

October 5, 2009

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

By email: [RegComments@fhfa.gov](mailto:RegComments@fhfa.gov) and Federal Express

Subject: HERA Section 1217 Study

Dear Mr. Pollard:

The Federal Home Loan Bank of San Francisco (Bank) appreciates this opportunity to comment on the study prepared by the Federal Housing Finance Agency (FHFA) in accordance with Section 1217 of the Housing and Economic Recovery Act of 2008 (HERA Section 1217 Study).

The Bank fully supports the FHFA's goal of ensuring that the collateral used to support Federal Home Loan Bank (FHLBank) advances is consistent with the interagency guidance on nontraditional mortgage products and does not have predatory characteristics. We also fully support efforts to protect consumers and the economy through responsible underwriting policies and practices, particularly in the area of nontraditional and subprime lending. The Bank has in place policies and procedures that implement the guidance issued by the FHFA in 2005, 2007, and 2008, including the provision that, to be eligible collateral, private-label mortgage-backed securities (PLMBS) issued after July 10, 2007, must conform to the interagency guidance.

We are, however, concerned about the FHFA's intention to expand the PLMBS requirement to apply to PLMBS purchased by a member after July 10, 2007, even if the PLMBS were issued before that date. As indicated in the HERA Section 1217 Study, the Federal Housing Finance Board (FHFB) was careful to avoid making the requirements of Advisory Bulletin 2008-AB-02 retroactive. The study states: "By adopting the effective date of the interagency guidance, the FHFB chose not to apply the advance collateral guidance retroactively. To have done so might have reduced access to liquidity and potentially added to the financial stress of some FHLBank member institutions at a time of increasing uncertainty in financial and housing markets." We believe that concern is still valid. The proposed clarification would make the guidance retroactive, which could have significant unintended consequences, as described below.

- **Certification by issuers of compliance with interagency guidance:** As discussed in the study, members have been unable to provide the FHLBanks with representations and warranties from securities issuers that the loans underlying PLMBS issued after July 10, 2007, are in compliance with the interagency guidance. Obviously, this type of certification could not have been in use before the interagency guidance was issued, and we are not aware of its use since then. As a result, Bank members have not been able to borrow against PLMBS issued after July 10, 2007. The proposed clarification would mean that members would no longer be able to borrow against any PLMBS the

member purchased after July 10, 2007, even if the securities were issued before the guidance was published. This could remove a significant amount of collateral from the pools available to support member borrowings from the FHLBanks.

- Disparate impact: Under the proposed clarification, identical PLMBS may be eligible for pledging by one member and ineligible for pledging by another member based solely on the date the member purchased the securities.
- Resolution of failed lending institutions/impact on merger activity: PLMBS acquired by a member or a non-member successor through merger or through a purchase and assumption agreement negotiated with the FDIC or another regulator as part of the resolution of a financial institution failure would become subject to the certification requirement. In this case, the acquiring member or non-member successor would no longer be able to use the PLMBS to support the advances also acquired as part of the transaction. This limitation could hamper the FDIC and other regulatory authorities in their resolution efforts and reduce the flexibility of the FHLBanks in working with regulators on the orderly liquidation of outstanding advances following a member failure.

Some of these observations could also apply to whole mortgages originated before July 10, 2007, but purchased by members after July 10, 2007. In particular, the inability of members to pledge mortgage loans acquired through a purchase and assumption agreement with the FDIC could hamper the FDIC, especially if those loans had previously been used to support outstanding advances that were also acquired in the transaction.

Thank you for your consideration of our comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'DSM', with a long horizontal stroke extending to the right.

Dean Schultz  
President and Chief Executive Officer