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November 16, 2012

Federal Housing Finance Agency
Office of the Director
1700 Seventh Street, SW
Washington, DC 20024

RE: State-Level Guarantee Fee Pricing Increases

Dear Acting Director DeMarco,

We are writing to express grave concerns about the Federal Housing Finance Agency's (FHFA'S) proposal, Federal Register Notice [No. 2012-N-13], 77 FR 58991, to increase the guarantee fees, also known as g-fees, charged by Fannie Mae and Freddie Mac (the Enterprises) to guarantee Government Sponsored Enterprise (GSE) mortgages that finance single family homes. This proposal to increase g-fees is aimed at five states, including New York State. The fees range from 15 to 30 basis points, with homeowners in New York State to experience the highest increase under the proposal.

The proposal would impose an up-front g-fees charge of 30 basis points for loans originated in New York State. Under the proposal, these fees, paid initially by the lender, would be passed onto the borrower through a higher interest rate. We are concerned that these proposed state-level g-fees increases would unreasonably and unfairly penalize New York State homeowners and would derail the recovery of the fragile housing market.

The FHFA derives support for the higher g-fees charge by considering the number of days to foreclose and get marketable title along with the average per-day carrying costs in each state. It concludes that New York State's foreclosure laws result in longer than average foreclosure times and that this in turn leads to higher default costs incurred by the Enterprises on loans originating in New York State. These conclusions, we believe, are based on erroneous reasoning and incorrect assumptions.

The proposal incorrectly attributes the costs that Enterprises may incur from mortgage defaults to our state's laws that safeguard homeowners against the illegal and wrongful conduct of lenders and mortgage servicers in foreclosure cases. The FHFA fails to consider foreclosure delays caused by the conduct of lenders and servicers. At the same time, we believe, the proposal fails to account for overall cost savings resulting from averted foreclosures.

The widespread abuses in foreclosure actions including robo-signing, fraudulent affidavits and chain of title problems have been well publicized and are no secret. New York State has enacted strong laws to protect homeowners from predatory lenders, wrongful foreclosures and from unlawful and abusive practices of lenders and servicers in foreclosure actions. New York State's laws help to prevent homeowners from becoming victims of illegal foreclosures. In addition to providing opportunities for homeowners to contest wrongful foreclosures, our state laws help struggling homeowners to explore loss mitigation, including pursuing mortgage modifications and short sales. They also provide for homeowner counseling and foreclosure mediation. These common sense measures are not the cause of delays in foreclosure or of increased default costs. In fact, there is evidence that the foreclosure measures implemented by New York State are cost-effective and help avoid unnecessary foreclosures. There is evidence that state laws providing homeowner counseling and foreclosure mediation help reduce foreclosures. There is additional evidence that judicial foreclosure states, such as New York State, have higher cure rates than non-judicial foreclosure states. Yet, cost savings resulting from averted unnecessary foreclosures and higher cure rates because of our state laws do not appear to be factored into the FHFA's reasoning.

We are also deeply concerned that the FHFA has not evaluated all factors contributing to delays in foreclosure proceedings and erroneously attributes foreclosure delays to New York State Law. The proposal fails to account for foreclosure delays and backlogs resulting from the misconduct of lenders and mortgage servicers. In so doing, the proposal rewards wrongdoers instead of holding them accountable and allows them to pass off the cost of their wrongful conduct onto already struggling homeowners. Long foreclosure delays are frequently caused by bad record keeping on behalf of the lenders, which in turn result in chain of title problems and lost note concerns, and misrepresentations to the court including submission of robo-signed documents in foreclosure actions by lenders and their agents. These sources of delays have not been accounted for in the proposal. Further, intentional dilatory conduct of lenders and servicers such as delays in filing or pursuing foreclosure actions to conclusion, failure to explore loss mitigation and loan modification options, and failure to send representatives to court that are authorized to make decisions on behalf of the lender, all practices that are prevalent in New York, are additional causes of foreclosure delays in our state that have not been factored into the proposal.

Additionally, the increased g-fees appear to be selectively aimed at changing New York State's foreclosure laws and we are concerned that in doing so, the proposal improperly infringes on our state's ability to protect homeowners against the predatory and wrongful conduct of lenders and servicers.

Finally, we fear that ultimately, the state-level g-fees proposal will deter potential buyers from purchasing new homes and will halt the recovery of the housing market and the economy. We strongly urge the FHFA to reconsider its proposal.

Respectfully,



Helene Weinstein
Chair, Judiciary Committee
New York State Assembly



Annette M. Robinson
Chair, Banks Committee
New York State Assembly