

Congress of the United States
Washington, DC 20515

**Ask Secretary Geithner and the FHFA to
Stop Fannie Mae from Suing Homeowners
With Taxpayer Dollars**

August 2010

Dear Colleague:

We hope you will join us in sending the below letter to Treasury Secretary Geithner and the Acting Director of the Federal Housing Financing Agency expressing serious concerns about a new policy in which Fannie Mae will sue homeowners who have “strategically defaulted” on their mortgages. This opaque, flawed proposed policy would be a poor use of taxpayer dollars, does nothing to help keep individuals in their homes, and will likely result in the targeting of individuals who default on their mortgages through no fault of their own. The letter asks the Secretary of the Treasury and the Acting Director of Fannie’s conservator to indefinitely suspend the implementation of this new policy until the Administration and the Congress have reviewed the implications of this new policy, including cost, transparency, utility, and oversight, and determined if it is in the best interest of the American people to have Fannie Mae pursue such a policy. Please contact Michael Darner (michael.darner@mail.house.gov) in Rep. Conyers’ office or Deborah Koolbeck (deborah.koolbeck@mail.house.gov) in Rep. Kaptur’s office if you would like to sign the letter.

Sincerely,

/s
JOHN CONYERS
Member of Congress

/s
MARCY KAPTUR
Member of Congress

August XX, 2010

The Honorable Timothy Geithner
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

The Honorable Edward Demarco
Acting Director

Federal Housing Finance Agency
1700 G Street, NW
4th Floor
Washington, DC 20552

Dear Secretary Geithner and Acting Director Demarco:

We are writing today to express our strong reservations about the policy announced by Fannie Mae to encourage its servicers to pursue deficiency judgments against “strategic defaulters.” We believe that this opaque, overbroad, and punitive policy, as conceived by Fannie Mae, is a poor use of taxpayer dollars and will unnecessarily include individuals who are not choosing to default on their mortgage. Furthermore, this policy is one of many which seems to run counter to the national need to stem the tide of foreclosures which are devastating communities across our nation. Mr. Secretary, as owner of 80 percent of Fannie Mae, we respectfully request that you work with Acting Director DeMarco of the Federal Housing Finance Agency (FHFA), Fannie Mae’s conservator, to use FHFA’s authority to require Fannie Mae to suspend indefinitely this new policy until the Administration and the Congress have reviewed the implications, including cost, transparency, utility, and oversight, of this new policy and determined if it is in the best interest of the American people to have Fannie Mae pursue such a policy.

At a time of record deficits and a nation crying for the government to get its finances in order, it is also unclear why Fannie Mae is proposing to use taxpayer dollars to pursue legal judgments against individuals who will lose or have lost their homes, have wrecked their credit rating, and likely have little or no remaining monetary assets. Treasury has already invested \$86 billion into Fannie Mae and considering Fannie Mae’s dependence on federal dollars to exist and operate, we think pursuing expensive litigation against a vulnerable population when there appears to be little to no economic incentive is questionable at best.

The vagueness of this policy is also problematic. Under the proposed Fannie Mae policy, borrowers who are determined to have strategically defaulted on their mortgages will be subject to having deficiency judgments pursued against them in a court of law. However, it is unclear what transparent, objective criteria Fannie Mae is using to determine who is a strategic defaulter and who is not. Fannie Mae has also stated that an individual who pursues a mortgage modification in good faith will not be subjected to litigation. The problem with this aspect of the policy is that Fannie Mae has stated it will rely on the reports of its servicers to determine borrower intent. We have great concern with putting such faith in the servicers based on constituent feedback on the performance and objectivity of servicers based on their experiences, along with servicers’ evaluations by the Government Accountability Office (GAO), the Special Inspector General for the TARP (SIGTARP), and the Congressional Oversight Panel (COP).

For example, the GAO states, “The most common complaints involved the difficulty in reaching the servicers or not hearing back from them in a timely manner.” Furthermore, since the Treasury has yet to determine and implement metrics for assessing the servicers in terms of communicating with borrowers under the Making Homes Affordable Program, also known as HAMP, it is unclear that Fannie Mae would be able to rely on the servicers’ performance either.

The SIGTARP has also found that "...this lack of consistent standards [among servicers] could mean that servicers are inconsistently applying criteria..." The GAO continues, "However, a lack of specific guidelines has also led to significant variations in servicers' quality assurance programs."

Given the fact that Fannie Mae is the administrator of HAMP, and the above are just a small set of criticisms of HAMP, it is unclear that Fannie Mae could properly implement this new policy consistently against "strategic defaulters."

We request that the following questions be thoroughly and clearly answered by Fannie Mae and FHFA, and then the answers considered by the Administration and the Congress before Fannie Mae considers moving ahead with this questionable policy. These questions include:

- How much is this policy expected to cost Fannie Mae and the oversight agency to implement?
- Is this an appropriate use of taxpayer dollars, and if so, why?
- What effect will this policy have on the future of our nation's housing market?
- Is this policy consistent with the Obama Administration's foreclosure mitigation efforts?
- How much of the money returned to Fannie Mae from said lawsuits will be paid to the Treasury, and how much will go to the investors, and how were these percentages determined?
- How many lawsuits and in what states does Fannie Mae expect to pursue deficiency judgments?
- What are the clear, objective criteria for determining who is a strategic defaulter and who is not? Who worked to determine these criteria (names, position, corporation or agency for which each person works)?
- What agency will conduct the oversight of this policy, especially in regard to the servicers?
- How often will Fannie Mae and the agency conducting oversight assess the process and implementation of this policy by the servicers and what are the criteria of this assessment?
- What concrete, recordable attempts will be made to engage the borrower prior to a delinquency judgment being filed to resolve the situation prior to litigation?
- How much investor input was considered when creating this policy? Please include related documents and detailed summaries of meetings and conversations in which the investors gave input, as well as copies of emails.
- What evaluations and tests did FHFA use to determine the effectiveness and efficiency of this policy? Who completed these evaluations and tests? Please include the raw data from the evaluations and tests, as well as the models and processes used to analyze the data, as well as the conclusions of the analysis.
- What process was implemented at FHFA for approval of this policy? Who at FHFA was involved in the approval process?

Given the challenges, concerns, and questions raised by this policy, we believe that you should act with all deliberate speed to suspend the implementation of this program, initiate a comprehensive review its procedures and aims, and ensure that Fannie Mae answers thoroughly

and clearly the above questions so that both the Administration and the Congress can review and work with the Treasury and FHFA to ensure that taxpayers' dollars are spent wisely.

Sincerely,

cc: The Honorable Shaun Donovan, Secretary of Housing and Urban Development

cc: The Honorable Neil Barofsky, Special Inspector General for the TARP