

1201 15th Street NW  
Washington, DC 20005  
T 800 368 5242 x8265  
F 202 266 8333  
dledford@nahb.org  
www.nahb.org



December 22, 2011

Mr. Edward DeMarco  
Acting Director  
Federal Housing Finance Agency  
1700 G Street, NW, 4<sup>th</sup> Floor  
Washington, DC 20552

Re: Alternative Mortgage Servicing Compensation Discussion Paper

Submitted via Electronic Delivery to:  
[Servicing\\_Comp\\_Public\\_Comments@fhfa.gov](mailto:Servicing_Comp_Public_Comments@fhfa.gov)

Dear Mr. DeMarco,

The National Association of Home Builders (NAHB) appreciates the opportunity to comment on the Federal Housing Finance Agency's (FHFA) Alternative Mortgage Servicing Compensation Discussion Paper (Discussion Paper) released for public comment on September 27, 2011. NAHB is a Washington-based trade association representing more than 160,000 members involved in a wide variety of housing activities, including the development and construction of single-family for-sale housing; the development, construction, ownership, and management of affordable and market-rate multifamily rental housing; and the development and construction of light commercial properties.

### **Background**

FHFA's Discussion Paper outlines two new mortgage servicing compensation structures. FHFA's broad goals for this project are to improve service for borrowers; reduce financial risk for servicers; and provide flexibility to better manage non-performing loans without harming mortgage market liquidity.

The first approach would include modest changes to the current Fannie Mae and Freddie Mac (the Enterprises) servicing compensation model by requiring a reserve account. Under this option, servicers would retain a Minimum Servicing Fee (MSF) strip (ranging from 12.5 to 20 basis points (bps)), with an additional reserve account (ranging from three to five basis points) to cover non-performing loan servicing costs. Currently, servicers retain a minimum 25 bp strip to cover loan servicing costs, regardless of loan performance.

The second option is a "fee for service" model that fundamentally differs from the current compensation model. The loan guarantor would pay a flat fee per loan for

the servicing of performing loans. A set fee per loan ties the compensation to the number of loans being serviced, not the size of the mortgage. The loan guarantor would collect a master servicing fee from the interest payments made by the borrower to fund the fee. The flat fee, along with other components of this proposal, would significantly alter current mortgage servicing compensation.

### **NAHB Comments**

The ability of the home building industry to meet the demand for housing, including addressing affordable housing needs, and contribute significantly to the nation's economic growth is dependent on an efficiently operating housing finance system. The system must provide adequate and reliable credit to home buyers and home builders at reasonable interest rates through all business conditions in all geographic areas of the country.

Loan servicing is a critical component of the housing finance industry. How well a loan servicer manages the servicing process can have a significant impact on the performance of the mortgages in its portfolio and the overall value of the mortgage servicing portfolio. In its Discussion Paper, FHFA lists the myriad functions a servicer must perform to ensure quality servicing. Over the life of a loan, the servicer is responsible for answering borrower inquiries, dealing with issues relating to changes in borrower circumstances, remitting principal and interest ("P&I") to investors, providing accounting for payments, providing remaining loan balance information, making payments to tax authorities and insurance companies, and transmitting tax related information to the borrower. Furthermore, there is the additional work servicers must perform when a loan becomes delinquent and loss mitigation activities are initiated. In this circumstance, evaluating a borrower's best option between loan modification, deed-in-lieu, short sale, or foreclosure is a significantly labor-intensive process.

Servicers must be knowledgeable of applicable Servicing Guidelines for individual investors, which are subject to change, as well as various state and federal government requirements. There is liability associated with errors made if servicing guidelines are not followed accurately.

Throughout the recent crises in the mortgage finance industry, loan servicing has been a focus of concern. In particular, regulators and members of Congress have focused on the unprecedented volume of defaulted mortgage loans that has resulted in millions of home owners losing their homes. There has been widespread concern about the ability and willingness of servicers to help home owners stay in their homes.

These perceived weaknesses in the servicing industry have caused industry reform efforts to focus on servicing operations. Policy makers, regulators and legislators all are considering how servicing policies and procedures could be reformed and standardized throughout the industry. Some believe it is appropriate to change how servicers are compensated for their work. NAHB believes

improvements in both areas should be evaluated, but a restructuring of servicing compensation should take place as part of overall servicing reform (as a component of servicing) and implemented only after servicing reform is finalized.

NAHB submits these comments to express concerns that the significant changes to servicing compensation FHFA proposes in the discussion paper may limit the availability and affordability of mortgage credit at a time when the housing market remains fragile. Though many industry participants agree servicing reform is necessary, NAHB believes it is premature to reform servicing compensation prior to knowing how a national servicing standard will be structured or the outcome of the many other regulatory and legislative changes proposed for the housing finance system as a whole.

#### Efforts to Reform Servicing Standards

The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Federal Reserve), the Federal Deposit Insurance Corporation (FDIC), and the Consumer Financial Protection Bureau (CFPB) are planning to develop national servicing standards. In April 2011, the Federal Reserve, the OCC, and the FDIC released "Interagency Review of Foreclosure Policies and Practices." In this report the agencies stated they are currently engaged in an effort to establish national mortgage servicing standards to promote the safe and sound operation of mortgage servicing and foreclosure processing. The agencies also indicated this effort will include engaging the Enterprises, private investors, consumer groups, the servicing industry, and other regulators. The guidance provided a general overview of the core principles that should be included in future national mortgage servicing standards. National mortgage servicing standards are widely supported within the industry.

