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September 17, 2013

Mr. Ed DeMarco
Acting Director
Federal Housing Finance Agency
400 7th Street SW
Washington, DC 20024

Dear Mr. DeMarco:

I am writing on behalf of the over one million members of the National Association of REALTORS® (NAR) to raise concerns about continued attempts to increase the cost and reduce access to conventional mortgages for an ever increasing amount of borrowers. Most recently, press reports indicate that you are preparing to reduce conforming loan limits for Fannie Mae and Freddie Mac (the government-sponsored enterprises or Enterprises). We all share the goal of supporting the mission of the Enterprises, until the date when the nation's housing finance system is reformed. Until then, they must continue to play a vital role in the success of our nation's housing market by serving as a reliable source of liquidity for housing finance.

NAR is America's largest trade association, including our eight affiliated Institutes, Societies and Councils, five of which focus on commercial transactions. REALTORS® are involved in all aspects of the residential and commercial real estate industries and belong to one or more of some 1,400 local associations or boards, and 54 state and territory associations of REALTORS®.

Conforming Loan Limits

The Wall Street Journal reported on September 8 ("Loan Size to Be Cut for Fannie, Freddie") that you have decided to reduce the conforming loan limits, notwithstanding the statutory provisions that prohibit reductions.[1]

You have not yet made public your legal theory for overriding the statutory prohibition against reducing conforming loan limits, but we have serious legal questions about whether you have this authority. This issue has a long history. Congress established the mission of the Enterprises and rules for their operation, including setting loan limits to be adjusted annually. Your predecessor agency, OFHEO, believed the statute allowed it to reduce limits based on reductions in home prices, but NAR and others disagreed. In response to efforts by NAR and others, FHFA decided as a policy matter to reverse its original intention announced in 2007 to reduce the limits.[2] Congress made the policy not to reduce limits permanent in section 1124 of the Housing and Economic Recovery Act of 2008 (HERA).[3]

[1] See Section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)) and section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)). We note that the Charter Acts available on your website are not current, which could cause confusion to those seeking up-to-date versions, and recommend that you bring them up to date. See http://fhfaoig.gov/LearnMore/History.
[2] See the March 26, 2008, announcement by OFHEO, the predecessor agency to FHFA, that the $417,000 limit would not be decreased for 2009 and subsequent years. http://www.fhfa.gov/webfiles/2237/32608FinalGuidanceonCLLCalc.pdf
[3] See the Housing and Economic Recovery Act of 2008, Public Law 110-289 (July 30, 2008).

While Congress granted FHFA, as conservator, broad authority as part of HERA, we believe that you are required to exercise it within the statutory framework established by the Charter Acts for the two Enterprises. If you had the authority to ignore the prohibition against reducing loan limits, what would prevent you from making other fundamental changes? We believe Congress did not intend to allow you to make any fundamental changes to the statutory structure of the organizations, other than those compelled by the nature and goals of the conservatorship. Otherwise, you could allow the Enterprises to (a) engage in primary mortgage market activities to enhance income, (b) limit their activities only to states with higher need due a shortage of mortgage funding or even only to states without high risk characteristics such as high unemployment, and (c) set minimum income limits to reduce risk to the Enterprises. Aside from our apparent disagreement over whether you have legal authority to reduce loan limits or make other fundamental changes to the mission of the Enterprises, we believe that a decision to override congressional intent made clear by the specific prohibitions in the Charter Acts, cited above, is bad policy.

While there has been some return of private lending without the benefit of a federal guarantee, it remains limited and available only to the most highly qualified borrowers. Minimum down payments are higher than required by the Enterprises or FHA, as are required minimum credit scores. As an example, one of the most recent private label security offerings consisted of loans to borrowers with an average FICO score of 769 (out of 850) and with loan-to-value ratios of over 66%, representing an average down payment of almost 34% for purchase loans. An arbitrary reduction in existing limits, in the hope it will encourage more private sector lending, is a social policy experiment that risks dampening or reversing the ongoing recovery in the housing market and the economy as a whole. It also risks denying homeownership to many credit-worthy homeowners who are not in a position to meet the extremely risk-averse standards of the current jumbo lending market. Lowering limits will hit first-time homebuyers the hardest. The Wall Street Journal article quotes a representative of a major mortgage lender acknowledging that lowering the limits will leave a "hole" for borrowers who cannot meet a minimum 20% down payment requirement or have good, but not great, credit.

We are also concerned about the significant negative impact lowering loan limits will have on high-cost markets where many millions of families live. As you will recall from our earlier efforts that resulted in the existing authority for higher limits for these areas, we believe it is only fair to adjust the limits to reflect the higher costs of markets such as many of those in California and in the urban corridor from Washington to Boston. Without higher limits in these areas, many hard-working, middle income families will be denied homeownership simply because they happen to reside in an area of high home prices.

