NATIONAL ASSOCIATION OF CONSUMER ADVOCATES

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, the National Association of Consumer Advocates[1], are writing to express our concerns about the Federal Housing Finance Agency's ("FHFA") recent proposal, *Federal Register* Notice [No. 2012-N13], to increase up-front fees ("g-fees") on mortgages originated in five states Connecticut, Florida, Illinois, New Jersey, and New York in order to guarantee Government Sponsored Enterprise ("GSE" or "Fannie Mae and Freddie Mac") mortgages.

We are concerned about the FHFA g-fee proposal for the following reasons:

- The proposal overreaches its authority interfering with the rights of states.
- The proposal relies on incorrect assumptions to penalize state consumer protection laws.
- The proposal does not consider the benefits of state foreclosure protections.

<u>The FHFA Overreaches its Authority Interfering With State Rights</u>

The FHFA explicitly states in the g-fee proposal that these fees are aimed at changing state foreclosure-related laws. "If those states were to adjust their laws and requirements to move their foreclosure timelines and costs more in line with the national average," the proposal states, "the state-level, risk-based fees…would be lowered or eliminated." FHFA asserts that the five states targeted that follow judicial foreclosure procedures impose disproportionate foreclosing costs on Fannie Mae and Freddie Mac. FHFA claims these costs result from state laws that extend the timeline for the foreclosure process by guaranteeing homeowners legal protections, such as a right to pre-foreclosure mediation. We believe that the FHFA is inappropriately using

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[1] The National Association of Consumer Advocates (NACA) is a national non-profit organization of attorney and advocate members who represent and have represented millions of consumers victimized by fraudulent, abusive and predatory business practices. As an organization committed to promoting justice and fairness for consumers, NACA members and their clients are engaged in promoting a fair and open market place that forcefully protects the rights of consumers, particularly those of modest means.

the power of pricing as a way to influence state legislatures and courts. This proposal sets a dangerous precedent for allowing federal agencies to design regulations intended to shape state consumer protection laws and practices.

Regulation of mortgage foreclosures has always been a fundamental province of state laws. States should be free to address the particular challenges that have arisen during the foreclosure crisis to provide its citizens with proper consumer protections. For example, in Connecticut, the state put in place a pre-foreclosure program that has been very successful in keeping homeowners in their home. Before a Connecticut homeowner can be foreclosed on, they have a right to negotiate with their lender or loan servicer in an effort to find a mutually beneficial alternative to foreclosure. New York passed comprehensive legislation in 2009 that provides struggling borrowers the opportunity to contest wrongful foreclosures, seek loss mitigation and stay in their homes rather than move quickly to foreclosure. These actions were taken by elected state representatives with better knowledge of the costs and benefits of their own proceedings. These types of state laws are intended to help homeowners who can afford to remain in their homes and reduce the number of homes lost to foreclosure. They provide justice and fairness into foreclosure processes which in the past have been stacked against homeowners. Instead of setting a floor for minimum, uniform national consumer protections for homeowners facing foreclosure, the FHFA's g-fee proposal sets a ceiling for the types of protections states put forward for homeowners, above which states will be punished.

The proposal relies on incorrect assumptions to penalize state consumer protection laws.

First, the FHFA incorrectly assumes that foreclosure delays are caused by state laws, and that the foreclosure delays are what increase Fannie and Freddie losses. In the proposal, the FHFA characterizes the five states as having "exceptionally high costs," presumably as a result of "state laws and practices." However, there are many different causes for long foreclosure delays that do not include the timelines contained in the laws themselves. For instance, the relative volume of foreclosures in a state creates delays. In Florida, the fact that the state is facing high volumes of foreclosures has increased delays. Another major delay factor not considered by the FHFA is that mortgage servicers are not complying with loss mitigation requirements and state foreclosure-related laws. There are many ways in which servicers create delays such as repeatedly "missing" the necessary filing paperwork for a borrower, ignoring settlement conference procedures or HAMP guidelines and dismissing and then re-filing cases. According to USFN ("America's Mortgage Banking Attorneys"), the longer timelines for foreclosures observed in states today are due to servicer behavior rather than state law. Borrowers should not be penalized for servicer misbehavior.

Second, the effects of foreclosure delays are not obvious. Foreclosure delays may increase losses on a home if it is eventually sold at a foreclosure sale. However, most loans in foreclosure do not result in a foreclosure sale. Loans that end up with almost any other outcome will usually result in lower losses to the investor, for example, a loan modification will normally produce a smaller loss. If a slightly longer foreclosure process produces a loss mitigation result

then losses are reduced long term, not increased. For FHFA to determine that total losses on delinquent loans are higher in some states than others, it needs to compare not only the losses on foreclosure sales, but also the loss reduction from foreclosure alternatives.

The proposal does not consider the benefits of state foreclosure protections.

The FHFA justifies increasing the g-fees based on the length of the foreclosure timeline in each state, but does not examine the overall foreclosure levels and the benefits to homeowners, communities and investors. High foreclosure rates hurt not just the families foreclosed on but their neighbors and communities. Homes left vacant and untended during and after a foreclosure can become nuisance properties, deterring potential homebuyers and lowering home values in the neighborhood. Lower home values in turn can result in less property tax revenue raised. As a result, cities are hard-pressed to pay for services like libraries, parks, police and fire. In addition, the state laws and processes that in part are delaying foreclosures in order to increase loss mitigation outcomes have positive effects for the local housing market, in preventing vacancies and real-estate owned ("REO") properties, that will reduce GSE losses. Unlike states with faster foreclosures but maintain a larger REO inventory that will ultimately increase the supply of houses for sale, extending disposition timelines and reducing resale prices.

Therefore, the FHFA must examine all of the important consequences of mortgage foreclosures and the savings that occur when consumer protections and procedures require that loss mitigation takes place instead of foreclosure.

Conclusion

The GSEs were created to preserve and promote home ownership. A fee increase that punishes those states that do the most to keep families in their homes is inconsistent with the interests and mission of the GSEs. We urge FHFA to immediately withdraw its proposed guarantee fee increase due to substantial legal and practical concerns. We are open to working with FHFA to reexamine options that would meet its goals of creating a functioning housing market and helping homeowners avoid foreclosure.

If you have any questions or would like to discuss anything in this letter in more detail, please contact Ellen Taverna, NACA's Legislative Director at 202-452-1989 ext 109 or ellen@naca.net.

Sincerely,

Ellen Taverna
NACA's Legislative Director