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April 7, 2011

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

Re: Private Transfer Fees RIN 2590-AA41

Dear Mr. Pollard:

I am writing on behalf of the 1.1 million members of the National Association of REALTORS® to support the Federal Housing Finance Agency's (FHFA's) proposed rule RIN 2590-AA41 on the use of private transfer fees for the Federal Home Loan Banks (FHLBs) and the government sponsored enterprises (GSEs), Fannie Mae and Freddie Mac. We support the FHFA proposed rule, which restricts the FHLBs and the GSEs from dealing in mortgages on properties encumbered by certain types of private transfer fee covenants and in certain related securities.

In an attempt to consider the many legitimate purposes of private transfer fees, FHFA may have inadvertently created a gray area around the direct benefit to the encumbered property. We believe that in some cases an adjacent or contiguous property up to 1,000 yards away could provide a direct benefit to the encumbered property. However, it is equally conceivable that the same adjacent or contiguous property 1,000 yards away could be allocated to a nonprofit organization for environmental conservation. While one can argue a direct benefit does exist, a counter-argument is the conservation benefit goes only the nonprofit or provides only an indirect benefit to the encumbered property. FHFA can mitigate these situations by providing additional clarification in the definitions section of the proposed rule or by providing some examples of direct benefits to encumbered property. A list of examples does not have to be exhaustive as direct benefits may vary from region to region.

As you know, a private transfer fee commonly occurs when a developer agrees to add a covenant to the deed of each new home, or a homeowner agrees to add a covenant to an existing home's deed, that requires future owners of the property to pay a percentage of the selling price to a designated beneficiary. While the percentage fee paid is tied to the home price, it does not correlate with any tangible benefit received by the home buyer. The transfer fee rule is a covenanted mandate so it is extremely difficult to reverse the requirement once it is in place. In many cases the fee is attached to the deed for up to 99 years meaning several subsequent buyers may pay a fee where no service was rendered or benefit received.

Private transfer fees increase the cost of homeownership, do little more than generate revenue for developers or investors and provide no benefit to homebuyers. They place an inappropriate drag on the transfer of property.

Moreover, there is virtually no oversight on where or how proceeds can be spent, on how long a private transfer fee may be imposed, or on how the fees should be disclosed to home buyers. Already, one company is negotiating with institutional investors to "securitize" pools of transfer fees, which will essentially create bonds that can be sold on a secondary market, based on the future cash flows.

FHFA's proposed rule appropriately recognizes that, in very limited situations such fees should be excepted when paid to nonprofit organizations that are tax exempt under section 501(c)(3) or (c)(4) and provide direct benefits to the encumbered party. An exception for these organizations, where such fees are expected and familiar to many homeowner association members, can help fund capital reserves, capital improvements, upgrades and major repairs. Implementation of the rule prospectively ensures that homes already encumbered with such fees will not be adversely impacted by adhering to rules that were not in existence at the time of the original purchase.

Thank you for your time and consideration of this matter. If you have any questions or would like to further discuss this issue please contact NAR's Senior Regulatory Policy Representative, Jerry Nagy, at 202.383.1233 or jnagy@realtors.org.

Sincerely,

Ron Phipps, ABR, CRS, GRI, GREEN, e-PRO, SFR
2011 President, National Association of REALTORS®