October 15, 2010

Alfred M. Pollard, Esq.
General Counsel
Federal Housing Finance Agency
1700 G Street, NW   Fourth Floor
Washington, DC 20552

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

Dear Mr. Pollard:

We are engaged in a multi-year strategy, funded by the Ford Foundation, to promote long-term affordability and community stability. We seek to help more people safely buy homes today, maintain those homes and keep them affordable in the future.   More information about our work is available at: www.affordableownership.org.

We are writing because we believe the guidance you have proposed would inadvertently prevent state, local and nonprofit affordable homeownership programs from funding the ongoing monitoring and stewardship costs needed to ensure that the public interest in long-term affordability and sustainability are met.

Well designed homeownership programs protect the public investment in scarce affordable units by requiring those units to provide affordable homeownership opportunities to one generation of homeowners after another. To monitor compliance with these requirements and ensure that the homes continue to provide quality housing opportunities for many years into the future, nonprofit or government entities provide long-term asset management or stewardship services. There are very few ways to cover these stewardship costs that are essential to creating more long-term sustainable homeownership opportunities.

Appropriate transfer fees are among the “best practices” that we recommend to local affordable housing programs across the country to cover this cost. If FHFA were to adopt guidance prohibiting the Enterprises and the Banks from participating in transactions that include transfer fees, that would make it much more difficult to create long-term affordable homeownership opportunities that are also an important part of your mission.

We share FHFA’s concern about private transfer fees. We agree that fees that fund purely private income streams for select market participants and their possible securitization should be prohibited by FHFA. However, the proposed guidance is far broader than necessary and will have serious unintended negative consequences for efforts to create sustainable affordable homeownership in the midst of this crisis. We are aware of no states that have adopted limitations on private transfer fees as sweeping as the proposal.

We recommend the following changes to the proposed guidance:

A. Exemptions. The Guidance should contain well crafted exemptions for transfer fees payable to community associations, charitable organizations, and fees otherwise imposed by or payable to government entities. State legislatures, including North Carolina's, have passed legislation prohibiting the enforceability of transfer fees. This legislation contains exemptions to minimize unintended negative consequences.

B. Disclosure. Concerns about title transparency should be addressed by disclosure requirements. For example, the FHFA could require the Enterprises and the Banks to disclose the existence of the transfer fee in a bold legend on the first page of the covenants.

C. Not Retroactive. The Guidance should only apply to transfer fee covenants established after the effective date of the Guidance. It should not be retroactive. This will avoid adverse effects of the proposed Guidance on unit owners who could not reasonably have predicted the FHFA's new regulations.

If you have questions about this, please contact Jim Gray at NCB Capital Impact, jgray@ncbcapitalimpact.org or 703-647-2346.

Thank you in advance for considering our comment.

Respectfully,

National Housing Conference

NCB Capital Impact