



November 26, 2012

Mr. Edward J. DeMarco
Acting Director
Federal Housing Finance Agency
1700 G Street, NW
Washington, DC 20552

Dear Mr. DeMarco

The Mortgage Bankers Association¹ (MBA) appreciates the opportunity to comment on the recently-released plan to impose state-level pricing for states with “exceptionally high costs” related to foreclosures (the Announcement). MBA understands the financial pressures faced by Fannie Mae and Freddie Mac (the GSEs) that led to this Announcement, and it is our hope that by taking this action the Federal Housing Finance Agency (FHFA) has alerted policy-makers around the country to an important issue in the housing recovery.

The Announcement imposes an additional, upfront charge of between 15 and 30 basis points on mortgages sold to a GSE from states with foreclosure costs substantially higher than the national norm.² These costs include, among others:

- Length of time needed to secure marketable title to the property
- Property taxes that must be paid until marketable title is secured
- Legal and operational expenses during this time³

Because the charge would be applied upfront based on the principal amount of the mortgage, rather than an on-going deduction from the interest rate, the charge is effectively a Loan-Level Price Adjustment (LLPA), and thus will be referred to as such. The following are MBA’s comments and observations with respect to FHFA’s Announcement.

¹ The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation’s residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA’s Web site: www.mortgagebankers.org.

² 77 Fed. Reg. 186, 58991. The Announcement specifically targets the five states that are “clear outliers”, which was indicated to be roughly 1.5+ standard deviations from the national average.

³ *Id.*

FHFA Should Make Public the Formula and Data Used to Arrive at the LLPA Charges

The FHFA should disclose the formula and assumptions used in determining the states to which the LLPA would be applied and the charge to be assessed. While the Announcement described the factors used in making these determinations, it does not set forth the formula or rates used in calculating each state's LLPA. In conversations with FHFA since the Announcement was released, it appears that there is no plan to make these details public in the future.

MBA believes this lack of transparency is both inappropriate and contrary to consumer interests. Determining that certain state foreclosure laws are sufficiently costly to warrant applying a punitive charge to mortgages originated in that state is a significant housing policy decision. This charge will alter the housing market in these states by making mortgages more expensive than elsewhere in the country. FHFA, as a government agency, is obligated to be fully transparent when implementing policy measures and the LLPA is no exception.

Additionally, consumers will be harmed if this information is not disclosed. Various rules and regulations that have recently been proposed and implemented require greater disclosure of the costs and fees that are included in the consumer's interest rate. For the FHFA to withhold the pricing formula, assumed rates, and other details means that consumers will have no way of knowing why they are paying the charge they incur or how it was calculated, thus undermining the policy goal of transparency. Moreover, this Announcement will only have the desired disincentive effect if residents and policy-makers understand the correlation between their policies and resulting foreclosure costs and are aware of the thresholds that would trigger a LLPA charge.

Need for Uniform Foreclosure Laws

MBA believes this Announcement highlights the need for a uniform, national standard for foreclosure proceedings. Indeed, MBA has been working with the Uniform Law Commission to develop just such a framework, and we are aware that the GSEs are also involved in this critical effort.

An important state distinction is whether foreclosure laws are judicial or non-judicial. The choice of which approach to embrace is an important policy decision for the state and its people because it fundamentally defines the relationship between the borrower and the home. MBA respects this, and as a result supports developing proposals for both judicial and non-judicial states, ensuring that states retain the freedom to pursue the policies that best fit their situation. However, within judicial states and non-judicial states alike there are significant differences in the foreclosure laws which give rise to disparities between states in the time frame required to complete foreclosures.

Servicers likewise incur significant additional costs in the states targeted in the FHFA's announcement. One of the most significant factors impacting cost is whether the state has mandated mediation; in such states, the servicer must advance taxes and insurance for

much longer times. Likewise, these states require servicers to incur higher legal and other foreclosure costs, as well as costs of complying with mediation requirements.

Harmonizing key terms such as foreclosure laws will allow for greater fungibility of the loans and underlying servicing rights. This not only increases access to capital in those states targeted by the Announcement for higher-than-normal costs, but also nationwide as increased investor capital and better economies of scale make lenders more willing to extend credit to borrowers.