Separately, also in April 2011, the OCC issued guidance to national banks requiring servicers, among other practices, to establish a single point of contact for borrowers and to establish procedures to end dual tracking, i.e. to ensure foreclosure actions stop when a borrower is approved for a trial or permanent modification. The OCC examiners determined that deficiencies and weaknesses in the foreclosure process had negative consequences for borrowers and the housing market.

The FHFA's Servicing Alignment Initiative directed the Enterprises to establish consistent policies and processes for the servicing of delinquent loans owned or guaranteed by the Enterprises. Together, the Enterprises developed and issued new standards for mortgage servicers regarding the management of delinquent loans, default prevention and foreclosure time frames. The standards, reinforced by new incentives and compensatory fees, require servicers to take a uniform approach for homeowner communications, loan modifications and other workouts, and, when necessary, foreclosures. The requirements defined under the Servicing Alignment Initiative became effective October 1, 2011 with a new Standard

Modification to be effective for borrower evaluations beginning January 1, 2012.

In addition, the settlement negotiations between the Obama Administration, the State Attorneys General (AGs) and mortgage servicers reportedly include establishing more robust servicing requirements.

#### Mortgage Industry Reform

At this time, the housing finance system is facing much uncertainty. In addition to the efforts to consider new national servicing standards, the entire housing finance system is dealing with an uncertain future. The regulatory environment is being impacted by hundreds of regulations required to implement the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act.) Additionally, even though there is no consensus on how to overhaul the structure of the Enterprises, there have been many proposals by Congress for how to structure the secondary mortgage market in the future and what role if any the Enterprises and the federal government will play. All of these efforts are creating a general sense of uncertainty in the housing market and potentially impeding a much-needed recovery.

#### Foreclosures

Home mortgage foreclosures continue to have a significant negative impact on the housing market and are contributing to the nation's slow economic recovery. The unprecedented level of delinquent loans and foreclosure activity is one of the most critical issues facing the housing market and has become a heavy burden on mortgage servicers.

Recently, the FHFA released changes to the eligibility requirements for the Home Affordable Refinancing Program (HARP) in order to assist homeowners avoid foreclosure. NAHB supports these efforts to take more effective loan modification actions and institute reforms in mortgage servicing to help home owners who are in financial need and have behaved responsibly in handling their mortgage and other financial obligations avoid foreclosure.

The changes to compensation would apply to future loans purchased by the Enterprises, including those loans refinanced under HARP and it is unclear if the new compensation rules would hinder the HARP refinancing efforts. The FHFA should not divert attention away from the immediate foreclosure crisis by changing the compensation structure of the mortgage servicing industry. Such efforts should be tackled only after the housing market has recovered.

#### Mortgage-Backed Securities Market

The "To be Announced" (TBA) market facilitates the forward trading of mortgage-backed securities (MBS) issued by the Enterprises and Ginnie Mae. The liquidity

of the TBA market is dependent on the volume of investors willing to participate. Investors are attracted to this market because of its perceived stability and predictability. The TBA market is responsible for significant capital flow from a wide range of investors. According to the Securities Industry and Financial Markets Association (SIFMA), an average of \$302 billion of agency MBS was traded *each day* by primary dealers during the second quarter of 2011.

Securities industry representatives have expressed concerns that the proposed changes to the mortgage servicing compensation would disrupt the TBA market and impact the liquidity of this market. A less stable and less predictable securities trading market may increase the cost of mortgage credit to consumers as investors expect a higher rate of return on their investment. These higher costs will be borne by home buyers and will further limit availability of mortgages to creditworthy borrowers. Access to affordable housing credit also is critical to eliminating the shadow inventory of foreclosed homes. Until this inventory is drawn down, a full housing recovery cannot take hold and economic growth will continue to stall.

While the market eventually would adjust to the new rules, the time period needed for this transition and other market adjustments caused by these new rules are unknown. Any disruption in the liquidity of credit for home purchases will further delay a recovery in the housing market.

#### Impact to Market Competition

NAHB believes that mortgage credit for single family housing should be available and affordable through the provision of an ample roster of lenders and mortgage originators. It is unclear how changes to mortgage servicing compensation will impact smaller community banks that may not be able to maintain operations with a reduced fee. There is concern that community banks may be squeezed out of the market, thereby reducing competition and ultimately hurting consumers.

#### Conclusion

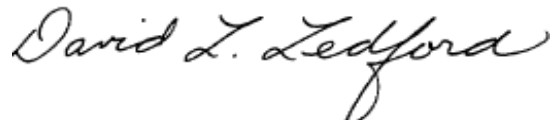
NAHB urges the FHFA to consider this effort to change mortgage compensation as part of the dialogue to establish national servicing standards and not implement any changes until after the finalization of national servicing standards, rather than as a more immediate and separate action. Without knowing the outcome of new national servicing standards, a radical change to servicing compensation could have drastic and unintended consequences to mortgage originations, securitization, pricing, and market competition. NAHB believes a more responsible approach requires a broad industry conversation on the potential impacts of these changes in order to avoid unintended consequences.

NAHB appreciates the FHFA's efforts to encourage a housing market recovery and we urge the FHFA to reconsider any actions that may undermine that recovery.

Mr. Edward DeMarco  
Federal Housing Finance Agency  
Comments Re: Alternative Mortgage Servicing Compensation  
December 22, 2011  
Page 6

Thank you for the opportunity to comment on the Discussion Paper. If you have any questions about NAHB's comments, please contact Jessica Lynch, Assistant Vice President, Regulatory Affairs, at 202-266-8401 or [jlynch@nahb.org](mailto:jlynch@nahb.org).

Sincerely,

A handwritten signature in cursive script that reads "David L. Ledford". The signature is written in black ink and is positioned above the typed name and title.

David L. Ledford  
Senior Vice President  
Regulatory Affairs