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

Submission to: Servicing_Comp_Public_Comments@FHFA.gov

Re: Alternative Mortgage Servicing Compensation Discussion Paper

Dear Mr. DeMarco:

Thank you for the opportunity to comment on the FHFA's Alternative Mortgage Servicing Compensation Discussion Paper.

BOK Financial Corporation (BOKF) is a $24 billion regional financial services company based in Tulsa, Oklahoma. Our bank, BOKF NA, is a national bank operating as Bank of Oklahoma, Bank of Albuquerque, Bank of Arizona, Bank of Arkansas, Bank of Kansas City, Bank of Texas and Colorado State Bank and Trust. In 2010 our Mortgage group originated over $2.8 billion in mortgage loans. We also operate a mortgage servicing portfolio of $12.3 billion.

General Comments

- We believe the existing servicing fee structure has served the market well for decades and is still viable. A wholesale change is not needed at this time.
- Reducing the revenue stream opportunity in Mortgage Servicing will result in fewer companies participating or investing in Mortgage Servicing. We believe this consolidation will impact the consumer with higher costs to finance a home.
- Many changes to regulatory requirements, investor guidelines and underwriting rules are already correcting the servicing problems. These changes are resulting in higher quality mortgage loans that are performing at pre-crisis cumulative default rates, as reported by the GSE's. These higher quality loans will continue to enhance servicing portfolio performance due to lower delinquency rates. (Cf.: Fannie Mae 2011 First-Quarter Credit Supplement, May 6, 2011, page 8; or click here: Default Rate Summary)
- We believe the timing is bad to introduce change in the servicing fee structure given the state of the housing market and the Mortgage Servicing market.
- We further believe that the proposed changes do not meet FHFA's stated objectives for the FFS proposal. In the following paragraphs we discuss the proposals in light of the agency's objectives.

Evaluation of the Proposals and the FHFA's Stated Objectives

Improved service to borrowers –

- We understand the mega servicers were found to have issues with customer service (e.g., single point of contact) but we do not believe the proposed changes will improve the service to borrowers. If that were the case, then all the FHA/VA borrowers should be receiving superior service compared to conventional loan customers due to the fact that the GNMA servicing fees far exceed that on GSE loans. But there is no evidence that loans with higher service fees translate into a better service to the borrower. Enhanced Servicing Standards enforced with compensatory fees are already forcing servicers to improve their service to delinquent and defaulting borrowers.

Reduce financial risk to servicers –

- We do not believe financial risk will be mitigated under the FFS proposal where not only is the fee per loan not yet determined, but it can change over time. The proposal replaces the interest rate risk inherent in the MSR (that can be hedged) with the uncertainty of annual fees that will render any form of financial planning and budgeting completely impractical. The industry has come a long way in developing and implementing prepayment models that help the MSR holders manage the financial risk. There is no way to model the annual fee per loan over its life when that fee will be determined annually by a GSE at its own discretion.

- Servicers will increase their counterparty risk if they have to rely on the GSE's to reserve and safely manage part of the servicing revenue stream.

Provide flexibility to guarantors to better manage non-performing loans while promoting continued liquidity in the TBA MBS market –

- We believe the existing model where the Guarantors wield the power to not only (1) grant the right to service mortgages to only deserving servicers, (2) seize and remove it for cause, (3) set stringent guidelines that can be modified at will, and (4) enforce punitive consequences for non-compliance with the guidelines affords them more than adequate flexibility to better manage non-performing loans.

- We believe the FFS proposal could lead to an unintentional consequence of harming liquidity of the TBA market for the GSE's MBSs. We note that FHFA is concerned that by eliminating MSRs and hence the mortgage servicer's collateral in an MBS pool, unscrupulous servicers could promote refinancing. That is why the proposal contemplates a policing role for the GSEs to monitor prepayments by each stakeholder in a pool. Such uncertainty will do more harm than good to liquidity of any financial instrument, notwithstanding the ever increasing oversight from the GSEs.

Enhance competition in the market for origination and servicing?

- Servicing Market: Only the mega servicers with significant economies of scale will be capable of withstanding the significant reduction in the servicing revenues. We foresee a mass exodus of small /medium sized servicers. This consolidation of servicers and less competition will ultimately impact consumers with greater costs for home financing.