MBA Recommends Eliminating Adverse Market Fee for States with Good Foreclosure Policies

As mentioned above, the rationale for developing the Announcement is to compensate the FHFA for “state and local laws that may increase the Enterprises’ costs.”⁴ The Announcement focuses on those five states whose “total default carrying costs” are 1.5 or more standard deviations from the national mean.⁵

MBA urges the FHFA to expand this approach further by rewarding those states with significantly more reasonable policies than the national average. MBA recommends eliminating the adverse market fee charged on loans originated in states where foreclosure costs are 1.5 or more standard deviations below the national mean. This will incentivize states to enact less costly and burdensome policies, reducing the costs faced by the GSEs and spurring additional investment.⁶ Eventually, many if not most states will likely choose this path, reducing the foreclosure risk for the entire book of business backed by the GSEs.

Consumer Impact of Proposed Charge

Page 4 of the Announcement states that “[l]enders may pass an upfront fee through to a borrower as an adjustment to the interest rate on the borrower’s loan.” Thus, the assumption is that this LLPA will be passed on to borrowers. Assuming competitive conditions allow such pass-through, borrowers in the states targeted by this LLPA will be adversely impacted.⁷

MBA appreciates the FHFA’s flexibility in allowing the charge to be passed through as either an upfront fee or an adjustment to the borrower’s interest rate. While not eliminating the adverse impact to borrowers, this flexibility mitigates some of the additional costs that first-time homebuyers and moderate income families would face in securing a mortgage.

MBA notes that it is unfortunate that performing borrowers must pay the cost of state level protections of borrowers in default. This cross-subsidization demonstrates the need for

⁴ *Id.* at 58991

⁵ *Id.* at 58992

⁶ Which can in turn provide greater access to capital for underserved consumers.

⁷ If competitive conditions do not allow, there will likely be a reduction in credit availability as lenders will be unable to recoup their costs for more price-sensitive borrowers.

more uniformity of state foreclosure laws to eliminate the moral hazard and cross-subsidization associated with mortgages facing foreclosure.

Servicer's Costs Not Anticipated in the Announcement

MBA notes that the Announcement takes care of Fannie Mae's and Freddie Mac's higher costs of foreclosure in those states, but ignores the fact that servicers are also incurring costs associated with longer foreclosure timelines. For example, servicers must advance, for varying periods of time, funds for tax and insurance payments, principal and interest. Moreover, servicers are incurring significant increased operating expenses associated with the volume of delinquencies and significant new servicing requirements imposed by the GSEs.

Of most concern, however, is the fact that the GSEs are recouping from servicers part of the cost associated with longer foreclosure timelines through the imposition of compensatory fees and other penalties levied by Fannie Mae and Freddie Mac for uncontrollable foreclosure delays such as court delays, bankruptcy stays, loss mitigation, and mediation. Through higher G-fees, it appears the GSEs would also recoup these costs from the borrower.

Given that the GSEs are now setting G-fees to represent these longer foreclosure timelines, we stress once again that FHFA and the GSEs must provide a more equitable, national approach to applying compensatory fees. This approach should recognize the full extent of uncontrollable court/legal delays, the true timelines to resolve bankruptcy stays and other stated conditions, and nationwide – as opposed to state - netting, whereby the servicer can offset foreclosures that took longer than the published timelines with those that took less time regardless of the location of the property.

FHFA Should Re-Consider the Pricing Format for the LLPA

The LLPA charge set forth in the Announcement is priced in decimal format, whereas industry practice typically prices LLPAs in eighths.⁸ Incorporating a new LLPA would required some technical revisions as a matter of course, but the difference in pricing format will unnecessarily add to this cost. MBA recommends that FHFA revise the proposed charges and reformat to match existing LLPA pricing.

Alternatively, MBA recommends establishing a small, limited number of “buckets” that can be applied nationwide, each with their own LLPA charge and criteria for foreclosure costs. This will eliminate much of the technological complexities described above by limiting the number of new LLPAs that need to be incorporated into existing price formats. Should additional states surpass FHFA's threshold for acceptable foreclosure costs, they can be included in one of these pre-existing buckets.⁹ This will ease the technological burden and minimize the risk of accidental non-compliance arising from the integration process.

⁸ I.e., 1/8, 1/4, 3/8, etc.

⁹ As opposed to pricing a unique LLPA for each state.

Conclusion

Facilitating the return of private capital to the home finance market is a critical priority in ensuring a lasting recovery of the housing market, and MBA looks forward to working with the FHFA and the GSEs to implement policies that accomplish this goal. Any questions should be directed to Jim Gross, Vice President, Financial Accounting and Public Policy at (202) 557-2860 or jgross@mortgagebankers.org, or to Dan McPheeters, Policy Advisor, at (202) 557-2780 or dmcpheeters@mortgagebankers.org.

Sincerely,

A handwritten signature in black ink, appearing to read "D.H. Stevens", with a stylized flourish at the end.

David H. Stevens
President and Chief Executive Officer