Lowering rates also would also create confusion and uncertainty for potential borrowers and lenders, especially in the months leading up to any reduction. There is already turbulence enough in the regulatory environment for mortgage lending. In January 2014, many changes stemming from the Dodd-Frank Act will go into effect, including the "ability-to-repay" requirements. The risk retention (QRM) regulations remain in flux. Adding even more confusion and uncertainty in this environment runs the risk of reversing progress being made in the economic recovery.

Adverse Market Fees

Fannie Mae issued Announcement 07-21 on December 5, 2007, to impose an adverse market delivery charge, effective on March 1, 2008. Fannie Mae justified the new fee as being due to "an accelerated deterioration of market conditions" including declining home values and a 20-year high level of unsold existing homes. Freddie Mac followed suit in a Bulletin issued on December 11, 2007, citing the "continued deterioration in the mortgage market." Today these adverse market fees remain in place notwithstanding the resurgence of the housing market with higher home prices, more sales, and relatively low (though increasing) mortgage interest rates. NAR's existing home sales survey, announced on August 21, 2013, found that existing home sales increased 6.5% in July, to a seasonally-adjusted annual rate of 5.39 million (17.2% above the July 2012 sales). Sales have exceeded year-ago levels for the last 25 months. Additionally, for the last 17 months, there have been year-over-year home price increases. In light of this sustained turn-around, NAR believes that there is no longer a factual basis for imposing an adverse market fee on all mortgages in all markets and asks you to rescind it.

FHFA Policy to Increase Guarantee Fees Charged by the Enterprises

The Federal Housing Finance Agency (FHFA) Strategic Plan for Fiscal Years 2013-2017 includes increasing guarantee fees charged by the Enterprises "closer to the level that other market participants would charge to assume the credit risk." This assumes that if the Enterprises continue to increase the fee they charge for the guarantee of the prompt payment of principal and interest on their mortgage backed securities, pricing will be attractive enough to draw private enterprises back into the mortgage market. On July 16, 2013, the FHFA Inspector General (OIG) issued a report raising questions and concerns about this policy and recommended that FHFA "develop definitions and performance measures that would permit Congress, financial market participants, and the public to assess the progress and effectiveness of FHFA's initiative." We support this recommendation.

We agree that more private sector participation is key to a stronger and more balanced housing finance market. Homebuyers who are good credit risks but who do not qualify for a loan meeting the standards of the Enterprises, FHA, or other federal programs should have other options. The question is whether higher costs for loans purchased or guaranteed by the Enterprises will have the desired effect of returning private sector back to the mortgage market. We note that in the 1990s, a more normal decade than the last, according to the OIG report, the Enterprises had more than a 60% share of the market, FHA and other federal programs had approximately a 20% share, and the private sector had less than a 20% share.

There may be many other factors keeping purely private sector lending at current low levels. As noted in the OIG report, one factor is the regulations issued under the Dodd-Frank Act related to assuring borrowers have the ability to repay the loan and that lenders retain a portion of the risk for mortgages that do not meet certain minimum standards. Lenders are concerned about litigation risk stemming from these new rules. In light of the tremendous losses suffered by investors in private label mortgage backed securities, it may be many years before private sector lenders and the investors themselves will be willing to return to the mortgage market, no matter how high you raise the guarantee fees charged by the Enterprises.

Another concern is whether the higher fees will be increase cost to consumers who can afford to become homeowners and redirect more mortgage loans to FHA, without enticing private sector back into the market. Increases imposed in 2012 may have these results, and we are sure the FHFA is monitoring the data.

We remain perplexed by the policy to require all but a relatively small amount of Enterprise income to be paid into the United States Treasury. As you know, we had long opposed the onerous 10% dividend on advances made to the Enterprises to maintain their positive net worth. Now that they are once more generating income due in significant part to a near doubling of guarantee fees, your policy may make the transition from the current structure to a replacement structure much more difficult by removing capital that could be used to create reserves to meet obligations of the current GSEs as they are wound down and capitalize a backstop ahead of taxpayer support. We are concerned that the only effects of raising fees may be to weaken the housing recovery, reduce homeownership, and increase payments to the Treasury.

Conclusion

In light of the harm it would cause to the housing and mortgage markets, the economy as a whole, and homebuyers, we urge you to resist using general conservatorship powers to override the congressional policy that loan limits not be reduced. If you remain determined to amend FHFA policy and lower the loan limits, we believe you should proceed through notice and comment rulemaking to give all interested parties, including Members of Congress, an opportunity to fully explain their legal and policy objections.

We also urge FHFA to take the OIG recommendation to heart and establish definitions and measurement standards for its policy of increasing fees to entice the private sector back into the mortgage market. An analysis of just what it would take to achieve this goal is crucial. FHFA policies must avoid the unintended consequence of raising fees so high they choke off the housing recovery by making many homebuyers ineligible for loans, especially if your policies do not achieve the intended but possibly unattainable goal of increasing private sector lending in the mortgage market.

If you have any questions or would like to meet to discuss these concerns, please feel free to contact Charlie Dawson, NAR's Policy Representative for Financial Services, at 202.383.7522 or cdawson@realtors.org.

Sincerely,

Gary Thomas
2013 President, National Association of REALTORS®