



Americans for Financial Reform
1629 K St NW, 10th Floor, Washington, DC, 20006
202.466.1885

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VIA EMAIL: gfeeinput@fhfa.gov

Edward J. DeMarco
Acting Director
Federal Housing Finance Agency (FHFA) OPAR
400 Seventh Street SW, Ninth Floor
Washington, D.C. 20024

Re: State-Level Guarantee Fee Pricing [No. 2012-N-13]

Dear Director DeMarco:

We are writing on behalf of Americans for Financial Reform (AFR) and the following member organizations to ask that you withdraw the state-level guarantee fee pricing proposal set forth in Federal Register, Vol. 77, No. 186, Tuesday, September 25, 2012 (at 58991-58994). The proposal is an unwarranted attack on state consumer protection laws and is based on misperceptions and faulty modeling.

The Proposal Penalizes States for Protecting Their Residents

The proposed rule unfairly punishes states with stronger consumer protection laws and rules. The five targeted states – Connecticut, Florida, Illinois, New Jersey and New York – have long-standing, as well as more newly adopted rules in place to assist homeowners facing foreclosure. These laws are intended to help homeowners who can afford to pay remain in their homes, and reduce the number of homes lost to foreclosure within State borders. The protections include pre-foreclosure notices, mediation programs, requirements that the plaintiff verify their standing, and redemption periods. These protections are not overbroad or oppressive. Rather, they add fairness to foreclosure processes which traditionally have been stacked against homeowners. Ultimately, the protections preserve homeownership.

Any Federal action in this area should set a floor, not a ceiling. States have felt compelled to put in place their own laws only after repeated failures by the mortgage servicers to adhere to industry standards and contracts such as those established under the Home Affordable Modification Program (HAMP). They have done so because foreclosures impact homeowners, but also neighborhoods, local communities, and states' economies. The guarantee fee proposal sends a chilling and ominous message to legislatures across the country, warning all that if they act to reduce unnecessary and preventable foreclosure, then future borrowers in their state will be penalized.

The proposed rule is an attack on states' rights to provide additional protections for their citizens. The foreclosure process is governed by state law and it is entirely reasonable for states to modify their laws to seek a fair process, and one that maintains the integrity of their courts, as well as to accommodate particular conditions and circumstances within their borders. The proposal, which would punish states for enacting protections and threatens others states that would otherwise wish to do so, is an overbroad reach into an area properly within states' purview.

The Delays at Issue are the Fault of the Mortgage Servicers

The proposal is predicated on a faulty presumption that delays in the foreclosure processes are a result of state law protections for borrowers. In fact, delay and malfeasance by servicers remains a major problem, even following the Federal and Multi-State Attorneys General National Mortgage Servicing Settlement. Homeowners and their advocates continue to report long delays and errors in processing applications. Homeowners continue to be required to jump through unreasonable hoops, including providing documents multiple times, and having to supplement applications with documentation not initially requested, only to have their original information go stale so that they are forced to begin the process again. Servicers continue to violate the timelines set forth in HAMP and in the Settlement. It can still take months for a homeowner to learn whether they are approved for a loan modification or short sale or other such relief.

Mediation programs and other pre-foreclosure requirements are aimed at cutting through problems in the loss mitigation processes. The goal is to get the homeowner and servicer together in a monitored process so that there can be a serious examination of whether or not a home can be saved. Yet servicers continue to ignore the requirements of these processes, causing huge delays. The borrower protection programs do not in and of themselves create longer timelines; it is the servicers' noncompliance with program requirements that causes delays.

The Characterization of the Five Targeted States as Having 'Exceptionally High Costs' is Deeply Flawed

The model used to identify states where loan defaults are significantly more costly than the national average fails to take into account at least three key factors. First, the model does not consider the numbers or rates of foreclosure by state. As a result, a state that has a longer timeline but a lower rate of homeowners going into foreclosure would still be deemed a costlier state by the FHFA, even if overall foreclosure costs are lower as a result of their reduced numbers. Indeed, the mediation programs which the FHFA treats as a problem result in more homeowners getting loan modifications, reducing the number of foreclosures. Second, while the model focuses on loss severities, it does not include some of the key contributors to (or mitigators of) loss severity: the costs of holding REOs, and losses on re-sale. Reduced foreclosures also mean that fewer homes end up vacant and/or in the real-estate owned inventory of the banks, lowering the overall costs of each foreclosure, and they can make it easier to sell homes at a higher price. Finally, the model fails to consider other factors outside the foreclosure laws, such as the housing stock of the states, and other issues impacting home values.

