



April 11, 2011

Alfred M. Pollard, Esq.
General Counsel
Attention: Comments/RIN 2590-AA41
Federal Housing Finance Agency
Fourth Floor, 1700 G Street, NW
Washington, D.C. 20552

VIA E-Mail (regcomments@fhfa.gov) & Overnight Mail

Re: Notice of Proposed Rulemaking and Request for Comments – Private Transfer Fee Covenants (RIN 2590-AA41)

Dear Mr. Pollard:

The Federal Home Loan Bank of San Francisco (“Bank”) has reviewed the notice of proposed rulemaking published by the Federal Housing Finance Agency (“Finance Agency”) on February 8, 2011, proposing that the entities the Finance Agency regulates should not purchase, invest in, or accept as collateral mortgages on properties encumbered by private transfer fee covenants, unless such covenants benefit a covered association exclusively for the direct benefit of the property encumbered by the covenant (“Proposed Rule”). We appreciate the opportunity to comment on the Proposed Rule.

The Proposed Rule was issued following the Finance Agency’s receipt of comments on its proposed guidance on private transfer fees published on August 16, 2010 (75 FR 49932). Based on these comments, the Finance Agency limited the scope of the Proposed Rule. The Bank generally supports the much narrower focus of the Proposed Rule and the Finance Agency’s intent to make it prospective in effect. With regard to prospective application of the rule, we suggest this aspect of any final rule be changed so that it applies only to mortgages originated, and covenants created, after the relevant effective date of the rule, in order to more clearly differentiate between mortgage loans covered by the rule and those not covered. We also suggest that the relevant effective date for purposes of prospective application of any final rule be set with reference to the effective date of that final rule, rather than the publication date of the Proposed Rule, since standards and definitions under a final rule may differ from those of the Proposed Rule.

The Bank still has significant concerns regarding how it could effectively implement and monitor compliance with the Proposed Rule. The Finance Agency suggests acceptable compliance may be achieved through the Federal Home Loan Banks’ (“FHLBanks”) collateral review processes coupled with direction to their members and robust representations, warranties, or certifications. However, without express documentation in the loan files clearly and unequivocally evidencing the existence of a private transfer fee covenant, and sufficient documentation to assess that any applicable

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covenant is made for the benefit of a “covered association” and for the “direct benefit” of the encumbered property, as these terms are defined in the Proposed Rule, the Bank will not likely be able to determine whether a private transfer fee covenant exists and satisfies the exception in the Proposed Rule. For mortgage-backed securities (MBS) collateral and investments, compliance monitoring or validation (beyond reliance on the issuers’ and the members’ related representations and warranties) would be even more difficult since neither the Bank nor likely the Bank’s members have access to the individual underlying mortgage loan files.

For these reasons, the Bank believes it would be very difficult to implement the Proposed Rule effectively. The Bank therefore requests that in any final rule, the Finance Agency expressly recognize these monitoring challenges and allow the FHLBanks to exclusively rely on appropriate representations, warranties or certifications from members, originators and issuers, as the case may be, that any mortgage loan or MBS pledged as collateral or part of the Bank’s investment portfolio complies with applicable regulations, without requiring further review or monitoring by the FHLBanks. If the Finance Agency adopts a final rule that requires the FHLBanks to do more than obtain appropriate representations, warranties or certifications, then we urge the Finance Agency to consider coordinating its documentation requirements in this area with those of other agencies that regulate aspects of the mortgage loan origination and documentation process so that the Finance Agency rule can be implemented effectively.

Thank you for considering our comments.

Sincerely,



Suzanne Titus-Johnson
Senior Vice President and
General Counsel-Corporate Secretary