage servicers to take foreclosure prevention actions for eligible mortgages. Similarly, in response to communities across the United States that were experiencing ever increasing rates of foreclosure, the Federal Housing Administration (FHA) introduced the FHA-HAMP program to provide homeowners a greater opportunity to avoid foreclosure. FHFA itself announced in April 2011 the development of uniform GSE policies for servicing delinquent loans intended to enhance and streamline outreach to delinquent borrowers and establish performance-based monetary incentives for compliance.[3] Under FHFA's own guidelines, a foreclosure is not permitted on a mortgage owned or guaranteed by Fannie Mae or Freddie Mac until the servicer has conducted a formal review of the borrower's eligibility under all available foreclosure alternatives, including loan modifications, short sales, and deeds in lieu of foreclosure.

Conversely, in the September 25th notice, FHFA indicates that if states were to adjust their laws and requirements sufficiently to reduce 'expected' foreclosure times and costs to be more in line with the national average, the proposed fee increases

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[1] http://www.occ.gov/static/news-issuances/ots/press-releases/ots-pr-2011-08.pdf and http://occ.gov/news-issuances/news-releases/2011/nr-occ-2011-47.html
[2] http://www.fhfa.gov/webfiles/18695/Servicerstatementandframework101310.pdf
[3] http://www.fhfa.gov/webfiles/21190/SAI42811Final.pdf

imposed under the planned approach would be lowered or eliminated. Therefore, FHFA's intent is to incentivize the affected states to allow for the quicker processing of foreclosures, seemingly without accounting for other factors which may contribute to increase in delays and costs, including deficient servicing practices and well-intended government policies such as those put into place by FHFA.

NAR believes FHFA's approach to increase g-fees in states with foreclosure prevention measures is inconsistent with other federal foreclosure prevention efforts and demonstrates a lack of coordination among the federal agencies. FHFA, along with other federal agencies, should take a more integrated approach to housing policy to ensure that policy changes governing mortgage finance and servicing are proposed in a more coordinated manner among the agencies.

Conclusion

REALTORS® have long maintained that the key to the nation's economic strength is a robust housing industry. NAR applauds FHFA's efforts to encourage the GSEs to take every feasible action to keep families in their homes with a loan modification as well as efforts to broaden opportunities for consumers to refinance. These home retention initiatives mitigate losses to both the GSEs and taxpayers, and provide stability to local housing markets.

NAR believes FHFA's approach to increase g-fees in states with foreclosure prevention measures is inconsistent with other federal foreclosure prevention efforts specifically at a time when mortgage servicers are improving performance. We respectfully request that the agency propose changes in a more coordinated effort with other federal agencies. NAR also recommends that FHFA conduct further study on the effect the large number of mortgage defaults and servicing deficiencies have had on foreclosure timelines and how the increased credit quality of the GSEs current books of business will reduce the volume and therefore costs of processing foreclosures in the impacted states.

If you have questions, please feel free to contact me or Charlie Dawson, NAR's Policy Representative for Financial Services, at 202.383.7522 or cdawson@realtors.org.

Sincerely,

Gary Thomas
2013 President
National Association of REALTORS®