

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
OFFICE OF THE DIRECTOR**

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September 23, 2010

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

Attention: Public Comments

Re: Guidance on Private Transfer Fees Covenants [NO. 2010-N-11]

Dear Mr. Pollard:

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

The California Department of Housing and Community Development (HCD) provides leadership, policies and programs to preserve and expand safe and affordable housing opportunities and promote strong communities for all Californians. The Department also supports increasing the supply of housing, especially affordable housing and works to improve the state's housing conditions and the health and safety of its residents. As the lead housing department, HCD is part of the state Business, Transportation and Housing Agency.

HCD shares FHFA's concern about potential abuses of transfer fees, especially when used to "...reimburse the developers or investors for their initial outlays" and commends FHFA for its leadership in protecting consumers from these types of fees which are not designed for a public purpose.

However, the Notice of Proposed Guidance, in protecting against those transfer fees that provide purely private benefits to select market participants (e.g., a developer or former property owner) either directly or through securitized investment vehicles, has the impact of eliminating the use of such fees to provide public benefit such as environmental mitigation, affordable housing and community amenities. California Civil Code Sections 1368(c) and 1098.5 permit the use of transfer fees for very narrowly defined public purposes, such as funding charitable activities, and only when appropriately disclosed and in amounts determined to be reasonable by appropriately authorized Governmental Agencies.

Private transfer fees may be used in California to purchase open space as environmental mitigation for a project or to support the development of affordable housing and homeless shelters. Transfer fees may also be used to resolve litigation that threatens to prevent the building of housing. Such uses provide a public benefit and do not accrue benefits to select developers or property owners and in some cases, allow housing to be built.

I urge the FHFA **not** to adopt the proposed guidance on private transfer fee covenants (No. 2010-N-11). I urge FHFA instead to consider providing guidance in a subsequent rulemaking process to regulate, rather than prohibit, the use of transfer fees. Such guidance should differentiate between transfer fees that render benefit to the affected property and homeowners and those that only accrue value to unrelated third parties. Further, the guidance should require appropriate public disclosure and the amount of the transfer fee should be capped at a reasonable amount.

Thank you for your consideration of this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lynn L. Jacobs', written in a cursive style.

Lynn L. Jacobs
Director