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COMMITTEE ON APPROPRIATIONS

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INTERIOR, ENVIRONMENT, AND RELATED AGENCIES

JOINT ECONOMIC COMMITTEE

October 20, 2011

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

Dear Director DeMarco:

Since September 6, 2008, the Federal Housing Finance Agency has been overseeing and regulating the activities of Fannie Mae and Freddie Mac "in order to maintain access to funds for the production of sound new mortgages."[1] In your role as conservator for these Government Sponsored Enterprises (GSE's), I am writing to bring your attention to a *The New York Times* article[2], as well as information that has been compiled by the Tompkins County Council of Governments' Task Force on Gas Drilling[3], which raises a series of questions regarding gas leases, home mortgages and the GSE's lending requirements. Given the rapid growth of shale gas development and the still fragile housing industry, it is important that FHFA quickly look into these questions to determine their scope and impact and provide guidance to protect homeowners and local banks.

I represent a portion of New York that lies above the Marcellus Shale, which is believed to hold significant quantities of natural gas. As a result many local property owners have signed leases with gas companies to allow for natural gas drilling operations to take place on their property.

New York is not issuing new permits for Horizontal Drilling and High-Volume Hydraulic Fracturing for natural gas in the Marcellus Shale, but the state is currently seeking public comment on an environmental impact statement that, when finalized, would allow new drilling to begin. In the meantime, a significant amount of land in New York has been leased for shale gas drilling. For example, in Tompkins County, New York, a portion of which I represent, nearly 40 percent of the land has been leased for gas drilling.

However, serious questions have recently been raised about the relationship between gas leases and standards set by secondary lending institutions such as Fannie Mae and Freddie Mac. For example, according to a report by the Congressional Research Service[4], both GSEs require prior approval from a lending institution before a landowner can sign a lease to allow gas drilling on their property. However, drilling companies told *The New York Times* that they tell homeowners to seek bank approval before drilling activities begins, but after already signing a lease. In addition, Fannie Mae

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1 Federal Housing Finance Agency. (2010) Report to Congress. http://www.fhfa.gov/webfiles/21572/FHFA2010_RepToCongress6_13_11.pdf p. 1

2 Urbina, Ian. (2011, October 20). Rush to Drill for Natural Gas Creates Conflicts With Mortgages. *The New York Times*, pp. A1, A15

3 http://www.tompkins-co.org/tccog/Gas_Drilling/Index_GasDrilling.html

4 https://www.documentcloud.org/documents/250730-mortgages-and-gas-leases-doc-reader.html#document/p57/a33452 pp. 1-3

and Freddie Mac have above and below ground setback rules in their manuals, yet it is not clear if drilling companies are complying with these rules.[5]

Few people seem to be aware of these requirements. According to *The New York Times*, very few landowners sought permission from lending institutions before signing a gas lease. Local banks have questions about how to deal with such leases or how the accompanying drilling infrastructure will comply with mortgage rules. State regulators also do not seem to be aware of the problem. For example, there is no mention of secondary lending institution requirements in the draft Supplemental Generic Environmental Impact Statement prepared by New York's Department of Environmental Conservation to oversee new shale drilling in the state.

New gas leases are being signed at a rapid rate and it is important for homeowners, banks, investors and state regulators fully understand the requirements and impacts of the GSE lending rules. As FHFA noted in its 2010 Report to Congress, compliance with contractual obligations falls within the agency's role as conservator[6]. Given this, I request your assistance with the following questions.

1. Will FHFA require that audits be done to see how many mortgages owned or sold by Fannie Mae or Freddie Mac may be impacted by the issues raised in *The New York Times?*
2. Local lenders are desperate for more guidance on how they can stay in compliance because if they fall out of compliance these loans may be forced back on them.
   - Has FHFA asked Fannie Mae or Freddie Mac to contact local banks regarding secondary lending institution requirements when assessing or refinancing a property with a gas lease?
   - Will FHFA have Fannie Mae and Freddie Mac provide clarification to local banks and homeowners about what types of leases the GSEs are willing to have on properties?
   - Will FHFA have Fannie Mae and Freddie Mac advise local lenders on how they can set up an efficient process for guaranteeing that landowners get prior consent before entering into a lease?

As I mentioned, shale gas development is proceeding at a rapid pace and given the already weak housing industry I believe it is important to understand the size and impact of the issues raised by *The New York Times* and others in order to protect homeowners and local banks. FHFA has an important role in that process and I appreciate your assistance with these questions.

Sincerely,

Maurice D. Hinchey

[5] http://www.tompkins-co.org/tccog/Gas_Drilling/Focus_Groups/Assessment%20Documents/whitepaperongasandoilleases.pdf p. 2

[6] Federal Housing Finance Agency. (2010) Report to Congress. http://www.fhfa.gov/webfiles/21572/FHFA2010_RepToCongress6_13_11.pdf p. 3