

From: Willis Smith <wsmith@ncrbiz.com>
Sent: Monday, April 11, 2011 9:48 PM
To: !FHFA REG-COMMENTS
Subject: RIN 2590-AA41

Alfred M. Pollard, General Counsel
Federal Housing Finance Agency (FHFA)
Washington, DC

Dear Mr. Pollard:

Private Transfer Fees have been utilized successfully to assist property owners, their associations and others for years. The FHFA proposed rule, RIN 2590-AA41, if promulgated, could have significant unintended consequences. Complying with the definition of Direct Benefit will be difficult if not impossible. Determining which mortgage has a compliant Private Transfer Fee and which one does not creates uncertainty in an already fragile housing finance market and could undermined the FHFA regulatory mission to "foster liquid, efficient, competitive and resilient national housing finance markets"(1).

Mortgages cannot differentiate beneficiaries of Private Transfer Fees. While the transfer is simply an opportunity for the beneficiary of the fee to collect it as indicated in the proposed rule(2), this opportunity is the same for each beneficiary. The same burden to pay the fee exist no matter who benefits. The proposed rule indicates "because it is difficult to value the burden of a private transfer fee, it is also difficult to value the property that it encumbers and hence the value of that property as collateral..."(3). Valuations can and have been done for private transfer fees. Either the mortgage is negatively impacted creating concerns for safety and soundness or not regardless of the beneficiary.

Developers want successful developments. Their investment and capital financing certainly touch and benefit the land. Private Transfer Fees and the selling of the future income stream generated by these fees provide much needed capital for developments. This capital benefits the encumbered property with completing disclosed infrastructure and amenities, reducing bank debt and borrowing cost and maintaing the development. All of these enhance the value of the property and hence the collateral. This should allow these particular private transfer fees to "not be inconsistent with the safety and soundness goals"(4). Granted, selling of the income stream must occur. Removing the regulatory and political uncertainty will allow the market to dictate if this is a viable economic financing tool. Developers that I know will not encumber their property or will remove the encumbrance if this is not a viable economic market driven solution. This is a private solution that can help revive the housing market and put homebuilders, electricians, landscapers, architects, contractors and realtors back to work!

Please consider revising the proposed rule or eliminating it from the Federal Registrar. If regulation is required then follow the recommendation of the Center for Regulatory Effectiveness to require full and complete disclosure for all the involved parties allowing the consumer to make an informed decision.

Respectfully Submitted,
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- (1) FHFA Proposed Rule RIN 2590-AA41; II. Background
- (2) FHFA Proposed Rule RIN 2590-AA41; IV. Public Comments on Proposed Guidance B(4)
- (3) FHFA Proposed Rule RIN 2590-AA41; IV. Public Comments on Proposed Guidance B(4)
- (4) FHFA Proposed Rule RIN 2590-AA41; IV. Public Comments on Proposed Guidance B(4)