FEDERAL HOME LOAN BANK OF DALLAS

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**Terry Smith**
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***via Federal eRulemaking Portal***
***and electronic mail to:***
***RegComments@fhfb.gov***

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

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

Dear Mr. Pollard:

The Federal Home Loan Bank of Dallas (the "Bank") appreciates this opportunity to comment on the proposed guidance published by the Federal Housing Finance Agency (the "Finance Agency") on August 16, 2010, which proposes that the entities regulated by the Finance Agency should not deal in mortgages or related securities on properties encumbered by private transfer fee covenants (the "Proposed Guidance"). The Finance Agency has described its concerns with the impact that private transfer fee covenants may have on liquidity, affordability and stability in the housing finance market, and has requested comments on the Finance Agency actions which would be most appropriate to address the concerns raised by such covenants.

**Coverage of the Proposed Guidance.** In describing the Proposed Guidance, the Finance Agency states that the Proposed Guidance directs the entities which it regulates not to purchase or invest in "*securities backed by private transfer fee revenue.*" [emphasis added] *Id.* at 49933. However, the text of the Proposed Guidance not only prohibits the purchase and acceptance as collateral of securities backed by private transfer fee revenue, but extends the prohibition to *securities backed by mortgages encumbered by a private transfer fee covenant.* The text of the Proposed Guidance, thus, expands the coverage of the Proposed Guidance substantially beyond the Finance Agency's stated intent. The Bank, therefore, respectfully urges the Finance Agency to consider whether this expansion is necessary to achieve the Finance Agency's stated goals.

In addition, the Bank requests clarification in the final guidance that the Finance Agency does not intend for the term "private transfer fees" to include a charge or fee of a fixed dollar amount payable to a condominium or homeowners association to cover transfer or administrative costs related to sale of a covered home or condominium.

**Implementation and Monitoring.** The Bank has significant concerns regarding the Federal Home Loan Banks' (the "Banks") ability to effectively implement and monitor compliance with the Proposed Guidance as currently drafted. The Proposed Guidance states that "Fannie Mae and Freddie Mac should not purchase or invest in any mortgages encumbered by private transfer fee covenants or securities backed by such mortgages. The Banks should not purchase or invest
in such mortgages or securities or hold them as collateral for advances."

In identifying mortgage loans which are prohibited by the Proposed Guidance from being purchased or accepted as collateral, a regulated entity could review the mortgage file to determine if the file contains documents evidencing the existence of a private transfer fee covenant on the mortgaged property. For loans considered for purchase by Fannie Mae and Freddie Mac, this type of loan-level file review is possible since Fannie and Freddie have access to individual loan files for purchased loans. In contrast, when the Federal Home Loan Banks take collateral from members on a blanket basis, the Banks do not have access to loan files for individual loans covered by the blanket lien. It would, therefore, not be possible for the Banks to determine conclusively whether such loans are subject to a private transfer fee covenant.

In addition, the Proposed Guidance would require the Banks to examine the loan file (in order to determine whether any of the underlying mortgaged properties are encumbered by a private transfer fee covenant) for each mortgage loan backing a mortgage-backed security, prior to purchasing or accepting such security as collateral. The Finance Agency notes in the Proposed Guidance that private transfer fee covenants "often are not disclosed by sellers and are difficult to discover through customary title searches." *Id.* at 49933. The difficulty in discovering private transfer fee covenants is exacerbated in the purchase or acceptance of mortgage-backed securities as collateral, which could require the review of loan files for hundreds or even thousands of mortgage loans to ensure that they are not encumbered by private transfer fee covenants.

**Effective Date.** The Proposed Guidance does not state when the final guidance would be effective. The Bank requests that the Finance Agency clarify in the final guidance that it will apply prospectively only. The Bank also requests that the final guidance apply only to mortgage loans originated and mortgage-backed securities issued 120 days or more after the effective date of the final guidance so that Bank members and underwriters of mortgage-backed securities can have sufficient time to revise underwriting and origination guidelines as necessary. Retroactive application of the final guidance to mortgage loans previously originated or to mortgage-backed securities previously issued could have serious unintended consequences for the Federal Home Loan Banks and their members. The Bank further requests that the Finance Agency include in the final guidance a safe harbor for securities issued by Fannie Mae and Freddie Mac after the effective date of the final guidance, based on the assumption that the mortgages underlying such securities will be in compliance with the guidance.

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We thank the Federal Housing Finance Agency for its consideration of these comments.

Respectfully submitted,

Terry Smith
President and CEO