INSTITUTE FOR COMMUNITY ECONOMICS

October 15, 2010

Alfred M. Pollard, Esq.
General Counsel
Federal Housing Finance Agency
1700 G Street, NW, 4th Floor
Washington, DC 20552

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

Dear Mr. Pollard:

The following comments are submitted to the Federal Housing Finance Agency's (FHFA) proposed "Guidance on Private Transfer Fees" and the Notice of Proposed Guidance as filed in the Federal Register (Vol. 75 No. 157 on Monday August 16th 2010).

The Institute for Community Economics is a federally certified community development financing institution that has loaned to non-profit, community land trusts across the United States for over 30 years. We are also a member of the National Community Land Trust Network. The Network is the umbrella organization which supports the work of community land trusts across the United States, promoting sustainable development through the creation of permanently affordable housing and the protection of working lands. The Network represents over 240 CLTs in over 40 states, many of which would experience significant adverse impacts from the proposed Guidance on Private Transfer Fees as it is currently written.

While we commend the FHFA for its concern about protecting consumers from private transfer fees that are abused to "reimburse developers for their initial outlays", we very much want to support and protect transfer fees that are used to provide public benefits such as affordable housing, environmental mitigation and community amenities, as is the case with many Community Land Trusts. Appropriate transfer fees are among the best practices for local affordable housing programs across the country to help cover the cost of long-term asset management or stewardship that allows homes to remain affordable for future generations. The proposed guidance is far broader than necessary and will have unintended negative consequences for efforts to create sustainable affordable homeownership in the midst of this economic crisis.

In particular, we strongly argue that the FHFA's final regulation should exempt transfer fees payable to 501(c)(3) charitable organizations, community associations, or that are payable to or imposed by governmental entities. Many state and municipal governments have been forced to reduce funding for affordable homeownership programs and are seeking ways to create public/private partnerships that can leverage public dollars with private contributions to more efficiently to help more families buy homes today and tomorrow.

A successful example of such a strategy is being used in Chapel Hill, North Carolina, where the Town has requested private transfer fees from developers to support permanently affordable housing in the Community Land Trust model. This effective combination is providing ongoing workforce housing opportunities in a community where the average price of homes exceeds $300,000. These fees, like those of other CLTs, do not adversely affect liquidity, affordability, and stability in the housing finance market.

CLT homeowner mortgages did not contribute to the current housing and economic crisis and do not need to be placed outside the reach of the Government Sponsored Entities (GSEs). The foreclosure rate for CLT homeowners is 1/8 the national rate. CLT homeownership is a proven, effective way of helping low-income households become and remain successful homeowners. After 5 years of homeownership 90% of CLT owners are still homeowners, compared to 50% for other first-time homeownership programs. Not allowing the GSEs to deal in mortgages on properties encumbered by private transfer fees that are used to provide public benefits such as affordable housing <u>would significantly impede our ability to serve low-income families</u>.

We strongly recommend that the FHFA take the following actions with respect to the proposed Guidance:

A. <u>Exemptions</u>. The Guidance should contain well crafted exemptions for transfer fees payable to community associations, 501(c)(3) charitable organizations, or that are 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. <u>Disclosure</u>. Concerns about title transparency should be addressed by disclosure requirements. For example, the FHFA could require through its supervised entities that the existence of the transfer fee be identified in a bold legend on the first page of the covenants.

C. <u>Not Retroactive</u>. 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.

We support FHFA’s efforts to address the “liquidity, affordability and stability in the housing finance market”. This effort should not only help the housing finance market, but also help to strengthen our communities by supporting successful homeownership for low income families.

Sincerely,

Andy Slettebak
Director
Institute for Community Economics

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