

## § 1228.2

for their benefit. *Direct benefit* also includes cultural, educational, charitable, recreational, environmental, conservation or other similar activities that—

(1) Are conducted in or protect the burdened community or adjacent or contiguous property, or

(2) Are conducted on other property that is used primarily by residents of the burdened community.

*Excepted transfer fee covenant* means a private transfer fee covenant that requires payment of a private transfer fee to a covered association and limits the use of such transfer fees exclusively to purposes which provide a direct benefit to the real property encumbered by the private transfer fee covenants.

*Private transfer fee* means a transfer fee, including a charge or payment, imposed by a covenant, restriction, or other similar document and required to be paid in connection with or as a result of a transfer of title to real estate, and payable on a continuing basis each time a property is transferred (except for transfers specifically excepted) for a period of time or indefinitely. A *private transfer fee* does not include fees, charges, payments, or other obligations—

(1) Imposed by or payable to the Federal government or a State or local government; or

(2) That defray actual costs of the transfer of the property, including transfer of membership in the relevant covered association.

*Private transfer fee covenant* means a covenant that:

(1) Purports to run with the land or to bind current owners of, and successors in title to, such real property; and

(2) Obligates a transferee or transferor of all or part of the property to pay a private transfer fee upon transfer of an interest in all or part of the property, or in consideration for permitting such transfer.

*Transfer* means, with respect to real property, the sale, gift, grant, conveyance, assignment, inheritance, or other transfer of an interest in the real property.

[77 FR 15574, Mar. 16, 2012, as amended at 78 FR 2323, Jan. 11, 2013]

## 12 CFR Ch. XII (1–1–14 Edition)

### § 1228.2 Restrictions.

The regulated entities shall not purchase, invest or otherwise deal in any mortgages on properties encumbered by private transfer fee covenants, securities backed by such mortgages, or securities backed by the income stream from such covenants, unless such covenants are excepted transfer fee covenants. The Federal Home Loan Banks shall not accept such mortgages or securities as collateral, unless such covenants are excepted transfer fee covenants.

### § 1228.3 Prospective application and effective date.

This part shall apply only to mortgages on properties encumbered by private transfer fee covenants if those covenants are created on or after February 8, 2011. This part shall not apply to mortgages on properties encumbered by private transfer fee covenants if those covenants are created pursuant to an agreement entered into before February 8, 2011, applicable to land that is identified in the agreement, and the agreement was in settlement of litigation or approved by a government agency or body. This part also applies to securities backed by mortgages to which this part applies, and to securities issued after February 8, 2011, backed by revenue from private transfer fees regardless of when the covenants were created. The regulated entities shall comply with this part not later July 16, 2012.

### § 1228.4 State restrictions unaffected.

This part does not affect state restrictions or requirements with respect to private transfer fee covenants, such as with respect to validity, enforceability, disclosures, or duration.

## PART 1229—CAPITAL CLASSIFICATIONS AND PROMPT CORRECTIVE ACTION

### Subpart A—Federal Home Loan Banks

Sec.

1229.1 Definitions.

1229.2 Determination of a Bank's capital classification.

1229.3 Criteria for a Bank's capital classification.