- Origination Market: As in case of the guaranty fee, we believe the fee per loan will be uneven across servicers. Armed with higher fees per loan, we foresee some large servicer/lenders cornering certain markets by initially offering attractive rates to borrowers to drive away competition, followed with expensive mortgages. Unless there is verifiable empirical data that FHFA can provide which proves that a proposal similar to FFS has enhanced competition in the mortgage or any other industry, we strongly believe FFS will not promote competition in the mortgage markets.

In addition to the specific objectives of this proposal, we note the long-term strategy for the FHFA states the agency's most urgent goal is to ensure stability in the mortgage market (FHFA Strategic Plan 2009-2014, pg 6). For reasons detailed in this letter we believe this servicing compensation proposal will have a disruptive effect on the mortgage market.

BOKF Response to FHFA's Specific Questions;

1) What are the impacts of these proposals on the competitive landscape in origination and servicing markets, service to borrowers, and efficiency in secondary markets?

Origination:

- Reserve Account will have negligible impact.
- FFS could have potentially negative impact. Lenders with advantage of bargaining with large volume could potentially benefit from higher FFS.

Servicing:

- Reserve Account will have negligible impact.
- FFS: with no indication of what the FFS will be, it is hard to quantify the impact on servicers. It is however predictable that if the FFS is lower than what the small/medium servicers can profitably operate within, it will certainly lead to quick exits from the industry via consolidation or offloading to sub-servicers.

Service to borrowers:

- Reserve Account will have minimal impact.
- FFS: Paying a supplemental fee for a loan falling into delinquency could have the unintended consequences of incentivizing a manipulative servicer to quietly encourage a loan to fall behind in payments. We believe the incumbent method of "carrot and stick" currently employed by the GSEs is working exceptionally well. Cost benefit analysis of servicing delinquent loans has proven that although a 30 day delinquent loan is lucrative for a servicer, loans delinquent past that are net cost additive. Since the servicing managers are routinely graded on their delinquency management as a Key Performance Indicator by not only the GSEs, but also internally by auditors, delinquent borrowers are well in the focus of most mortgage servicers. We believe that instead of lacking an incentive to better handle the large influx of delinquent borrowers, the mortgage servicers were unable to secure the expertise required to process delinquent borrowers. And that is because the pool of expertise is scarce in the industry.

Efficiency in Secondary Markets:

- Reserve Account will have minimal impact.

- FFS: With the unpredictable nature of FFS, i.e., not only is the initial fee per loan yet to be determined but that the compensation could change annually, determining the Primary Secondary Spread would be problematic which could lead to inefficiencies in the Secondary Markets.

2) What are the benefits and/or the impediments to your business model of having a capitalized MSR asset?

a) **Does a capitalized MSR impede competition in the servicing and origination market?** No, in fact we believe the proposed FFS structure would impede competition in the private market due to the revenue being determined by a government sponsored enterprise.

b) **Does the impact vary across various business and interest rate cycles**? Yes, but it acts as an offset to other business lines and is hence advantageous.

c) **Does the impact vary across size of servicers and originators?** Yes. At times, we are at a disadvantage and at times not. Overall, it evens out.

d) **Would greater transparency in MSR valuation improve the competitive landscape?** Yes, and so would the transparency of the Guarantee Fee of each lender.

e) **What is the impact of a potential reduction in tax Safe Harbor?** The reduction of the tax safe harbor to match the reduced normal servicing amount under the proposal would result in the acceleration of taxable income in the amount of the increase in the I/O strip (reduction in the normal servicing) without the current cash flow to pay the taxes unless the I/O strip were monetized up front. Normal servicing is taxed over the period the cash flow is received as the loan is serviced. Any excess servicing is capitalized and taxed upfront. To the extent servicing is paid as a fixed fee over the life of the loan, none of the payment would qualify under the safe harbor rules.

f) **Should the servicer be required to hold a capitalized MSR asset (effectively be an IO investor) as a condition of performing servicing activities?** No, it should be an option. Servicers that hold MSF versus those who opt to create and hold Excess on top of that are not servicing any differently.

