



October 2, 2009

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

**RE: HERA Section 1217 Study**

Dear Mr. Pollard:

The Mortgage Bankers Association (MBA)<sup>1</sup> appreciates the opportunity to respond to the Federal Housing Finance Agency's (FHFA) study and recommendations regarding the extent to which loans and securities used as collateral to support Federal Home Loan Bank (FHLBank) advances are consistent with the interagency guidance on nontraditional mortgage products.<sup>2</sup> The FHFA's authorization to conduct this study stems from Section 1217 of the Housing and Economic Recovery Act (HERA).<sup>3</sup> MBA notes that the term "interagency guidance" is not specifically defined in the HERA legislation but is widely used in reference to supervisory guidance titled "Interagency Guidance on Nontraditional Mortgage Product Risks"<sup>4</sup> (Interagency Guidance) issued jointly by the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Federal Reserve), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA). The FHFA expanded the scope of the HERA-authorized study to include guidance related to subprime lending issued by the OCC, Federal Reserve, FDIC, OTS and NCUA.<sup>5</sup> According to the FHFA, the issue of subprime mortgage lending is closely related to nontraditional lending, thus meriting the FHFA's expansion of the study.

**MBA Position**

MBA generally supports the findings of the study, but recommends that the FHFA coordinate any future actions with other relevant regulatory agencies. MBA also requests the FHFA to

---

<sup>1</sup> The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,400 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: [www.mortgagebankers.org](http://www.mortgagebankers.org).

<sup>2</sup> 74 Fed. Reg. 14838618-38626; (Aug. 4, 2009).

<sup>3</sup> Pub. L. 110-289, 122 Stat. 2654 (July 30, 2008).

<sup>4</sup> Oct. 4, 2006.

<sup>5</sup> Statement on Subprime Mortgage Lending, Jul. 10, 2007.

reconsider its approach to clarifying the applicability of the interagency guidance to private label mortgage backed securities (PLS).

### **Interagency Coordination**

MBA appreciates the efforts of the FHFA and other federal financial institution regulators to address and deter abusive lending practices. In fact, MBA believes the Interagency Guidance appropriately outlines the primary concerns that lenders should consider in developing loan terms and underwriting standards. MBA believes measures such as the Interagency Guidance are particularly effective because they are implemented in a coordinated manner by the federal financial institution regulators. MBA's longstanding policy is to encourage regulators to avoid conflicting supervisory actions in order to minimize compliance costs and maximize competition and credit options to consumers. We therefore request the FHFA attempt to act in concert with other supervisory agencies on issues of common concern.

It is for this reason we oppose the FHFA's proposal to clarify the Advisory Bulletin issued by one of the FHFA's predecessor agencies, the Federal Housing Finance Board (FHFB), regarding the applicability of the Interagency Guidance to the FHLBank System.<sup>6</sup>

### **Private Label Mortgage Backed Securities**

According to the supplementary information accompanying the FHFA's request for comment, the Advisory Bulletin states that residential mortgage loans underlying PLS issued after July 10, 2007, must conform to the Interagency Guidance.<sup>7</sup> The Advisory Bulletin is silent about PLS issued before July 10, 2007, that a member may acquire after that date. FHFA intends to clarify that PLS purchased by a member after July 10, 2007, is also subject to the guidance contained in the Advisory Bulletin.

MBA believes this retroactive application of a new supervisory standard could have negative repercussions on liquidity in the secondary mortgage market and FHLBank balance sheets. In order to ensure compliance retroactively with the Advisory Bulletin, a FHLBank must ensure all PLS issued before but purchased after July 10, 2007, conform to the Interagency Guidance. This entails obtaining representations and warranties from the issuer of the PLS that the underlying loans are in compliance with the Interagency Guidance. Given the dramatic contraction and consolidation that has occurred in the industry, it is possible that the original issuer of the PLS has been subsumed by another entity that is unwilling to assume the liability of its predecessor, particularly in light of the significant liability involved. In the alternative, a FHLBank must dispose of the PLS. Given that the market for PLS is virtually nonexistent currently, this latter alternative also is not a viable option.

The FHFB recognized the potential negative impact that retroactive application of the Interagency Guidance would have on the FHLBank System and the market generally when the agency established the effective date for the Advisory Bulletin. According to the FHFA, the FHFB chose not to apply the advance collateral guidance retroactively because it did not want to reduce access to liquidity or add to the financial stress of some FHLBank member institutions

---

<sup>6</sup> Advisory Bulletin 2008-AB-02: Application of Guidance on Nontraditional and Subprime Residential Mortgage Loans to

Specific FHLBank Assets. Jul. 1, 2008.

<sup>7</sup> 74 Fed. Reg. 148, 38625; (Aug. 4, 2009).

at a time of increasing uncertainty in financial and housing markets.<sup>8</sup> MBA believes the current economic environment is equally tenuous and merits a similarly cautious approach to supervisory action by the FHFA.

MBA offers a substitute approach in order to minimize the potential disruption that could arise from the FHFA's proposed clarification. Specifically, MBA suggests the Advisory Bulletin be clarified to apply to purchases of PLS issued before July 10, 2007, that are purchased after the date the clarification is issued.

**Conclusion**

MBA is a long-time supporter of the FHLBank System, and we appreciate the FHFA's efforts to enhance the transparency of FHLBank advance collateral practices. MBA requests that you consider our suggestions, and we look forward to addressing any questions you may have.

Regards,

A handwritten signature in black ink that reads "John A. Courson". The signature is written in a cursive, slightly slanted style.

John A. Courson  
President and Chief Executive Officer

---

<sup>8</sup> Id. at 38621.