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December 8, 2014

Melvin L. Watt, Director  
Federal Housing Finance Agency  
Constitution Center  
400 7th Street, SW  
Washington, D.C. 20024

RE: Fannie Mae and Freddie Mac's Policy Change Concerning Sales of REO Properties

Dear Director Watt:

We were encouraged by the announcement last week that the Federal Housing Finance Agency (FHFA) has directed Fannie Mae and Freddie Mac to change their policies concerning sales of foreclosed-upon homes (so-called Real-Estate Owned, or REO, properties). Consistent with the requirements of our state foreclosure laws, Fannie and Freddie (the Government-Sponsored Enterprises or GSEs) will now permit sales of REO properties to the former homeowner, or someone acting on the homeowner's behalf, at the home's fair market value as opposed to the "make-whole" amount.<sup>1</sup> The prior policy led to a perverse outcome: the GSEs would sell REO properties to any third party investor at the fair market value, *but not to the former homeowner*, even when the former homeowner was financially able to repurchase the home.

Since as early as 2012, we have urged FHFA and the GSEs to adopt innovative ideas designed to combat the deleterious effects of the foreclosure crisis. Included among these are "buyback" programs run by non-profits that enable financially qualified homeowners to stay in their homes. Such programs represent creative efforts to help communities rebuild. Indeed, as you know, under one provision of our state foreclosure law passed in August 2012, creditors are prohibited from refusing to sell a property (to a non-profit entity) *merely because* it will be resold or rented to the former homeowner. *See* M.G.L. c. 244, §35C(h). When FHFA and the GSEs refused to comply with this provision, we filed suit, seeking declaratory and injunctive relief.

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<sup>1</sup> The "make-whole" amount, which the GSEs previously demanded for sales to the former homeowner or to any third party acting on the homeowner's behalf, represents the entire outstanding mortgage indebtedness, even where such amount is well above the property's current fair market value.

We are pleased that FHFA now has agreed to reverse in part its position regarding buyback programs that were a major component of our lawsuit. We are considering this development as we weigh our options for appeal in that case.

Because of this policy change, numerous families in Massachusetts will no longer face eviction at the hands of the GSEs, but will instead be able to repurchase their homes at the market rate. This policy change also makes financial sense for the GSEs, as they will recoup at least the property's current market value, yet they will avoid the cost of owning, maintaining and marketing these REO properties, as well as the cost incurred by suing to evict families from their former homes. By any measure, this is an outcome that benefits all stakeholders: the GSEs, the affected families, and the communities in which they live.

As encouraged as we are by this policy change, we believe it does not go far enough. First, eligible REO properties include only those in the GSEs' existing inventory as of the date of the announcement (November 25, 2014). This means that homeowners foreclosed upon today or tomorrow or next week, even if they qualify for financing, will not be permitted to repurchase their homes at a fair price. We presume FHFA limited the new policy in this way due to its previously-stated concerns that homeowners may strategically default in the hope of qualifying for a buyback program and repurchasing their home at a lower price. While this has never been substantiated, to the extent it is a valid concern, we believe it can be addressed through policy mechanisms such as clear modification underwriting standards, a showing of hardship by the borrower, shared home value appreciation, and/or incremental vesting of principal reduction. Many of these options have been employed with great success here in Massachusetts.

Second, FHFA's policy change does not cover pre-foreclosure property sales, which are often referred to as "short sales" because the price paid by the purchaser is less than the outstanding mortgage indebtedness. There is no principled reason to limit the new policy to sales of REO properties. Instead, the opposite is true: in a short sale, the GSEs avoid the cost of foreclosure altogether, which is also an enormous benefit to the homeowner and surrounding community. We thus urge FHFA and the GSEs to (i) adopt the new policy permanently and for all REO property sales, now and in the future, and (ii) enlarge the new policy to include pre-foreclosure short sales.

We hope that this forward progress is advanced even further by additional policy changes to benefit distressed homeowners and the hardest-hit communities. In particular, we have long advocated for loss mitigation programs that employ principal reduction as one of many available options. A loan that is modified such that the borrower can afford to stay in the home and continue paying the modified loan is generally more financially advantageous for lenders and investors when compared to foreclosure. As such, the adoption of principal reduction represents a financial benefit to the GSEs, while also stabilizing families and neighborhoods.<sup>2</sup> We again urge FHFA to promptly reevaluate the GSEs' principal reduction policies. Too many families

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<sup>2</sup> Data from HAMP and other sources clearly demonstrate that principal reduction is an effective method of addressing negative home equity. Numerous studies (including from the Congressional Budget Office and the Federal Reserve), and our experience through the Massachusetts HomeCorps program, demonstrate that principal reduction guided by a net-present value (NPV) analysis can generate affordable and sustainable loan modifications.

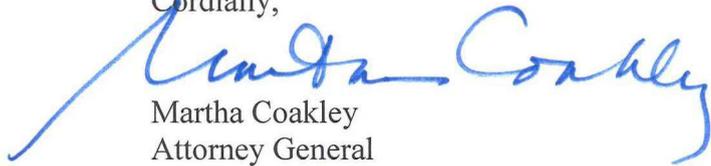
and communities are suffering the harmful consequences of having negative equity in their homes, which phenomenon has significantly hampered the housing recovery in those areas.

It has been six long years since FHFA placed the GSEs into conservatorship under a statutory mandate requiring, among other things, that FHFA maximize assistance for homeowners to minimize foreclosures (*see* Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343). FHFA should take this opportunity to reevaluate the effectiveness of its loss mitigation policies and adopt proven strategies, such as principal reduction and targeted buyback programs. These and other approaches are fully consistent with FHFA's Congressional mandate.

My office has firsthand experience with the types of programs that have effectively utilized principal reduction, as well as with various community stabilization efforts that have included home buybacks on behalf of former homeowners. We would be happy to share our experiences with you and to work with FHFA personnel as you move forward in your efforts to assist distressed homeowners and minimize foreclosures. We strongly urge you to adopt the changes suggested above.

Thank you for your attention to these matters. I look forward to continuing to work with you on these and other important issues.

Cordially,



Martha Coakley  
Attorney General

CC: Senator Elizabeth Warren  
Senator Edward Markey