ILLINOIS HOUSING
DEVELOPMENT AUTHORITY

401 N. Michigan Avenue
Suite 700
Chicago IL 60611
312.836.5200
312.836.5222 TDD
www.ihda.org

Pat Quinn, *Governor*

November 26, 2012

Mr. Edward DeMarco
Acting Director
Federal Housing Finance Agency
Office of Policy Analysis and Research
400 7th Street, SW, 9th Floor
Washington, DC 20024

email: gfeeinput@fhfa.gov

Dear Acting Director DeMarco:

I am writing to express grave concern about the Federal Housing Finance Agency's (FHFA) proposal to selectively choose Illinois and four other states for increased guarantee fees for loans purchased by the Enterprises that the FHFA oversees. This will be the third FHFA fee increase in 2012, and similar to those homebuyer fee increases, is couched in terms of taxpayer protection. FHFA asserts that the Enterprises now overseen by FHFA were inadequately compensated through the current guarantee fee structure for actual losses and that taxpayers had to provide financial support to the Enterprises as a result. It is undisputed that the Enterprises experienced actual losses in recent years that required taxpayer support; however, this was primarily due to their conscious decision to take on unprecedented credit risk and not for the reasons FHFA sets forth in the September 20, 2012 *Federal Register* Notice.

As a policy matter, it is unreasonable for FHFA to seek to penalize a handful of states that happen to have strong homeowner protection laws to compensate for its poorly conceived national policy of purchasing riskier loans. More specifically, the proposed fee structure will have a highly negative impact on efforts currently underway within Illinois to promote economic rebound for housing for its citizens by making it more difficult to provide robust homeownership opportunities, which are a major factor in maintaining stable communities. We urge you to rescind this selective, arbitrary fee increase as it flies in the face of the Enterprises' chartered purpose, is counterproductive to Illinois' efforts, encourages eroding of important consumer protections, and employs an arbitrary and unfair methodology in order to do so.

First, Fannie Mae was chartered by Congress in 1938 to support liquidity, stability, and affordability in the secondary mortgage market, where existing mortgage-related assets are purchased and sold.[1] This proposed fee increase will have the opposite effect: it will reduce affordable homeownership opportunities in Illinois.

Second, the methodology used by FHFA in determining which states to penalize fails to consider significant factors that were principal drivers of the foreclosure crisis. The most important factor of FHFA's chosen methodology, according to the September 20, 2012 *Federal Register* Notice, is the expected number of days that it takes an Enterprise to foreclose and obtain marketable title to the collateral backing a mortgage in a particular state. Illinois is one of 18 states for which foreclosure takes 480 days or longer.[2] According to FHFA's own Notice, the *most important reason* Illinois was selected for penalty is because it takes 480 (540 where a home is not abandoned) days to foreclose a mortgage lien in Illinois. The same FHFA data shows that there are five states and territories where the foreclosure timeline exceeded 480 days, yet they will not be required to pay the proposed increased fees.

Third, the FHFA seeks to penalize Illinois for its foreclosure timeline without consideration of the critical protections provided by such a timeline, along with other factors that significantly impacted the timeline yet were caused by other actors. This timeline was built into Illinois law to protect homeowners from some of the very practices that led to the foreclosure crisis, and are critical for two reasons: to hinder fraudulent foreclosures and to provide homeowners with the greatest opportunity to pursue an alternate disposition, including loan modification, sale, or short sale. For instance, in Illinois, a lender may not pursue foreclosure until the homeowner has received notice of and been given opportunity to obtain professional, free foreclosure prevention counseling funded by the federal and Illinois governments. This has resulted in thousands of Illinois homeowners accessing counseling, after which they are twice as likely to avoid foreclosure and stay in their homes. We support these important homeowner protections.

Fourth, other key factors that significantly impacted the foreclosure timeline outside of the reasons identified by FHFA, including the widespread use of falsified documents in foreclosure filings and the lending industry's subsequent self-imposed moratorium, along with what appear to be conscious decisions on the part of some servicers to not pursue foreclosure of homes with lower values. These delays in foreclosure were caused by loan servicers, and homebuyers in Illinois should not be penalized for their actions.

Foreclosures took longer in 2011 and 2012 due to the well known "robo-signing scandal" and subsequent self-imposed moratorium. In Illinois, the lender must prove that it has the right to

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[1] http://www.fanniemae.com/portal/about-us/governance/our-charter.html

[2] Fannie Mae Servicing Guide, Party VIII, Section 106.08: Allowable Time Frames for Completing Foreclosure, June, 2012.

foreclose by submitting documents that prove ownership and an affidavit by a person who has reviewed the documents and who swears to have some personal basis for believing the facts to be true. This protects homeowners where the foreclosing bank cannot prove that it actually owns the mortgage or where the homeowner is not in default to the degree asserted in the foreclosure papers.

