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:

We are writing in regard to the Notice of Study and Recommendations and Request for Comment published in the *Federal Register* on August 4, 2009. We have concerns about the restrictions being placed 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.

- 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 premium on such securities and negatively impact their market price, creating increased 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.

- The Study also requested comment on whether the FHFA should explicitly address other mortgage loan features as a control against predatory lending. We believe any anti-predatory lending requirements beyond those mandated under applicable State laws impose unjust and unreasonable administrative burdens on our institution.

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. Our institution certainly supports responsible underwriting of subprime and nontraditional mortgage lending and appropriate borrower disclosures; however, we do not believe the FHFA intended clarification achieves this goal.

Thank you for the opportunity to comment.

Sincerely,

David J. Abeln
VP. Director Fixed Income
American Fidelity Assuarance Company