CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY
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This will be emailed.

METRO

To: regcomments@fhfa.gov
Subject: Guidance on Private Transfer Fee Covenants (No. 2010-N-11)

Dear Mr. DeMarco:

Capital Metro appreciates the opportunity to comment on FHFA's proposed guidance to its enterprises and banks regarding Private Transfer Fee Covenants. While we understand some of FHFA's concerns, we do not believe the proposed guidance is the right solution since it would effectively eliminate all private transfer fees (PTFs)—including those assessed to advance legitimate community benefits that are ultimately beneficial to the housing marketplace.

Instead, we respectfully encourage FHFA to refine its approach and adopt one that more directly addresses what appears to be a significant fundamental concern of FHFA, namely, that such fees "create purely private continuous streams of income for select market participants."[1] **FHFA should revise its proposed guidance to allow FHFA enterprises and banks to deal in mortgages and securities involving private transfer fee covenants <u>if the fee recipients are government entities, appropriate tax-exempt entities or homeowners associations</u>.**

If structured with sufficient and necessary safeguards, private transfer fees *can* result in public benefits. They are a reasonable vehicle that can be used to achieve federal, state, and local public policy goals that are ultimately beneficial to the housing marketplace.

For example, the US Department of Transportation and the Department of Housing and Urban Development are focused on "expanding access to affordable housing, particularly housing located close to transit."[2] As US Secretary of Transportation Ray LaHood has said, "The way we design our communities has a huge impact on our citizens' social, physical, and economic wellbeing. Yet many Americans live in neighborhoods without sidewalks or access to public transportation. Therefore, one of my highest priorities is to work closely with Congress, other Federal departments, the nation's governors, and local officials to help promote more livable communities through sustainable surface transportation programs. By focusing on livability, we can help transform the way transportation serves the American people—and create safer, healthier communities that provide access to economic opportunities."[3]

Financing tools like PTFs can help make these livable communities possible. Consider public transit agencies like Capital Metro, which are granted very limited tools to generate funds. Capital Metro and others in the Central Texas region have considered property transfer fees as an equitable way to fund transit and transit-related infrastructure in our community.

While Capital Metro has considered PTFs on a larger scale (yet still targeted specifically for the purpose of facilitating public transit), Capital Metro has also explored the use of a property transfer fee to help finance and sustain a transit-oriented development (TOD) on several tracts of undeveloped land that we own along our Red Line passenger rail route. A property transfer fee

[1] FHFA notice of proposed "Guidance on Private Transfer Fee Covenants" [No. 2010-N-11], August 16, 2010.
[2] http://fastlane.dot.gov/2009/06/livability-principles-will-guide-federal-housing-environmental-and-transportation-policy-.html
[3] http://fastlane.dot.gov/2009/03/livable-communities-the-hometowns-americans-deserve.html

would be part of an overall financing plan to fund the transit and infrastructure improvements necessary to develop the property in accordance with the community-developed and City Council-approved land use plan for the area. If implemented, the plan would also advance federal livability goals.

It is worth noting that the majority of future homeowners in the TOD will be purchasing property in this area precisely because of the access to convenient and environmentally sustainable transportation alternatives. In such instances, the PTF provides a direct benefit to the initial homeowner and all future homeowners. The fee would clearly benefit the public good and not a private entity. If FHFA's proposed guidance were enacted however, this tool would likely not be available, making the development of property, and fulfillment of a number of public policy goals, all the more challenging.

A lack of transportation alternatives creates a negative impact on housing values, community quality of life, mobility, and job opportunities. FHFA's proposed changes could also negatively impact the resale market for properties currently subject to such fees—contrary to FHFA's mission to promote liquid, efficient and stable housing finance markets.

Recognizing that PTFs can be a valuable tool to facilitate community improvements, some states, such as Texas, have already adopted appropriate and measured regulatory approaches to PTFs to protect sellers and buyers from the concerns raised by FHFA. In Texas, the Legislature has carefully weighed the advantages and disadvantages of PTFs and enacted state statutes to limit them to situations where the fee is payable to a governmental entity, a 501(c)(3), or a property owners' association.[4] Under Texas law, PTFs must also be separately disclosed to the purchaser and each lienholder at least seven days in advance of any conveyance or execution of a contract for a residential property.[5]

In short, the State of Texas has enacted measures to protect the buyers and sellers of property, the Texas housing markets, and the lending and real estate industries from the disadvantages cited in the proposed rule. Federal action in this arena would be unnecessary, at least in Texas and in any other state with similar protections.

Under FHFA's proposed blanket approach, the future viability and sustainability of transit infrastructure and transit-oriented development will be severely hampered—despite the positive impacts of both on the housing market, housing affordability, and the Administration's livability goals. Capital Metro encourages FHFA to reexamine its approach and continue allowing FHFA enterprises and banks to deal in mortgages and securities involving private transfer fee covenants *if the fee recipients are government entities, appropriate tax-exempt entities or homeowners associations.*

Sincerely,

Todd Hemingson

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Capital Metropolitan Transportation Authority

[4] Texas Property Code, Section 5.017.
[5] (Texas Property Code, Sec. 5.016).