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RICHARD PEÑA RAYMOND

STATE REPRESENTATIVE
DISTRICT 42

September 1st, 2010

Alfred M. Pollard, General Counsel
Federal Housing Finance Agency, Fourth Floor
1700 G Street NW.
Washington, DC 20552
via: regcomments@fhfa.gov
Attn: Public Comments

Re: Guidance on Private Transfer Fee Covenants No. 2010-N-11

Dear Mr. Pollard-

As a sixteen-year member of the Texas legislature, I am writing to express my concern over the proposed FHFA Guidance related to private transfer fee covenants.

The Texas legislature considered this very issue in our 2007 and 2009 legislative sessions. We recognized that a residential homebuyer could show up at the closing table with insufficient funds to close, and thus we limited residential transfer fees to those payable by the seller. We made an exception for fees payable to non-profits, which in Texas can be paid by the buyer or the seller. As to commercial property, we felt that these parties typically were sophisticated, and had access to competent legal counsel. Therefore we placed no restrictions as to these parties.

Texas, like many parts of the country, is experiencing a rise in negative equity, which leads to a rise in unemployment. Our construction industry has been particularly hard hit. Developers in the Lone Star State face a challenging environment, and funding is not available on commercially reasonable terms. This has lead to a tightening spiral of foreclosures, declining property values and bank failures. We need to interrupt the cycle by addressing negative equity.

One constructive way to address negative equity is to spread development costs out over time. A transfer fee accomplishes this in a fair and equitable way. When developers in our state impose a transfer fee as a means of recovering significant capital improvements, they can reduce the up front costs to the purchaser, negative equity is eliminated, projects become viable, homeownership becomes more affordable, and jobs are created.

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When a developer can sell off this future income stream, project liquidity can be restored, bank debt can be paid down, and jobs are created. This has a positive ripple effect throughout the community.

I encourage FHFA to reject the proposed guidance or, in the alternative, to revise the guidance to limit GSEs to purchasing mortgages where a disclosure document is signed at closing. This process would ensure that homebuyers across the country are well informed of the existence of the transfer fee, but would avoid destroying the usefulness of this important solution to some of the challenges facing the real estate sector today.

Sincerely,

Richard Peña Raymond

Richard Peña Raymond