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Assembly
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DIANE L. HARKEY
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COMMITTEES
VICE CHAIR, PUBLIC
EMPLOYEES RETIREMENT
AND SOCIAL SECURITY
APPROPRIATIONS
BUDGET
REVENUE AND TAXATION

October 12, 2010

The Honorable Ed DeMarco
Acting Director
Federal Housing Finance Agency
Fourth Floor
1700 G Street, NW
Washington DC 20552

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

Dear Director DeMarco and Mr. Pollard:

This letter is in response to the proposed Guidance on Private Transfer Fee Covenants (Proposed Guidance) No. 2010-N-I I that was published in the Federal Register on August 16, 2010 by the Federal Housing Finance Agency (FI-IFA).

As currently drafted, FHFA's proposal will prohibit Fannie Mae, Freddie Mac and the Federal Home Loan Bank System from supplying mortgage liquidity to communities encumbered by any form of deed or covenant based transfer fee.

I am concerned with the proposed guidelines as currently written, and strongly support an exemption from guidelines for fees that benefit the homeowner and the property, such as those that go to support homeowners, condominium, and cooperative associations. Without this exemption, I fear that the FHFA will needlessly disrupt real estate markets across the country and visit further financial distress on homeowners by restricting access to credit.

The real issue is that FHFA's ban would apply to all forms of transfer covenants. This includes the private third party intermediary approach, as well as covenants payable to HOAs, affordable housing groups and other community and non-profit organizations. My Staff has received calls from some HBAs and NAHB members concerned about the broad scope of FHFA's proposed guidance.

It is important to recognize the distinction between the relatively new third party approach, and the common industry practice of community benefit fees. Private transfer fees directly benefit for-profit third party developers, whereas flip taxes paid to HOAs after a property sale benefit the homeowner by helping to pay for maintenance and services, as well as keeping monthly fees lower.

While I understand the FHFA's actions to create a safe and stable mortgage market, many of my potentially impacted constituents and I are concerned that the Proposed Guidance could have extraordinary adverse and unintended consequences by locking those homeowners with transfer fee covenants on their properties out of mortgage and finance markets. In addition, I have real concerns, that the Proposed Guidance will devalue the hundreds, of thousands of homes in communities with services and resources funded by community benefits fees by barring the use of those fees to support such activities as community improvements, infrastructure, affordable housing and conservation in the future.

Thank you for your attention to this matter, and I look forward to your response.

Sincerely,

Diane Harkey