

October 15, 2010

Mr. Alfred M. Pollard
General Counsel
Federal Housing Finance Agency
1700 G Street, NW
Washington, DC 20552
Attention: Public Comments

Re: “Guidance on Private Transfer Fee Covenants, (No. 2010-N-11)”

Dear Mr. Pollard

The American Bankers Association (ABA) is pleased to submit comments regarding the Federal Housing Finance Agency’s (FHFA) proposed guidance to Fannie Mae, Freddie Mac (the Enterprises) and the Federal Home Loan Banks (FHLBs) prohibiting them from dealing in mortgages encumbered by private transfer fee covenants. The ABA generally supports the guidance, with one notable exception for certain transfer fee covenants funding homeowners’ associations and/or cooperatives.

Private transfer fees typically require a fee to be paid to the property owner or developer upon each subsequent transfer of the property. Because the fee requirement is in the form of a covenant on the deed of the property, the property cannot be legally transferred with clear title until the fee is paid.

We generally agree with the FHFA’s proposed guidance and share the concerns that private transfer fee covenants increase the costs of homeownership, limit property transfers or make them legally uncertain deterring a liquid and efficient housing market, and complicate real estate transactions creating confusion and uncertainty for home buyers. In short, private transfer fees, in most instances, do not provide home purchasers with any value, and may serve as a significant deterrent to home purchases.

We do urge FHFA to consider one key exception in the guidance. We believe it is appropriate to provide an exception for the use of private transfer fee covenants in connection with sales of cooperative housing properties and/or condominiums where the transfer fee goes to the cooperative association or homeowners’ association. In these instances, the private transfer fee is used to maintain and improve the physical structure in which the home purchaser is investing, providing real value to the purchaser. While it can be argued that other private transfer fees also can provide value, for example if the fees are used to create or maintain roads used by the homebuyer, such an outcome is not certain. When private transfer fees are paid to a developer or other entity who will no longer have a direct connection to the property being purchased, their justification is difficult to maintain. In the instance of a cooperative purchase, where the fee is being paid to an entity in which the homeowner will have an interest, the fee is more justifiable.

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We, therefore, urge FHFA to consider a narrow and appropriate exemption for such fees in the final guidance.

One other important aspect to the guidance that we hope the FHFA will incorporate is that the guidance be prospective only. Neither the Federal Home Loan Banks nor the Enterprises should be required to divest of loans already in their portfolios (or in the case of the FHLBs serving as collateral) if they are encumbered with a private transfer fee. The disruption to lenders and the Enterprises that could be caused by applying any ban on dealing in mortgages encumbered by a private transfer fee retroactively would be unfortunate and create further problems in an already troubled real estate market. The guidance should prohibit such transactions going forward, but grandfather existing loans so that they remain transferrable by the Enterprises and Federal Home Loan Bank members.

We appreciate the opportunity to comment on this important matter. If you require further information or would like to discuss these issues in more detail, please do not hesitate to contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph Pigg". The signature is stylized with a large, sweeping initial "J" and a long, horizontal stroke extending to the right.

Joseph Pigg
Vice President and Sr. Counsel