FHFA Should Not Start Assessing Upfront Fees or Credits on States Based on Their Relationship to the National Average Total Carrying Cost

The FHFA's proposal would unfairly penalize future borrowers for the wrongs of the mortgage lending industry and the ensuing economic downturn. There is no rational relationship between future borrowers and past defaults. In addition, this rule would set a bad precedent for allowing any number of environmental factors within a state to create higher borrowing costs. For example, it would be detrimental to recovery if fees also were proposed in states most impacted by the crisis with the highest foreclosure rates, or the largest REO inventories.

Making borrowing costlier would undoubtedly have a chilling effect in all of the targeted states. We would also note in particular that Florida, one of the states hardest hit by the foreclosure crisis, can particularly ill afford further impediments to their housing recovery. Since the publication of the proposed rule, communities in Connecticut, New Jersey and New York have suffered historic damage due to Hurricane Sandy. Borrowers who lost or suffered significant damage to their homes are experiencing extreme financial hardships and need to be able to borrow at the lowest market rates available. This proposal would further impede restoration efforts.

As states across the country continue to struggle with homeowners facing foreclosure within their borders, and work toward recovery in their housing markets, we strongly urge you to withdraw this proposed rule that would unfairly penalize future borrowers, discourage borrower protections, and dampen economic recovery within targeted states.

Sincerely,

Alliance for a Just Society
Americans for Financial Reform
California Reinvestment Coalition
Connecticut Fair Housing Center
Consumer Action
Empire Justice Center
National Association of Consumer Advocates
National Community Reinvestment Coalition
National Fair Housing Alliance

Following are the partners of Americans for Financial Reform.

All the organizations support the overall principles of AFR and are working for an accountable, fair and secure financial system. Not all of these organizations work on all of the issues covered by the coalition or have signed on to every statement.

- A New Way Forward
- AFL-CIO
- AFSCME
- Alliance For Justice
- American Income Life Insurance
- American Sustainable Business Council
- Americans for Democratic Action, Inc
- Americans United for Change
- Campaign for America's Future
- Campaign Money
- Center for Digital Democracy
- Center for Economic and Policy Research
- Center for Economic Progress
- Center for Media and Democracy
- Center for Responsible Lending
- Center for Justice and Democracy
- Center of Concern
- Change to Win
- Clean Yield Asset Management
- Coastal Enterprises Inc.
- Color of Change
- Common Cause
- Communications Workers of America
- Community Development Transportation Lending Services
- Consumer Action
- Consumer Association Council
- Consumers for Auto Safety and Reliability
- Consumer Federation of America
- Consumer Watchdog
- Consumers Union
- Corporation for Enterprise Development
- CREDO Mobile
- CTW Investment Group
- Demos
- Economic Policy Institute
- Essential Action
- Greenlining Institute
- Good Business International
- HNMA Funding Company
- Home Actions
- Housing Counseling Services

- Home Defender's League
- Information Press
- Institute for Global Communications
- Institute for Policy Studies: Global Economy Project
- International Brotherhood of Teamsters
- Institute of Women's Policy Research
- Krull & Company
- Laborers' International Union of North America
- Lake Research Partners
- Lawyers' Committee for Civil Rights Under Law
- Move On
- NAACP
- NASCAT
- National Association of Consumer Advocates
- National Association of Neighborhoods
- National Community Reinvestment Coalition
- National Consumer Law Center (on behalf of its low-income clients)
- National Consumers League
- National Council of La Raza
- National Fair Housing Alliance
- National Federation of Community Development Credit Unions
- National Housing Resource Center
- National Housing Trust
- National Housing Trust Community Development Fund
- National NeighborWorks Association
- National Nurses United
- National People's Action
- National Council of Women's Organizations
- Next Step
- OMB Watch
- OpenTheGovernment.org
- Opportunity Finance Network
- Partners for the Common Good
- PICO National Network
- Progress Now Action
- Progressive States Network
- Poverty and Race Research Action Council
- Public Citizen
- Sargent Shriver Center on Poverty Law
- SEIU
- State Voices
- Taxpayer's for Common Sense
- The Association for Housing and Neighborhood Development
- The Fuel Savers Club
- The Leadership Conference on Civil and Human Rights
- The Seminal
- TICAS
- U.S. Public Interest Research Group

- UNITE HERE
- United Food and Commercial Workers
- United States Student Association
- USAction
- Veris Wealth Partners
- Western States Center
- We the People Now
- Woodstock Institute
- World Privacy Forum
- UNET
- Union Plus
- Unitarian Universalist for a Just Economic Community

