Federal Housing Finance Agency
Constitution Center
400 7th Street, S.W.
Washington, D.C. 20219
Telephone: (202) 649-3800
Facsimile: (202) 649-1071
www.fhfa.gov

**VIA ELECTRONIC MAIL**

June 10, 2019

Mitchell A. Bierman, Esq.
Town Attorney
Town of Cutler Bay, Florida
10720 Caribbean Boulevard, Suite 105
Cutler Bay, Florida 33189
mbierman@wsh-law.com

RE: Application of Ordinance No. 08-16 to Fannie Mae and Freddie Mac

Dear Mr. Bierman:

To date, I have not yet received confirmation, pursuant to my letter, of November 14, 2018, on behalf of the Federal Housing Finance Agency ("FHFA"), the regulator and conservator of Fannie Mae and Freddie Mac (the "Enterprises"). That letter indicated that collections by the Town from the Enterprises and servicers pursuant to Ordinance No. 08-16, codified at Town of Cutler Bay, Florida, Code § 26-246 (the "Registration Ordinance") must cease, as they run afoul of federal law.

As mentioned in the letter, the annual registration fee collected pursuant to the Registration Ordinance constitutes a tax. *Federal Housing Finance Agency v. City of Chicago*, 962 F. Supp. 2d 1044 (N.D. Ill. 2013). Thus, any effort to impose the annual registration fee on the Enterprises and servicers acting on their behalf violates federal law. Moreover, the statute governing the Enterprise conservatorships immunizes the Enterprises from the payment of fines and penalties as well the placement of liens on Enterprise property; 12 USC 4617(j)(3) & (4). Accordingly, the Town may not collect the registration fee with respect to the Enterprises through the assessment of fines and penalties.

To clarify the applicability of the Registration Ordinance, FHFA proposes that the Town amend its Registration Ordinance so that the Enterprises may register vacant properties without paying a registration fee. Based on FHFA's experience with other jurisdictions, FHFA proposes the following amendment to achieve a mutually desirable effect.

> Amendment to Vacant Property Ordinance: Notwithstanding any ordinances to the contrary, Fannie Mae, Freddie Mac and any loan servicer acting on their behalf shall

be exempt from payment of any fee for any property registered under Ordinance No. 08-16 as well as from payment of any fines or penalties otherwise permitted to be assessed by Ordinance No. 08-16 or other ordinance that addresses vacant property. Any form used to register a property subject to Ordinance No. 08-16 shall provide a place for Fannie Mae, Freddie Mac or any loan servicer acting on their behalf to indicate their exempt status. Failure to indicate exempt status will not waive the right to claim exempt status but may require the registering party to re-register a property to indicate the exempt status.

In addition, I have attached to this letter a response form confirming that the Town will not collect registration fees from the Enterprises or servicers acting on their behalf. Please return the response form at your earliest convenience. I am available to answer any questions and discuss further; do not hesitate to contact me directly at 202-649-3050 or at alfred.pollard@fhfa.gov.

With all best wishes, I am

Sincerely,

Alfred M. Pollard
General Counsel

Federal Housing Finance Agency
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Washington, D.C. 20024
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RECEIVED
Clerks Dtc.

**VIA CERTIFIED MAIL**

November 14, 2018

Mitchell A. Bierman, Esq.
Town Attorney
Town of Cutler Bay, Florida
10720 Caribbean Boulevard, Suite 105
Cutler Bay, Florida 33189

RE: Application of Ordinance No. 08-16 to Fannie Mae and Freddie Mac

Dear Mr. Bierman:

On behalf of the Federal Housing Finance Agency ("FHFA"), the regulator and conservator of Fannie Mae and Freddie Mac (the "Enterprises"), it has come to FHFA's attention that the Town is seeking to collect from the Enterprises and servicers acting on their behalf pursuant to Ordinance No. 08-16, codified at Town of Cutler Bay, Florida, Code § 26-246 (the "Registration Ordinance"). FHFA seeks confirmation that such collection efforts will cease as they run afoul of federal law.

As with other jurisdictions, FHFA does not object to the Registration Ordinances requirement to register. The ordinance, however, mandates that mortgagees and/or owners of vacant property pay an annual registration fee of $150. *See* Registration Ordinance, §§ 26-251(a)-(i). Congress expressly exempted the Enterprises from all state and local taxation (except taxation of real property); 12 USC 1723a(c)(2); 12 USC 1452(e) and 12 USC 4617(j)(2). The annual registration fee required by the Registration Ordinance constitutes a tax. *Federal Housing Finance Agency v. City of Chicago*, 962 F. Supp. 2d 1044 (N.D. Ill. 2013) (registration fee imposed upon the Enterprises by similar municipal ordinance constituted a tax in violation of federal law). Accordingly, any effort to impose the annual registration fee on the Enterprises and servicers acting on their behalf (either directly or by filing liens against Enterprise property) violates federal law.

Moreover, the statute governing the Enterprise conservatorships immunizes the Enterprises from the payment of fines and penalties as well the placement of liens on Enterprise property; 12 USC 4617(j)(3) & (4). Thus, the Town may not enforce the registration fee with respect to the Enterprises through the assessment of fines and penalties.

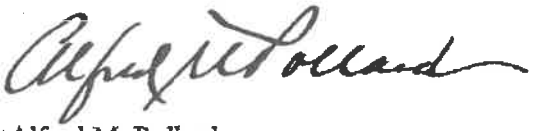
Please be assured that the Enterprises have established guidelines—approved by FHFA as conservator—that require mortgage servicers to ensure that the condition and appearance of vacant

properties are maintained. The Enterprises also have established guidelines—approved by FHFA as conservator—for securing and maintaining homes after foreclosure. Indeed, proper maintenance of all homes in which the Enterprises maintain an ownership or security interest is among the most critical of factors for their safe and sound operations. Therefore, although federal law bars imposition of the registration fee on the Enterprises and their servicers, FHFA has reinforced to the Enterprises the critical importance of maintaining vacant properties in accordance with their nationally-deployed guidelines.

Please respond at your earliest convenience. I am available to answer any questions and discuss further; do not hesitate to contact me directly at 202-649-3050 or at alfred.pollard@fhfa.gov.

With all best wishes, I am

Sincerely,



Alfred M. Pollard
General Counsel