



April 11, 2010

Alfred M. Pollard
General Counsel
Federal Housing Finance Agency
1700 G Street, N.W.
Washington, D.C. 20552

RE: RIN 2590-AA41 Notice of Proposed Rulemaking – Private Transfer Fees

Dear Mr. Pollard:

The Mortgage Bankers Association (MBA) appreciates the opportunity to comment on the Federal Housing Finance Agency's (FHFA) proposed rule on private transfer fee covenants (PTFs). Upon finalization of the rule, FHFA will enact significant programmatic changes that will affect future homebuyers.

FHFA previously published proposed guidance on PTFs on August 16, 2010, that would have restricted the Federal Home Loan Mortgage Corporation (Freddie Mac), the Federal National Mortgage Association (Fannie Mae) (collectively, the Enterprises), and the Federal Home Loan Banks (the Banks) from dealing in all mortgages on properties encumbered by PTFs. MBA commented on that proposal and stated that FHFA was too broad-brush in its assessment and should make distinctions among PTFs, based on their purpose. After contemplating the comments, FHFA made significant revisions to the proposed guidance and has now proposed a rule that restricts the Enterprises and the Banks from dealing in mortgages on *certain* properties encumbered by PTFs and in *certain* related securities. The proposed rule would extend to mortgages and securities held by the Banks as investments or as collateral for advances and to mortgages and securities held or guaranteed by the Enterprises.

MBA appreciates that FHFA incorporated many of the recommendations that MBA made to the original proposal. Significantly, FHFA makes important distinctions among PTFs and wisely exempts PTFs paid to homeowner associations, condominiums, cooperatives, and certain tax-exempt organizations that use PTFs to provide a direct benefit to the owners of the encumbered real property. These PTFs serve homeowners with a legitimate purpose and help maintain property values. MBA opposes the practice of private third parties, such as developers, builders, licensing companies, and real estate brokers, imposing private transfer fee covenants on residential real estate for the purpose of extracting future income.

The association also wants to take this opportunity to reiterate its strong support for the need for clear, transparent disclosures of PTFs in order to protect homebuyers against lien issues for lenders and mortgage investors. Disclosures should include, but not be

limited to, understandable statements regarding the fees and associated costs, their purpose, an expiration date of the covenant, and the entity to be paid. The property seller and title agent are in the best position to provide homebuyers with appropriate disclosures regarding PTFs because they are in positions of knowledge. Lenders are not in such a position and it would be an undue burden to require lenders to research collect or disclose this information. MBA believes sales contracts should be conditioned on the buyer's receipt of the disclosure of the PTF, meaning the buyer would be allowed to cancel the sales contract, without forfeiture of the good faith deposit, if a PTF covenant is identified.

MBA has heard that HUD is currently reviewing whether PTFs could increase lenders' liabilities under the Real Estate Settlement Procedures Act (RESPA). We understand that HUD has not made a final determination on how, or whether PTFs must be disclosed on the Good Faith Estimate (GFE), and if PTFs are subject to tolerances. If these fees were subject to tolerances, lenders could be liable for amounts exceed GFE-estimated PTFs, in excess of the tolerances. Such a result would be inappropriate considering that a title search is needed to ascertain a PTF and title searches are done close to closing due to their cost and nexus to the closing.

In regards to FHFA's request for comment on its proposed definitions MBA notes that the proposed definition of "adjacent or contiguous property" is slightly contrary to current standard or use. The definition states that, "adjacent or contiguous property means property that borders or lies in close proximity to the property that is encumbered by a private transfer fee covenant or to other similar encumbered properties located in the same community and owned by members of the same covered association, provided that in no event shall a property greater than one thousand (1000) yards from the encumbered property be considered adjacent or contiguous." Specifying the number of yards a property can be away from another property unnecessarily complicates the definition and adds undue burden on the industry. Removing the clause, "provided that in no event shall a property greater than one thousand (1000) yards from the encumbered property be considered adjacent or contiguous" would be a sufficient remedy, conform the definition to industry practices, and would not minimize the effectiveness of the policy.

Additionally, while MBA praises the prospective application of the rule, so that the marketability of current homes with PTFs will not be additionally affected, the association requests guidance from the Enterprises on how to address the anticipated operational challenges that will arise from attempting to distinguish between properties with PTFs originated prior to the effective date of the final rule, versus those PTFs originated after the final rule. For example, will Fannie Mae create a special feature code for certain properties?

MBA thanks FHFA for being receptive to MBA's concerns on PTFs and addressing them in the proposed rule. Used responsibly, PTFs can be beneficial to homeowners and can promote the stability of neighborhoods.

MBA Comments to FHFA's Proposed Rule on Private Transfer Fee Covenants

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If you have any questions, please contact Tamara King at TKing@mortgagebankers.org (202) 557-2758, or Vicki Vidal VVidal@mortgagebankers.org 202-557-2861.

Most Sincerely,

A handwritten signature in cursive script that reads "John A. Courson".

John A. Courson
President and Chief Executive Officer
Mortgage Bankers Association