List of State and Local Affiliates

- Alaska PIRG
- Arizona PIRG
- Arizona Advocacy Network
- Arizonans For Responsible Lending
- Association for Neighborhood and Housing Development NY
- Audubon Partnership for Economic Development LDC, New York NY
- BAC Funding Consortium Inc., Miami FL
- Beech Capital Venture Corporation, Philadelphia PA
- California PIRG
- California Reinvestment Coalition
- Century Housing Corporation, Culver City CA
- CHANGER NY
- Chautauqua Home Rehabilitation and Improvement Corporation (NY)
- Chicago Community Loan Fund, Chicago IL
- Chicago Community Ventures, Chicago IL
- Chicago Consumer Coalition
- Citizen Potawatomi CDC, Shawnee OK
- Colorado PIRG
- Coalition on Homeless Housing in Ohio
- Community Capital Fund, Bridgeport CT
- Community Capital of Maryland, Baltimore MD
- Community Development Financial Institution of the Tohono O'odham Nation, Sells AZ
- Community Redevelopment Loan and Investment Fund, Atlanta GA
- Community Reinvestment Association of North Carolina
- Community Resource Group, Fayetteville A
- Connecticut PIRG
- Consumer Assistance Council
- Cooper Square Committee (NYC)
- Cooperative Fund of New England, Wilmington NC
- Corporacion de Desarrollo Economico de Ceiba, Ceiba PR
- Delta Foundation, Inc., Greenville MS
- Economic Opportunity Fund (EOF), Philadelphia PA
- Empire Justice Center NY

- Empowering and Strengthening Ohio's People (ESOP), Cleveland OH
- Enterprises, Inc., Berea KY
- Fair Housing Contact Service OH
- Federation of Appalachian Housing
- Fitness and Praise Youth Development, Inc., Baton Rouge LA
- Florida Consumer Action Network
- Florida PIRG
- Funding Partners for Housing Solutions, Ft. Collins CO
- Georgia PIRG
- Grow Iowa Foundation, Greenfield IA
- Homewise, Inc., Santa Fe NM
- Idaho Nevada CDFI, Pocatello ID
- Idaho Chapter, National Association of Social Workers
- Illinois PIRG
- Impact Capital, Seattle WA
- Indiana PIRG
- Iowa PIRG
- Iowa Citizens for Community Improvement
- JobStart Chautauqua, Inc., Mayville NY
- La Casa Federal Credit Union, Newark NJ
- Low Income Investment Fund, San Francisco CA
- Long Island Housing Services NY
- MaineStream Finance, Bangor ME
- Maryland PIRG
- Massachusetts Consumers' Coalition
- MASSPIRG
- Massachusetts Fair Housing Center
- Michigan PIRG
- Midland Community Development Corporation, Midland TX
- Midwest Minnesota Community Development Corporation, Detroit Lakes MN
- Mile High Community Loan Fund, Denver CO
- Missouri PIRG
- Mortgage Recovery Service Center of L.A.
- Montana Community Development Corporation, Missoula MT
- Montana PIRG
- Neighborhood Economic Development Advocacy Project
- New Hampshire PIRG
- New Jersey Community Capital, Trenton NJ
- New Jersey Citizen Action
- New Jersey PIRG
- New Mexico PIRG
- New York PIRG
- New York City Aids Housing Network
- New Yorkers for Responsible Lending
- NOAH Community Development Fund, Inc., Boston MA
- Nonprofit Finance Fund, New York NY
- Nonprofits Assistance Fund, Minneapolis M
- North Carolina PIRG

- Northside Community Development Fund, Pittsburgh PA
- Ohio Capital Corporation for Housing, Columbus OH
- Ohio PIRG
- OligarchyUSA
- Oregon State PIRG
- Our Oregon
- PennPIRG
- Piedmont Housing Alliance, Charlottesville VA
- Michigan PIRG
- Rocky Mountain Peace and Justice Center, CO
- Rhode Island PIRG
- Rural Community Assistance Corporation, West Sacramento CA
- Rural Organizing Project OR
- San Francisco Municipal Transportation Authority
- Seattle Economic Development Fund
- Community Capital Development
- TexPIRG
- The Fair Housing Council of Central New York
- The Loan Fund, Albuquerque NM
- Third Reconstruction Institute NC
- Vermont PIRG
- Village Capital Corporation, Cleveland OH
- Virginia Citizens Consumer Council
- Virginia Poverty Law Center
- War on Poverty - Florida
- WashPIRG
- Westchester Residential Opportunities Inc.
- Wigamig Owners Loan Fund, Inc., Lac du Flambeau WI
- WISPIRG

Small Businesses

- Blu
- Bowden-Gill Environmental
- Community MedPAC
- Diversified Environmental Planning
- Hayden & Craig, PLLC
- Mid City Animal Hospital, Pheonix AZ
- The Holographic Repatterning Institute at Austin
- UNET

