National Association of Home Builders

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Sandra Thompson
Director
Federal Housing Finance Agency
400 7th Street, S.W.
Washington, DC 20219

RE: Exception to Restrictions on Private Transfer Fee Covenants for Loans Meeting Certain Duty to Serve Shared Equity Loan Program Requirements

12 CFR Part 1228 RIN 2590-AB30

Dear Director Thompson:

The National Association of Home Builders of the United States (NAHB) is pleased to submit comments in response to the Federal Housing Finance Agency's (FHFA) proposed rule to add an exception to restrictions on private transfer fee covenants for loans meeting shared equity loan program requirements for Resale Restriction Programs as established in FHFA's Duty to Serve Underserved Markets Regulation (Duty to Serve Regulation).

NAHB is a Washington DC-based trade association representing more than 140,000 members involved in the development and construction of for-sale single-family homes, including homes for first-time and low- and moderate-income home buyers, as well as the construction, ownership and management of multifamily rental housing, including affordable rental housing. NAHB and its members have a strong interest in supporting a housing finance system that offers home builders and home buyers access to affordable mortgage financing in all geographic areas and economic conditions. The proposal by the FHFA to establish an additional exception to restrictions for loans on properties with private transfer fee covenants (PTFCs) would support liquidity for shared equity loans and contribute to the availability of affordable homeownership.

Background

On March 16, 2012, the FHFA released its final rule regarding PTFCs. The final rule, effective July 16, 2012, clarified the circumstances in which Fannie Mae and Freddie Mac (the Enterprises) would be permitted to invest in mortgages on properties encumbered by PTFCs and when the Federal Home Loan Banks (the Banks) would be permitted to accept such mortgages or securities as collateral for advances. The final rule contains significant changes from FHFA's original proposed guidance and subsequent proposed rule due in part to concerns and recommendations raised by NAHB.

FHFA's original proposed guidance prohibited the Enterprises and the Banks from investing in any mortgages on properties with private transfer fee covenants designed to generate income. This prohibition applied regardless of the purpose of the fees and who or what entity was to benefit from the income raised by the fees. After reviewing comments on the proposed guidance and after issuing a subsequent proposed rule, FHFA issued its final rule as summarized below.

The Enterprises and the Banks are prohibited from purchasing, investing in or otherwise dealing in any mortgages encumbered by PTFCs or related securities and prohibits the Banks from accepting such mortgages or securities as collateral for advances unless such PTFCs are "excepted transfer fee covenants."

These exceptions to the final rule's prohibitions or "excepted transfer fee covenants" are as follows:

- When the private transfer fees are paid to a covered association that uses the proceeds to provide a "direct benefit" to the property.
- When the fee is imposed by or payable to the Federal Government or a state or local government.
- If the fee defrays actual costs of the transfer of the property, including transfer of membership in the relevant covered association.

As stated, the prohibition in the PTFC Regulation does not apply where the PFTC is an "excepted transfer fee covenant," which is defined as a covenant that requires payment to a "covered association" and limits the use of such payment to purposes that provide a "direct benefit" to the real property. The PTFC Regulation defines a "direct benefit" as meaning the proceeds of a PTFC "are used exclusively to support maintenance and improvements to encumbered properties and acquisition, improvement, administration and maintenance of property owned by the covered association of which the owners of the burdened property are members and used primarily for their benefit."[1]

The Duty to Serve regulation charges the Enterprises to do more to support three key underserved markets: Manufactured Housing, Affordable Housing Preservation, and Rural Housing. Under the Duty to Serve Regulation, one of the activities eligible for Duty to Serve credit under Affordable Housing Preservation is Enterprise support for shared equity programs in the form of Resale Restriction Programs administered by community land trusts, other nonprofit organizations or state or local governments.

However, it has been determined that many shared equity loan programs that would be otherwise eligible for Duty to Serve credit include PTFCs that would disallow the purchase of these loans by the Enterprises or their use as collateral for advances by the Banks. The Duty to Serve rule does not provide an exception to the restriction on PTFCs for loans that meet Resale Restriction Program requirements.

Proposed Rule

The FHFA is proposing to amend the 2012 final rule that restricts the Enterprises and the Banks from purchasing, investing in, accepting as collateral or otherwise dealing in mortgages on properties encumbered by certain types of PTFCs and in related securities, subject to certain exceptions. The proposed rule would establish an additional exception to the restrictions for loans on properties with

[1] Federal Register, March 16, 2012 pg. 15574

PTFCs and related securities if the loans meet the shared equity loan program requirements for Resale Restriction Programs as specified in FHFA's Duty to Serve Underserved Markets Regulation.

NAHB Comments

NAHB supports affordable housing programs such as the Duty to Serve shared equity homeownership program that helps the Enterprises fulfill their mission to meet the needs of underserved markets. We applaud the Enterprises' efforts to initiate, develop and implement affordable housing programs to increase homeownership opportunities for prospective home buyers. Housing affordability now stands at a more than 10-year low[2] and requires innovative solutions to address this challenge in the single-family housing market. The proposed additional exception to the PTFC restriction currently imposed on the Enterprises will remove a barrier to the support for shared equity programs for affordable homeownership preservation called for in the Enterprises' 2022-2024 Duty to Serve Underserved Market Plans.

NAHB believes the FHFA's proposed rule also should apply to the Banks as they may choose to invest in shared equity loans or related securities or accept them as collateral. This would allow the Banks to further the liquidity of shared equity loans and contribute to affordable homeownership opportunities. Though the Banks are not subject to the Duty to Serve regulations, allowing them the same option for participation in the shared equity market will increase the use of shared equity loans and offer more low- and moderate-income families the possibility of owning a home.

Please contact Curtis Milton, NAHB's Director of Single-Family Finance (email: cmilton@nahb.org or phone: 202-266-8597) if you have any questions about this letter.

Sincerely,

Jessica R Lynch

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[2] Rising Mortgage Rates Push Housing Affordability to Lowest Level in Index History - NAHB