In 2010, it came to light that several large banks routinely used affidavits signed by employees who did not personally review the documents and had no basis for believing that the homeowner was in default or that the bank even owned the loan. So, in late 2010 and the first half of 2011, in the midst of the foreclosure crisis, the nation's largest banks and mortgage lenders suspended foreclosures on tens of thousands of mortgages while they and state attorneys general investigated how corners were cut to keep pace with the crush of foreclosure paperwork. This robo-signing scandal impacted the timeline and will negatively impact future homebuyers if the fee increase is enacted. Simply put, Illinois homeowners should not have to pay for past sloppy lending practices.

Additionally, and even more appalling, some servicers do not pursue foreclosure to completion where properties have little economic value. Recently, the Woodstock Institute identified a set of vacant properties that had at some point been part of the foreclosure process in Chicago in 2010. Through this process, Woodstock identified 1,896 properties on the City of Chicago's vacant buildings index where there was a foreclosure filing with no subsequent outcome. For such vacant properties, particularly those that have been in the foreclosure process for many years, there are concerns that the servicer chose to "walk away" from the property without releasing its lien, leaving no clear accountable party for problems that may arise there.[3]

These servicer-abandoned foreclosures impact the length of the overall foreclosure timeline in Illinois, but are completely outside the control of the Illinois Mortgage Foreclosure Law, as servicers cannot be forced to complete a foreclosure, even where the home is obviously abandoned. Future home buyers should not be made to pay the price for loan servicers who do not complete foreclosures within the time frames set by law for reasons benefitting their own interest.

Finally, through the Illinois Housing Development Agency and its local partners, Illinois has launched several innovative programs that are working and we need to continue the progress we have made. In addition to administering the National Foreclosure Mitigation Counseling program and providing loan modifications for mortgages held within its portfolio, the Illinois Housing Development Authority (IHDA) has greatly expanded its efforts to keep people in their homes and provide for new homeownership opportunities in the last year through several targeted initiatives:

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[3] "Left Behind: Troubled Foreclosed Properties and Servicer Accountability in Chicago," Woodstock Institute, January, 2011.

Hardest Hit Fund (HHF)

- Launched September, 2011
- Up to 12,000 un- or under-employed homeowners can qualify for mortgage assistance
- $445 million federal grant
- 200 loan servicers and 65 local housing counseling agencies participating

Welcome Home Heroes Homebuyer Program

- Launched December, 2011
- Provides down payment assistance and a stable, fixed-rate mortgage to veterans and active duty service members
- Assists veterans returning from service to transition to stateside life

Building Blocks Program

- Announced in February, 2012, five pilot communities in Cook County will receive intensive support in their efforts to combat declining property values and keep current homeowners in their homes. The program will be expanded statewide upon successful completion of the pilot.
- Three-pronged approach
  - Target communities for prevention assistance through HHF and Illinois Foreclosure Prevention Network
  - Provide financing to rehabilitate vacant, foreclosed properties
  - Offer homebuyer assistance at low rates (3.5% 30-year fixed with $10,000 down payment assistance; credit scores as low as 600)

Mortgage Resolution Fund

- Launched in March, 2012, in partnership with Mercy Housing and Enterprise Communities, IHDA is using a portion of HHF to purchase delinquent mortgages at a discount and modify them to an affordable payment.
- Discount on first mortgage purchase was .21 cents per dollar of mortgage balance.
- The fund revolves. IHDA will sell the modified mortgages and use the proceeds to purchase additional troubled mortgages.

IL Foreclosure Prevention Network (IFPN)

- Launched February, 2012
- Targeted events that bring together ALL available resources to help Illinoisans keep their home
- Partnering with IL Department of Financial and Professional Regulation, IL Department of Employment Security, Illinois Attorney General legal assistance providers, housing counseling agencies, and many others

- Counseling works! Distressed homeowners who receive one-on-one counseling like the type to be provided through the IFPN are twice as likely to obtain a loan modification, and 67% of those who receive modifications are current on their payments one year later.

Housing Rehabilitation Program

- IHDA operates a number of programs through local project sponsors to provide housing rehabilitation assistance to eligible homeowners. These include the following:
  - HOME Single Family Owner Occupied Rehabilitation Program
  - Affordable Housing Trust Fund/matching DCEO-CDBG Housing Rehabilitation Program Funds
  - AHTF Home Modification Program-targeted to elderly and persons with disabilities in need of accessibility improvements

  All of these contribute to the ability of low/moderate income households being able to continue to afford homeownership.

These initiatives are working to keep people in their homes and promote responsible, affordable homeownership for Illinois citizens. They should not be counteracted by this proposed, ill-advised federal policy.

In conclusion, we urge you to rescind this proposed selective, arbitrary fee increase and to embrace the Enterprises' chartered purpose of fostering liquidity to institutions that provide responsible homeownership opportunities. We think this Notice is counterproductive to Illinois efforts to prevent foreclosure and promote responsible homeownership. We support consumer protections that could be eroded to avoid this fee increase, and we dispute the factors included in the methodology employed by FHFA.

Sincerely,

Mary R. Kenney
Executive Director
Illinois Housing Development Authority