Center for American Progress

Center for American Progress
1333 H Street, NW, 10th Floor
Washington, D.C. 20005
202.682.1611

December 20, 2012

From: **Peter Swire,** Senior Fellow
Jordan Eizenga, Economic Policy Analyst

RE: Response to Federal Housing Finance Agency Request for Public Comments, Alternative Mortgage-Servicing Compensation

To whom it may concern:

The Center for American Progress respectfully submits this brief response to the Request for Public Comments issued by the Federal Housing Finance Agency, or FHFA, on the topic of alternatives for a new mortgage-servicing compensation structure.

Respondent, Mortgage Finance Working Group at the Center for American Progress overview

The Center for American Progress, founded in 2003, is a progressive, nonpartisan think tank dedicated to improving the lives of Americans through ideas and action. CAP is a nonprofit corporation under Section 501(c)(3) and is located at 1333 H St. NW, 10th Floor, Washington, D.C. 20005 and can be reached at 202.682.1611.

The Mortgage Finance Working Group is sponsored by the Center for American Progress. The members of this working group began gathering in 2008 in response to the U.S. housing crisis in an effort to combine their understanding of the causes of the crisis and to discuss possible options for public policy to shape the future of the U.S. mortgage markets.

Peter Swire is a Senior Fellow at American Progress and the C. William O'Neill Professor of Law at the Moritz College of Law of the Ohio State University. Swire was special assistant to the president for economic policy from 2009 until August 2010 where he was White House coordinator for the administration's interagency housing and housing finance policy efforts. Swire also served as the Clinton administration's chief counselor for privacy from 1999 to 2001 in the Office of Management and Budget.

Jordan Eizenga is a Policy Analyst with the Economic Policy team at CAP. His current work focuses on municipal and housing finance. Prior to joining the Center, Jordan was a Hamilton Fellow in the Department of the Treasury where he worked with community development financial institutions to expand credit and equity investments in distressed and underserved domestic markets.

Approach

CAP submits these comments not to support either mortgage-servicing compensation mechanism mentioned in the discussion paper[1] released by FHFA. Rather, this response makes the broader point that it is crucial to have the consumer interest firmly in mind as any decision is made about the future of mortgage-servicing compensation. Indeed, we emphasize that the statutory mission of FHFA as conservator of Fannie Mae and Freddie Mac is fulfilled through a strategy that incorporates the perspective and protects the interests of the consumer.

The Request for Public Comment's stated goals[2] are to "improve service for borrowers; reduce financial risk to servicers; and provide flexibility for guarantors to better manage non-performing loans, while promoting continued liquidity in the To Be Announced (TBA) mortgage securities market." In order to meet these goals, especially "improve service for borrowers," we believe that there should be careful and explicit consideration of how homeowners will be affected by possible mortgage-servicing compensation standards.

The current structure of the mortgage-servicing industry is such that servicers are responsible to investors and "owe no duty at all to consider the needs and interests of consumers[3]." That is, the clients of mortgage servicers are no longer the borrowers, but the mortgage investors, as servicers collect and send monthly mortgage payments on to investors. The result is that consumers lack protections against improper acts and omissions by mortgage servicers.

This is not just a problem for borrowers. The recent "robo-signing" scandal, in which employees of servicing firms routinely failed to maintain required servicing documents, demonstrated that weak consumer protections are also a concern for mortgage insurers and investors of mortgage backed securities, not to mention the FHFA, Fannie Mae, and Freddie Mac. Private mortgage insurers made payments on insurance claims to investors for mortgages that were improperly originated and serviced. Fannie and Freddie claim they guaranteed mortgages that were fraudulently originated and serviced. Investors of private-label, mortgage-backed securities believe that servicers made loan modifications that put the interests of servicers ahead of investors.

Private capital will not begin to re-claim a larger share of the mortgage market unless there are essential protections against the sorts of mortgage-servicing problems that have occurred in recent years. The mortgage-servicing compensation system developed during the bubble has not succeeded. The new compensation system must provide incentives that protect borrowers during the three decades of the typical home loan.

It is important for the FHFA to articulate how the new servicing compensation system will interact with the FHFA's statutory role as conservator of Fannie Mae and Freddie Mac. The concern is that FHFA attention to "improved service to borrowers" might be seen by some as inconsistent with the mission of the conservatorship, which focuses on conserving the assets of Fannie and Freddie.

We believe that the statutory requirements of conservatorship clearly include consideration of the effects of FHFA's actions on borrowers. Although conservatorships typically are short term, that is not the case for FHFA. Reform of Fannie and Freddie is expected to take much longer than was once expected. To fulfill its mandate as conservator, FHFA should take action to maximize value, prevent taxpayer losses, and improve the housing market in the long term.

With this appropriate and long-term perspective, policies that strengthen the housing and mortgage markets, such as consumer protections against mortgage servicers, will also improve the financial condition of Fannie and Freddie. FHFA should thus clearly explain how "improved service to borrowers" is an integral part of its decisions about mortgage-servicing compensation. To the extent FHFA perceives any limits on where it can consider improved service to borrowers, then it should explain those limits and seek to partner with other regulators or other institutions for an overall solution that truly does protect borrowers.

Conclusion

The actions of mortgage servicers impact borrowers across our country. We commend FHFA for addressing the issue of mortgage-servicer compensation practices and hope that whatever compensation model the agency adopts, it puts the concerns of consumers front and center.

Thank you for your consideration,

Peter Swire, Senior Fellow
Jordan Eizenga, Economic Policy Analyst
Center for American Progress

Endnotes

1 Federal Housing Finance Agency, "Alternative Mortgage Servicing Compensation Discussion Paper" (2011), available at http://www.fhfa.gov/webfiles/22663/ServicingCompDiscussionPaperFinal092711.pdf.

2 Federal Housing Finance Agency, "Joint Initiative Seeks Public Comment on Alternative Mortgage Servicing Compensation; Releases Discussion Paper" (2011), available at http://www.fhfa.gov/webfiles/22664/WhitePaperServComp092711.pdf.

3 Peter Swire, "What the Fair Credit Reporting Act Should Teach Us About Mortgage Servicing" (Washington: Center for American Progress, 2011), available at http://www.americanprogress.org/issues/2011/01/pdf/fcra_mortgage_servicing.pdf.