

October 5, 2009

Alfred M. Pollard, Esq.
General Counsel
Federal Housing Finance Agency
Fourth Floor
1700 G Street N.W.
Washington D.C., 20552

Attention: Comments/HERA Section 1217 Study

Dear Mr. Pollard:

The Federal Home Loan Bank of Topeka ("FHLBTopeka") appreciates the opportunity to comment on the Notice of Study and Recommendations and Request for Comment published in by the Federal Housing Finance Agency ("FHFA") in the *Federal Register* on August 4, 2009.

FHLBTopeka shares the FHFA's goal of discouraging improper and risky practices relating to nontraditional, subprime and Alt-A lending. We offer the following comments to help achieve that goal in a manner that allows the Federal Home Loan Banks (FHLBanks) to continue their critical mission of promoting housing and homeownership by providing low-cost funding to member institutions that allows those institutions to expand the availability of mortgage credit, compete more effectively in their markets and foster strong and vibrant communities.

Advisory Bulletin 2008-AB-02

We are concerned about the proposed restrictions on an FHLBank's ability to accept private-label mortgage-backed securities (PLMBS) and certain acquired whole loans as collateral for advances. We urge you to reconsider the following issues prior to issuing a final regulation.

In Section V of the HERA study presented to Congress at the end of July 2009, the FHFA announced its intent to "clarify" the restrictions on acceptance of PLMBS that are presented in its Advisory Bulletin 2008-AB-02 ("AB-02") as follows:

"The advisory bulletin states that residential mortgage loans underlying private-label MBS issued after July 10, 2007, must conform to the interagency guidance, but it is silent about MBS issued before that date that a member may acquire after that date. FHFA intends to clarify that MBS purchased by a member after July

10, 2007, is also subject to the guidance contained in Advisory Bulletin 2008-AB-02.”

Our concerns include the following:

- The representations and warranties required of the issuer of the security cannot be obtained. If AB-02 is modified as proposed in the Study, for securities issued or purchased after July 10, 2007, the issuer of the security must provide representations and warranties that the underlying loans are in compliance with regulatory guidance on subprime and nontraditional mortgage lending for the security to be considered eligible FHLBank collateral. It is our understanding that due to the liability involved, issuers will not provide such representations or warranties, resulting in PLMBS being ultimately eliminated as a form of eligible collateral for FHLBank members.
- AB-02 has used the purchase date instead of the issue date for whole loans, which has effectively applied the interagency guidance retroactively to loans originated before the guidance was established. Consequently, the market for sale of whole loans has been constrained, which has adversely impacted the availability of credit to purchase homes. If a purchase date requirement is also applied to PLMBS, it could further freeze access to residential credit, which is contrary to current Administration and Congressional objectives.
- Additionally, using the purchase date and applying an impossible, retroactive standard would adversely and unfairly impact loans and investors. It would increase the likelihood that the PLMBS market will remain illiquid as FHLBank members would be reluctant to participate as investors. For investors currently holding PLMBS, the purchase date requirement would most likely increase the liquidity premiums on such securities and negatively impact their market prices, creating increased mark-to-market losses for investors holding such securities.
- If AB-02 is modified as proposed in the Study, the current re-securitization market will be drastically impacted because of issuers' unwillingness to provide representations and warranties that the underlying loans are in compliance with regulatory guidance on subprime and nontraditional mortgage lending.

In summary, we believe that any FHLBank collateral requirement should not be implemented retroactively; thus PLMBS issued prior to July 10, 2007, should remain eligible as FHLBank collateral regardless of purchase date. In addition, the same standard should be applied to whole loans. Thus, whole loans originated prior to July 10, 2007, should remain eligible as FHLBank collateral regardless of purchase date. We certainly support responsible underwriting of subprime and nontraditional mortgage lending and appropriate borrower disclosures; however, we do not believe the FHFA intended clarification achieves this goal.

Subprime, nontraditional and Alt-A loans and PLMBS

The Study concludes that “approximately one-fifth of the collateral supporting FHLBank advances consists of subprime or nontraditional loans or Alt-A or subprime private-label MBS.” However, the Study noted that the FHLBanks’ reliance on these types of collateral has declined in 2008. Moreover, FHLBTopeka has established underwriting requirements to prohibit nontraditional residential mortgage loans or subprime loans from being pledged other than on a case by case basis, which would require additional analysis of each loan and an overall limitation on the aggregate amount accepted as eligible collateral. For example, our general underwriting guidelines for residential loans disallow a member from pledging subprime loans, negative amortization loans, 40-year term loans and interest-only loans when the borrower has a FICO score less than 680. In addition, we require members pledging MBS issued on or after July 10, 2007 to provide written documentation certifying their compliance with the interagency guidance. Consequently, we believe the collateral currently supporting FHLBTopeka advances is fully consistent with safety and soundness and the housing finance mission of the FHLBanks.

In the FHFA Notice, the FHFA invited comments on the following questions, and we are pleased to provide the responses that follow:

Should FHFA replace its existing guidance on nontraditional, subprime, or anti-predatory lending with formal regulatory standards?

Yes. We believe that the best regulatory practice is to follow the notice and comment process as provided in the Administrative Procedure Act to provide the FHFA with the benefit of input from the FHLBanks, member institutions and the general public. We believe the FHFA, FHLBanks, member institutions and the general public would benefit from being given notice and an opportunity to comment on all guidance issued by the FHFA.

Should the FHFA explicitly address other mortgage loan features as a control against predatory lending?

No. We believe any anti-predatory lending requirements beyond those mandated under applicable State laws and the interagency guidance impose unjust and unreasonable administrative burdens on our member institutions.

Should the FHFA seek any additional statutory authority to support its ability to prohibit an FHLBank from accepting loans with predatory characteristics as collateral for advances?

No. FHLBTopeka believes that the FHFA has sufficient statutory authority to institute appropriate anti-predatory lending measures. As discussed in the FHFA Notice, the former Federal Housing Finance Board issued advisory bulletins and other guidance prohibiting FHLBanks from accepting loans with predatory characteristics as collateral for advances.

As the federal financial institution regulatory agencies, such as through the FFIEC, look to modify or enhance guidance with respect to nontraditional or subprime mortgage products, should FHFA be formally and directly involved?

Yes. As the regulator of the largest owners of mortgage-backed securities and a key player in the mortgage market, the FHFA should participate in discussions to modify or enhance this guidance. Actions by the FHFA not only affect the FHLBanks, but affect the ability of member institutions to access funding for which they must pledge eligible collateral. By participating in the development of such guidance, the FHFA can coordinate with the federal financial institution regulatory agencies to ensure that the guidance remains consistent among all the relevant financial regulators and reflects the crucial and beneficial role the FHLBanks play in the financial system.

Thank you for the opportunity to comment.

Sincerely,



Andrew J. Jetter
President and CEO