FEDERAL HOME LOAN BANK OF CINCINNATI

October 15, 2010

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)

VIA EMAIL (REGCOMMENTS@FHFA.GOV)

Dear Mr. Pollard:

The Federal Home Loan Bank of Cincinnati ("FHLBank") appreciates this opportunity to comment on the Federal Housing Finance Agency's ("FHFA") proposed "Guidance on Private Transfer Fee Covenants". The FHFA has indicated that the entities it regulates should not deal in mortgages on properties encumbered by Private Transfer Fee Covenants ("PTFC") because, in its view, such covenants appear adverse to liquidity, affordability and stability in the housing finance market and to financially safe and sound investments. The proposed Guidance would extend to mortgages and securities held by the Federal Home Loan Banks ("Banks") as investments or as collateral for advances.

PTFCs and Cooperative Lending Structures

The FHLBank of Cincinnati has reviewed comments submitted or soon to be submitted by the Federal Home Loan Bank of New York on this subject. Without restating them here, we would like to add our concurrence with the FHLBank of New York's comments. The FHLBank of Cincinnati has an interest in the treatment of these fees in that one of its members is the largest provider of financing to the co-op industry in the country, with concentrations in loans to co-ops and their tenants in various locations nationwide. Co-op share loans and associated multi-family loans are a primary source of advance collateral. The key issues from the FHLBank of Cincinnati perspective are:

- PTFC's that serve as a revenue stream to cooperatives serve a legitimate business purpose in financing capital improvements and building maintenance reserves.
- PTFC's serve to stabilize reserve funds and given their basis in the sale price of a property, cover expenses as they increase over time. In large municipalities, cooperative buildings are part of an aging housing stock that requires significant ongoing maintenance to maintain their habitability and value: a purpose which PTFC's support.
- For similar reasons, the above benefits also accrue to PUDs and condominium associations.
- Cooperatives and condominium associations are managed by boards elected by the tenants that have their best interests in mind, including those related to PTFC's.

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- Given the pervasive nature of PTFCs under these arrangements, preventing acceptance of loans with such covenants as collateral would have negative unintended consequences on FHLBank members that are active lenders in this market. There is also the possibility of a disruption in the liquidity and stability within this market.

In addition to the above, we concur with the FHLBank of New York's observation on the ***detrimental*** effect of setting standards on the level of such fees. The marketplace does not address whether the fees are proportional or related to the purposes for which the fees were to be collected, nor should we. Insisting that the fees be proportional or related to certain purposes will only add additional costs unnecessarily, such as engineering, accounting and legal costs. .

Acquired Member Assets Impact

Co-op share loans are not eligible assets for purchase under the Mortgage Purchase Program ("MPP ") acquired member asset program so there will be no negative impact from the application of the proposed Guidance in this regard. While condominium and PUD home loans are actively purchased through the MPP program, our research has indicated that the use of PTFC is not prevalent in this market as with coops. The fees in this case benefit the homeowners as they are used to fund the maintenance and repairs of the common areas of the homeowner association. However, actually being able to detect the presence of PTFC in the mortgage documents will be difficult as there does not appear to be a uniform market convention on how these fees are disclosed and documented. Other than formally prohibiting the sale of such loans and documenting this and documenting this in the MPP Guide, the prohibition on purchasing affected loans, expanding existing representations and warranties provided by participating financial institutions, and instructing the quality control service provider to look for the presence of PTFC during their QC process, the FHLBanks are limited in their ability to detect such loans. The FHLBanks could benefit from an industry standardization initiative in the disclosure of PTFC within the closing documents.

Monitoring Concerns

The FHLBank of Cincinnati has significant concerns with FHFA expectations regarding compliance testing of mortgage loans pledged as collateral and backing securities pledged as collateral. As a general rule, testing ***certain underwriting parameters of*** underlying mortgages of mortgage-backed securities is highly problematic.

The text of the Proposed Guidance would appear to require the FHLBanks to examine the mortgages backing every security, prior to purchasing or investing in that security or accepting such security as collateral, to determine whether any of the mortgages backing that security are encumbered by a PTFC. In the event a FHLBank discovered a PTFC on *one* mortgage backing the security, the Proposed Guidance would prohibit the FHLBank from purchasing or investing in that security or accepting that security as collateral. If this is the intent of the Guidance, we believe that this degree of "purity" testing will be an impossible standard to accurately verify, and a difficult standard to uphold. In fact, the FHFA recognizes that PTFCs "often are not disclosed by sellers and are difficult to discover through customary title searches." The difficulty in discovering PTFCs is exacerbated in the purchase of or investment in securities or acceptance of such securities as collateral, which may require the review of hundreds or thousands of mortgages to ensure they are not encumbered by PTFC. From a securities investment or securities collateral perspective, similar challenges and difficulties will be faced in enforcing the perceived requirements of this Guidance as is being encountered in enforcing the requirements of the Guidance on Subprime and Non-traditional Lending. The end result may be the disqualification of sound collateral because the hurdle for verifying "purity" will be too high.

Monitoring and testing for the presence of PTFCs will be no less challenging for mortgage loans pledged as collateral because, as the FHFA has acknowledged, PTFCs "are difficult to discover through customary title searches." As it pertains to co-ops, such covenants are difficult to locate in typical loan closing documentation. At a minimum, we believe consideration should be given to have co-op, condominiums and PUDs excluded from this guidance. For the situations warranted, we do believe that realistic and reasonable efforts can be applied to ensure adherence to the spirit and primary objective of the Guidance. This can include informing members of the prohibition on pledging such loans as collateral, requiring enhanced member certifications that such loans are not pledged, and conducting reasonable assessments of loans reviewed during on-site visits. Expectation to pursue compliance verification much beyond these standard practices will not be practical or meaningful.

Summary

The FHLBanks' mission is to provide a reliable source of liquidity to meet the housing finance and credit needs of their communities. Due to the potential for excessive verification and monitoring burdens, the Guidance as written will prohibit the FHLBank of Cincinnati from efficiently meeting its mission on a certain segment of the market for co-ops, condominiums, and potentially the financing of homes in PUDs where a PTFC may exist. Members may not be able to efficiently liquefy these mortgages with the FHLBank of Cincinnati so they can extend additional credit in the communities they serve. Not all PTFCs are created equal, so a distinction must be made between those PTFCs that provide value in which they benefit the affected property's homeowners association and community as opposed to those PTFCs which accrue value only to unrelated parties. The FHFA should also carefully consider the extent to which FHLBanks will be required to verify that pledged mortgage loans or those backing mortgage backed securities comply with the final guidance to be issued. The monitoring requirements imposed on the FHLBanks should result in the FHLBanks exercising reasonable efforts to ensure adherence to the spirit of the Guidance.

On behalf of the Federal Home Loan Bank of Cincinnati, we thank the Federal Housing Finance Agency for its consideration of these comments.

Sincerely,

Andrew S. Howell
Executive Vice President