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October 14, 2010

Dr. Edward J. DeMarco
Acting Director
Federal Housing Finance Agency
1700 G Street, NW, 4th Floor
Washington, DC 20552

Dear Dr. DeMarco:

As Chairman of the House Financial Services Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises, I request that the Federal Housing Finance Agency (FHFA) carefully review the negative ramifications of its proposed guidance on private transfer fee covenants published in the *Federal Register* on August 16, 2010, before taking any further action on these matters. If implemented as proposed, this draft directive has the potential to cut off access to mortgage credit for millions of existing households, including tens of thousands of homes in Pennsylvania's Monroe County, and further exacerbate the pricing problems in our fragile housing markets. The proposed guidance could also severely curtail a critical funding stream used to support infrastructure development, maintenance, and capital improvements in tens of thousands of homeowner associations across the United States.

During the last several weeks, I have heard from my constituents in Northeastern Pennsylvania, as well as experts in this field, that FHFA's guidance as presently drafted would harm common-interest communities in my congressional district and nationwide. Entities like condominium groups, building cooperatives, and homeowner associations use private transfer fees to support community infrastructure and capital improvements. By expressly preventing Fannie Mae, Freddie Mac, and the Federal Home Loan Banks from purchasing or investing in mortgages encumbered by private transfer fee covenants or securities backed by these mortgages, vital housing credit could become unavailable or severely restricted in these developments. The net result of the implementation of this draft guidance therefore seems likely to decrease the value of millions of existing homes and cause further market disruptions.

According to the Community Associations Institute, more than 300,000 common-interest communities across the country represent 24 million housing units and 60 million residents. In the Commonwealth of Pennsylvania we have nearly 15,000 common-interest communities, and in Monroe County alone 32,000 homes are located in 101 common-interest communities. A recent Community Associations Institute survey found that 50 percent of the 1,300 respondents have a deed-based transfer fee or a private transfer fee covenant placed on their properties.

If even half of the communities nationwide are denied access to housing credit from Fannie Mae, Freddie Mac, and the Federal Home Loan Banks because of the proposed FHFA guidance, 12 million households could be affected. Under these estimates, 16,000 homes in

Monroe County alone could experience price declines if the FHFA adopts the draft guidance as proposed. Instead of further straining our housing markets, FHFA should work to stabilize the system. Rather than applying this change in policy on private transfer fees to new and existing homes, FHFA ought to consider applying it only to new homes in order to protect the value of existing homes. For deeds with private transfer fees already in place, FHFA might additionally consider improving disclosures and transparency about the existing fees.

As I understand, private transfer fees also come in a number of forms. In some cases, developers insert these fees into deed covenants in order to create a source of long-term revenue for themselves. These developer-imposed fees have attracted the attention of the press in recent months and many have raised strong concerns about such arrangements because the developer benefits from these charges. With these charges, developers have the potential to earn a considerable amount of money over a very long timeframe every time a home in the development is sold in as long as a 99-year period. FHFA's proposed guidance has the potential to end these questionable arrangements which have attracted public scorn.

In other cases, however, private transfer fees produce positive benefits for common-interest communities, especially when those fees are paid to homeowner associations or similar entities. In these instances, private transfer fees help to fund desirable things like roads and infrastructure, community amenities, maintenance and repair, environmental mitigation, and affordable housing units. Such fees also help to diversify the income sources of homeowner associations, lower monthly dues and decrease the need for special assessments. In short, such fees function much like a long-term bond and help to keep down the cost, while keeping up the desirability, of living in these communities.

Pennsylvania's three common-interest community laws, which govern condominium, cooperative and homeowners groups, all permit these associations to impose a capital improvement fee of a capped amount on property transfers within the community. Pennsylvania's three common-interest community statutes also require associations to deposit the capital improvement fees in restricted capital reserves, so associations may not use these fees for operational expenses. As I understand, these capital improvement fees have helped hundreds of common-interest communities in Pennsylvania to make capital investments and to replace common assets. In short, these capital improvement fees produce considerable benefits for the residents of common-interest communities. FHFA ought to revise its draft guidance in order to take into consideration the good that Pennsylvania's capital improvement fees provide.

In sum, I have a responsibility to 32,000 households in Monroe County to make sure they are not effectively shut out of an already difficult housing market. All of Pennsylvania's common-interest communities must also continue to have access to a critical funding source used to support important capital improvements. Consistent with all applicable law and regulation, I therefore recommend that FHFA modify its proposed guidance on private transfer fees to address these concerns before finalizing the directive.

Sincerely,

Paul E. Kanjorski

Paul E. Kanjorski
Member of Congress