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August 11, 2009

VIA EMAIL TO REGCOMMENTS@FHFA.GOV

Alfred M. Pollard, General Counsel
Federal Housing Finance Agency
Fourth Floor
1700 G Street, N.W.
Washington, DC 20552
Attention: Comments/RIN 2590-AA11

RE: Reporting of Fraudulent Financial Instruments; RIN 2590-AA11

Dear Mr. Pollard:

On June 17, 2009, the Federal Housing Finance Agency (FHFA) published a proposed rulemaking in the Federal Register with respect to the reporting of fraudulent financial instruments purchased or sold by a regulated entity (the Proposed Rule). This letter sets forth the comments of the Federal Home Loan Bank of Dallas (the Bank) with respect to the Proposed Rule. We thank you for the opportunity to be heard on this important matter.

The Bank has long shared FHFA's views regarding the importance of combating mortgage fraud and agrees that a Federal Home Loan Bank (FHLBank) may be exposed to the risk of fraud, particularly when investing in whole mortgage loans. Given the importance of the topic, we believe it is especially critical that the requirements of the agency's fraud reporting and detection regulation be clear to all regulated entities, to maximize the effectiveness of these anti-fraud efforts.

It is in light of the above -- what we believe to be our shared policy goals -- that we offer the following comments regarding the Proposed Rule.

I. Scope of the Proposed Rule

- Background: In 2008, the Office of Federal Housing Enterprise Oversight (OFHEO) issued policy guidance (the OFHEO Guidance) regarding the mortgage fraud programs of Fannie Mae and Freddie Mac (the enterprises).[1] The definition of "mortgage fraud" in the OFHEO Guidance covered material misstatements and

[1] Examination of Mortgage Fraud Programs, PG-08-001 (January 10, 2008).

omissions relied upon by an enterprise to fund or purchase -- or not to fund or purchase -- a single-family or multifamily mortgage, and then provided a nonexhaustive list of specific examples of in-scope mortgage fraud.[2] It is unclear whether the Proposed Rule[3] is intended to expand fraud detection and reporting requirements beyond whole loan mortgage investments as contemplated by the OFHEO Guidance or whether it is intended merely to apply those requirements to the FHLBanks' mortgage purchase programs.

- Comment: Please clarify Sections 1233.1 and 1233.3(a)(1) of the Proposed Rule by specifying whether the scope extends beyond whole loan mortgage investments of the type covered by the OFHEO Guidance. If FHFA does intend a scope broader than whole loan mortgage purchases, please specify which other purchase and sale activities of the FHLBanks would be subject to the fraud reporting requirements.

II. Intent as an Element of Fraud

- Background: Under the Proposed Rule, "fraud" is defined to mean "a material misstatement, misrepresentation, or omission relied upon by a regulated entity," and "possible fraud" is defined to mean "that a regulated entity has a reasonable belief, based upon a review of information available to the regulated entity, that fraud may be occurring or has occurred."[4] However, tort and criminal law generally require intent to deceive as an element of fraud. For example, the principal federal criminal statute applicable to a fraud upon an FHLBank is 18 U.S. Code § 1014, which makes it a crime punishable by a prison term of up to 30 years and a fine of up to $1,000,000 to "knowingly [make] any false statement or report, or willfully [overvalue] any land, property or security, for the purpose of influencing in any way the action of...any Federal home loan bank." The definition of "fraud" in the Proposed Rule does not state explicitly whether intent is an element of the definition or if instead inadvertent misrepresentations or omissions are to be characterized as "fraud," notwithstanding the idiosyncratic nature of such a characterization in the broader context of tort and criminal law.

- Comment: Please clarify whether a regulated entity is required to report to FHFA misstatements or omissions which the regulated entity, after due diligence, has concluded were unintentional, rather than fraudulent.

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[2] Including false information contained in identification and employment documents, false mortgagee or mortgagor identity, fraudulent appraisals, theft of custodial funds, non-remitted payoff funds, misrepresentations of borrower funds, and property flipping where designed to falsely inflate property value.

[3] The Proposed Rule requires reporting of fraud or potential fraud occurring in connection with "a loan, a series of loans or other financial instruments that [a] regulated entity has purchased or sold." Proposed Section 1233.3(a)(1).

[4] Section 1233.1 of the Proposed Rule.

III. Reporting Procedures

- Background: Section 1233.3(a) of the Proposed Rule requires that reportable fraud be communicated in writing promptly to the Director of the FHFA, and in certain cases immediately by telephone or electronic communication.

- Comment: This section should be revised to permit a regulated entity to make fraud reports to its Examiner-in-Charge rather than directly to the Director.

IV. Reliance on Third Parties

- Background: Certain FHLBanks currently utilize third parties in connection with the quality control process (including mortgage fraud detection) for their mortgage purchase programs, in accordance with the delegation provisions of the Acquired Member Assets regulation.[5] For example, in the Mortgage Partnership Finance program, the Federal Home Loan Bank of Chicago performs quality control on behalf of other FHLBanks participating in the MPF program.

- Comment: Please confirm that adequate and appropriate third-party reviews may constitute fraud detection controls sufficient to satisfy a regulated entity's obligations under Section 1233.4 of the Proposed Rule.

Thank you for your consideration of our comments.

Sincerely,

Terry Smith
President and CEO

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[5] 12 C.F.R. § 955.5(a).