



By Electronic Submission to www.fhfa.gov/open-for-comment-or-input

November 22, 2023

Clinton Jones, Esq.
General Counsel
Attention: Comments/RIN 2590-AB30
Federal Housing Finance Agency
400 Seventh Street, S.W.
Washington, DC 20219

Re: Comments/RIN 2590-AB30, Exception to Restrictions on Private Transfer Fee Covenants (“PTFC”) for Loans Meeting Certain Duty to Serve Shared Equity Loan Program Requirements

Dear Mr. Jones:

Fannie Mae welcomes the opportunity to comment on the Federal Housing Finance Agency’s (“FHFA”) above-captioned notice of proposed rulemaking (“Proposed Rule”), which would amend FHFA’s regulation on private transfer fee covenants (“PTFC Regulation”).¹ The Proposed Rule would establish an exception to the PTFC Regulation’s restriction on PTFCs for mortgage loans that meet certain shared equity program criteria in FHFA’s Duty to Serve Underserved Markets regulation (“Duty to Serve Regulation”).² Fannie Mae strongly supports this proposal, which would clarify how Fannie Mae and Freddie Mac (the “Enterprises”) may continue to provide liquidity to a substantial portion of the shared equity market. We also suggest one minor modification for added clarity.

I. Background: Shared Equity Programs and Duty to Serve

In general, shared equity programs are run by non-profit or governmental entities that enable affordable, below market rate housing opportunities for homebuyers by imposing restrictions on eligibility of ownership: the purchaser must meet the specified maximum income limit set by the program at the time of purchase, and the purchaser is obligated to sell the home only to persons meeting the applicable maximum income and at a price not to exceed a specified maximum price.³ Shared equity programs are an effective way to create and preserve sustainable, long-term affordability for homeowners by providing expanded homeownership opportunities for successive purchasers at affordable (generally below market) prices.

Fannie Mae supports the shared equity market by providing liquidity for shared equity loans, working to standardize shared equity programs, and simplifying loan origination processes and requirements for loan delivery to Fannie Mae.

¹ The Proposed Rule appears at 88 Fed. Reg. 65827 (Sept. 26, 2023). The PTFC Regulation is codified at 12 C.F.R. Part 1228.

² The Duty to Serve Regulation is codified at 12 C.F.R. § 1282.31 *et seq.* The shared equity program requirements are at 12 C.F.R. § 1282.34(d)(4) as a regulatory activity of the affordable housing preservation market.

³ See, e.g., <https://groundedsolutions.org/strengthening-neighborhoods/shared-equity-homeownership#:~:text=Shared%20equity%20homeownership%20is%20a,families%20who%20purchase%20the%20home>. Such restrictions may be imposed by a ground lease, where the land is owned and operated as a community land trust; alternatively, the land may be subjected to recorded restrictions in a deed or other instrument, with the shared equity program entitled to enforce those restrictions in order to preserve affordability.

Through our work to support this market, we found that many shared equity programs charged modest fees,⁴ some of which were subject to the PTFC Regulation's prohibition.⁵ After the Enterprises raised concerns over the application of the PTFC Regulation to shared equity loans, FHFA issued a regulatory waiver under 12 C.F.R. § 1211.2 that provides retrospective and temporary prospective relief for certain shared equity loans.⁶ The prospective waiver, which is effective through December 31, 2024, is limited to shared equity loans on properties with PTFCs that meet the Duty to Serve shared equity program criteria under the Duty to Serve Regulation, other than the income cap of 100% of area median income ("AMI").⁷ The Proposed Rule is intended to codify the prospective waiver.⁸

II. Discussion

Fannie Mae believes the Proposed Rule strikes the right balance between the policy objectives reflected in the PTFC and Duty to Serve Regulations and the practical needs of shared equity programs. In the Proposed Rule, FHFA included specific questions soliciting comments regarding the scope of the shared equity exception to be added to the PTFC Regulation.⁹ Fannie Mae encourages FHFA not to narrow the scope of the exception by applying criteria beyond those proposed. In particular, Fannie Mae urges FHFA not to apply the Duty to Serve 100% of AMI limit. As noted in the Proposed Rule, because shared equity programs may set income limits up to 140% of AMI, limiting eligibility for the new PTFC exception to loans that meet a 100% of AMI limit "would require lenders and shared equity program administrators to use a differentiated approach with borrowers above and below this income threshold."¹⁰ Specifically, programs would need to eliminate transfer fees for borrowers with incomes *higher* than 100% of AMI, effectively shifting the administrative cost of the programs to lower income families exclusively.

While Fannie Mae supports the current proposal, we offer a technical suggestion to modify the new PTFC exception to better align with the regulatory language it incorporates from the Duty to Serve Regulation. Specifically, we recommend replacing the shorthand "Duty to Serve 100 percent of area median income" with "provisions relating to very low-, low- and moderate-income families and households." This modification would not change the scope of the proposed shared equity exception to the PTFC Regulation, nor would it affect the 100% of AMI limit in the Duty to Serve Regulation, but may be easier for lenders and others in the housing industry to interpret and apply.

Modified as suggested above, the new exception to the PTFC exception would read as follows:

⁴ In a recent Fannie Mae review, over 65% of shared equity programs examined imposed such fees. These fees help offset program costs for activities such as sourcing income-qualifying buyers and facilitating sales. It is Fannie Mae's understanding that, in most instances, the transfer fees are substantially less than real estate commissions and other fees charged in a typical real estate transaction.

⁵ Some fees fall under an existing regulatory exception. For example, the PTFC Regulation does not apply to fees imposed by or payable to federal, state, or local governments. 12 C.F.R. § 1228.1.

⁶ Fannie Mae implemented the prospective waiver on May 3, 2023, in *Selling Guide* Section B5-5.3-02, *Shared Equity Transactions: General Requirements*.

⁷ See 88 Fed. Reg. at 65829.

⁸ *Id.*

⁹ See *id.* at 65830.

¹⁰ *Id.* at 65829.

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(2) Requires payment of a private transfer fee under a program meeting the Duty to Serve shared equity loan program criteria for resale restriction programs in § 1282.34(d)(4)(i)(A) and (d)(4)(ii) of this chapter other than the ~~Duty to Serve 100 percent of area median income limit~~ **provisions relating to very low-, low- and moderate-income families and households.**

If you have questions regarding the matters addressed in this letter, please contact the undersigned at 202-752-1234.

Sincerely,

A handwritten signature in black ink that reads "Michael T. Hernandez". The signature is written in a cursive style and is enclosed within a thin black rectangular border.

Michael T. Hernandez
Vice President
Engagement & Impact