3) Should a lender's excess IO remain contractually attached to the MSR, or would seller/servicers prefer to have the excess IO be a separate stand alone asset (unencumbered by the Enterprises)? We would prefer it to be a stand alone asset.

a) **Does the impact from market-based pricing of the excess IO vary across size of servicers and originators?** Yes, especially if the Guarantee Fee can be negotiated by large lenders based on their volume instead of solely on the risk.

b) **Does contractually separating the excess IO from the MSR create more liquidity and price transparency?** No.

c) **Is the flexibility to separate the operational activities (servicing) from the financial management activities (investing in and managing MSR/IO exposure), as outlined in the Fee for Service proposal, beneficial or harmful to the industry?** Harmful. Without being able to capitalize the MSR/IO, a mortgage unit's P&L will not be sustainable by any parent bank.

4) Would these proposals encourage greater investment in non-performing loan operations or abilities in a benign market cycle? No. The proposals are not well designed.

a) **How does this impact the alignment between guarantor and servicer interests?** The FFS could very well result in misaligning the interests of guarantor and servicer by creating an added layer of negotiating the fee per loan annually. As if the ever increasing servicing guidelines are not complex and overbearing enough, the proposal of FFS would add to the current environment of "us versus them" and increase the cost of servicing.

b) **Would this improve service to borrowers?** We do not see how this FFS proposal would improve the service to borrower. Since the FFS is prospective, it is ill-suited to address the current mortgage industry situation that is marred by customer complaints. With SAI and other measures in place (and with more to come), juxtaposed with lenders diligently adding resources to handle the large influx of delinquent borrowers, we believe the mortgage industry is well on its way to satisfactorily address the present day crisis. Keeping in mind the current environment of stringent credit policy which bodes well for delinquencies to come, we foresee FFS as ineffective to handle the malaise today and little needed in future.

5) What would be the impact of the proposals on the TBA market if there were no MSR capitalization?

a) **To what degree might the net tangible benefit test and other suggested provisions help mitigate any potential negative impact on the TBA market?** Net tangible benefit test will probably do more harm than good to the industry. First of all, it will add another layer of negotiations and arguments with the GSEs. We foresee GSEs targeting some servicers with accusations of causing excessive run off which will lead to prolonged rebuttals and negotiations. As if repurchase requests, compensatory fees and SAI are not enough, the FFS proposal is nothing short of another channel well suited to be more adversarial.

b) **What additional steps can we take to assure continued liquidity in the TBA market?** Do not impose the FFS on the industry. The current business model of creating and maintaining the servicing fee is working. Better regulation of the non-financial institution mortgage companies in the TBA market would also help ensure liquidity and stability of the TBA market.

6) Should any of the following provisions that were proposed in the fee for service proposal be considered independent of any other changes to servicing compensation structure?

a) **Bifurcation of selling and servicing representations and warranties:** This proposal will add liquidity to the moribund mortgage servicing market. With the onset of Basel III, it is well expected that some of the lenders will seek a strategic reduction in their MSR concentration. Separating the representations and warranties will be highly advantageous to the industry. Besides the Reserve Account, the bifurcation is the only other proposal that merits our endorsement.

b) **A net tangible benefit test for streamlined refinances:** As stated previously we do not believe a net tangible benefit test should be part of this proposal.

c) **Restriction of the amount of excess IO in a given pool:** It would become a moot point if the FFS proposal is dropped. Market forces would determine this.

d) **Limitation of P&I advance requirements:** Mortgage bankers have not been complaining about this issue. In fact, rising cost of P&I advances serves as an excellent deterrent for wayward servicers. Delinquency, and consequently the P&I advances, is a manageable line item and servicers should be held to that test.

e) **Flexibility for excess IO execution:** This becomes a moot point if there is no market for excess IO. Hence we don't see any benefit.

Finally we wish to comment on the agency proposals and the role of government in the home mortgage business. In February 2011, the Obama administration indicated its desire to reduce the role of government sponsored enterprises in the residential housing market in favor of private securitization. For reasons stated in our comments we believe the current FHFA proposals will have the opposite effect by dramatically increasing the roles of Freddie Mac and Fannie Mae, limiting the risk mitigation capacity of mortgage servicers and reducing the viability of private housing securitization.

We appreciate the opportunity to comment on this proposal. Please contact me at 918-488-7013 should you have any questions regarding our comments or need further detail. Thank you.

Sincerely yours,

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