CLPHA
making public housing work in your community

Council of Large Public Housing Authorities
455 Massachusetts Avenue, NW Suite 425
Washington, D.C. 20001-2621
Executive Director: Sunia Zaterman
phone: 202.638.1300 | fax: 202.638.2364
web: www.clpha.org

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Submitted Via E-mail

Alfred M. Pollard
General Counsel
Attention: Comments/RIN 2590-AA41
Federal Housing Finance Agency
1700 G Street NW
Washington, DC 20552

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

Dear Mr. Pollard:

The Council of Large Public Housing Authorities (CLPHA) is a nonprofit organization representing more than 70 large public housing authorities (PHAs) that own and manage 40 percent of the nation's public housing program; administer 26 percent of the Section 8 Housing Choice Voucher program; and operate a wide array of other housing programs. We offer the following comments on behalf of our members.

Public housing provides housing opportunities to low-income families, seniors, and persons with disabilities. In 2010, there were about 1.2 million public housing units nationwide, housing about 2.1 million residents. Seniors and disabled residents head 51 percent of households in public housing and 41 percent of public housing households are families with children. The average annual family income is $13,351, and a majority of families stay in public housing for five years or less. Recent studies show that there are unmet capital improvements of approximately $32 billion in the federal public housing program and there is little prospect that future federal appropriations alone will address those needs. Thus, with encouragement from the U.S. Department of Housing and Urban Development (HUD), our members have been searching for ways to leverage additional public and especially private funds in order to improve housing opportunities for low-income Americans.

In our view, provided that they are properly disclosed, private transfer fees are a mechanism which could significantly assist nonprofit owners and developers, including PHAs, in raising funds for affordable housing, since a portion of these fees are typically provided to nonprofit organizations. We disagree with the approach taken in the proposed rule and encourage FHFA to expand the scope of permissible fees to include those which contribute to affordable housing preservation and development. In particular, we believe that the restriction that private transfer fees must "provide direct benefit to the owners of the encumbered real property" is too narrow and does not adequately

consider the broader focus on sustainable development and metropolitan planning that HUD and other parts of the Obama Administration are encouraging.

The proposed rule defines the term "direct benefit" to mean that "the proceeds of a private transfer fee are used exclusively to support maintenance and improvements to encumbered properties as well as cultural, educational, charitable, recreational, environmental, conservation or other similar activities that benefit exclusively the real property encumbered by the private transfer fee covenants." We think this definition would cause uncertainty about how to determine what is "direct" and whether the term "exclusively" means not a single dollar could be used, for example, for administrative purposes.

We also think that the proposed rule fails to acknowledge that in order for activities such as maintenance, improvements, education and recreation to "directly benefit" a new suburban subdivision, there must be sufficient affordable housing resources nearby to serve the workforce that provides these services – from the laborers who maintain the grounds and amenities to the cafeteria workers in the local schools. Further, failing to provide affordable housing within a reasonable distance of the new housing is inconsistent with achieving environmental, conservation and other sustainable development goals promoted by the Administration. We believe that planning and funding of affordable housing must be done on a regional basis and that private transfer fees are an innovative funding mechanism that can contribute to achieving those goals. For these reasons, we encourage the FHFA to consult with HUD regarding this proposed rule and the potential that this mechanism has to contribute to the Administration's priorities.

The proposed rule also discusses private transfer fees in terms of the FHFA's role of ensnring the safety and soundness of the regulated entities. It goes on to say that such fees are "contrary to the public missions of the Enterprises and the Banks." We wish to point out that affordable housing has also been part of the public mission of these entities. Fannie Mae, in particular, has played a critical role in affordable housing finance and FHLB member banks also operate several affordable housing programs. We assume you are very familiar with those programs. We suggest that permitting other private mechanisms for financing affordable housing, such as private transfer fees, are consistent with these affordable housing goals and activities.

Given the nature of our work at CLPHA, we have obviously focused our comments on the potential that private transfer fees have with respect to affordable housing. However, we believe that similar arguments apply in other policy areas as well, and we urge the FHFA to take a broad view in those areas similar to what we have suggested for affordable housiug. We also do not suggest that the only permissible private transfer fees should be those that exclusively fund nonprofit organizations or community benefits, even if broadly defined. Based on our review of the economics nnderlying private transfer fees, and their potential securitization, we are of the opinion that this mechanism would have a beneficial effect on local economies by re-starting housing construction and producing jobs at a critical time during the economic recovery. It also seems logical to us that the use of private transfer fees would actually decrease homeownership costs and enhance affordability by spreading out certain development costs over time. We find these to be very strong policy rationales justifying the permissibility of private transfer fees.

Further, our member PHAs now have considerable experience in partnering with private sector developers and other for-profit entities. Based on that experience, we believe that private transfer fees that provide significant revenues to nonprofits or for other community benefits are appropriate even if the bulk of the fees go to private parties. Without this mechanism, the underlying housing developments might never be constructed and no funds at all would be forwarded to nonprofit and community uses.

Finally, our members are very familiar with recording use restrictions to ensure long-term affordability and these techniques have not been challenged as restraints on alienation, though they certainly reduce the value of the affected housing units. Fannie Mae and FHLB member banks are certainly familiar with such restrictions. Further, in a homeownership context, PHAs typically record restrictions on the profit that a buyer may realize from the sale of a restricted home. The foregone equity may stay in the development, or it may be used by the PHA or a developer for other purposes. We do not see the payment of a private transfer fee to be fundamentally different from that in the sense that it controls to some degree how equity may be divided among buyers, sellers, and other parties in the future.

Thank you for the opportunity to comment on the proposed rule. If you have any questions, please do not hesitate to contact me.

Sincerely,

Sunia Zaterman

Sunia Zaterman
Executive Director

Cc: Stephen I. Holmquist, Esq.