LABORERS' INTERNATIONAL UNION OF NORTH AMERICA

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May 21, 2009

Alfred M. Pollard, General Counsel
Attention: Comments
RIN 2590–AA25,
Federal Housing Finance Agency,
Fourth Floor, 1700 G Street, NW
Washington, DC 20552.

Via email to RegComments@FHFA.gov

Re: RIN 2590-AA25, 2009 Enterprise Transition Affordable Housing Goals

Thank you for the opportunity to share our opinion with the Federal Housing Finance Agency (FHFA) regarding FHFA's proposed rule adjusting the 2009 Enterprise goals.

We appreciate that FHFA is crafting guidelines to ensure that the Enterprises are not purchasing loans that are contrary to good lending practices, and that mortgages with unacceptable terms and conditions are not counted towards the Enterprises' goals.

However, the proposed rules allow the Enterprises to continue to purchase a large group of mortgages that are contrary to good lending practices and contain unacceptable terms and conditions -- mortgages originated by the affiliated lender of homebuilders.

There is a fundamental conflict of interest in homebuilders originating their home buyers' mortgage. Builders have an incentive to sell their inventory at the highest possible price, and their in-house mortgage units provide the financing to make it possible. There is evidence that during the height of the housing boom in 2005 and 2006 builders were only able to sell homes at such inflated prices because of the collaboration with their mortgage subsidiaries and affiliated appraisal companies.

Steering

Most large builders have their own mortgage subsidiaries which provide the financing for the vast majority of their homebuyers. Builders steer homebuyers to their in-house mortgage units in order to control the buying process and ensure that they are able to sell their homes at a higher price than might be the case if there were the involvement of third party lenders.

The chart below shows the percentage of a builder's customers who used the builder's affiliated mortgage lender to purchase their home. The industry collectively refers to this as a "capture" rate, reflecting how they view the process.

Homebuilder Mortgage Capture Rate 2006

Builder	2006 Capture Rate
D.R. Horton[1]	68%
KB/ Countrywide KB[2]	57%
Lennar[3]	66%
Pulte[4]	91%

Homebuilders "capture" their customers by simultaneously enticing and frightening them into using the affiliated mortgage lender. The Enterprises should not purchase loans that have been "captured" through these abusive and predatory practices.

Builders offer incentives, such as paying a buyer's closing costs, which are only available to homebuyers who use the builders' affiliated mortgage lender. Homebuyers automatically assume that this savings on closing costs is the best deal available, which deters comparison shopping with other mortgage companies that might be able to offer a better rate or type of loan.

However, we have seen a number of transactions in which the builder offered to pay a large amount of money, such as $20,000 to $25,000, and then in order to make it seem as if the builder were actually paying that amount, the bulk of the money went towards discount points to give the buyer a lower rate. However, the buyer did not actually get a lower rate than they would have otherwise.

Teresa Sandoval bought a home from Lennar in Indio, CA in October 2006. She received financing through Lennar's lending subsidiary Universal American Mortgage and Lennar paid $15,000 for closing costs. The bulk of this went for discount points paid to Universal American -- $7,486 on the first mortgage and $1,660 on the second mortgage. However, it is difficult to see what discount Ms. Sandoval received. At the time of her loan, the average rate on a 30 year fixed rate mortgage was 6.4%, and Ms. Sandoval's rate was 6.75% on the first and 12.125% on the second.

Jesus Beltran purchased a home from KB in Coachella, CA in May 2007 with financing from Countrywide KB Home Loans. KB paid $10,000 for his closing costs, all of it went towards paying the $12,698 of discount points on the first and second mortgage.

It is unclear how much of a discount Mr. Beltran actually got for the 3.75 points on his first mortgage. At the time of his loan the average rate for a fixed 30 year mortgage according to Freddie Mac was 6.18%. Mr. Beltran received an adjustable rate loan with a prepayment penalty that started at 5.5% but could go as high a 10.5% and had an APR of 6.88%.

It does not appear that Countrywide KB informed Mr. Beltran of how much the discount points would be until very late in the process. Although the discount points are disclosed on the Good Faith Estimate which is dated two weeks before the closing, a document titled "Closing Cost Estimate" and dated three months before closing shows the closing costs and prepaids totaling less than $5,000, which were all the fees except the discount points which are not disclosed at all on this form.

Builders have not been content to just use incentives to steer buyers to their affiliated mortgage companies. Builders have resorted to what can only be termed "scare tactics" – frightening buyers with the dangers of using an outside lender and the financial harm that can result to the buyer.

These scare tactics are evident in the purchase agreements of several of the largest home builders.

DR Horton **(Exhibit A)**

Buyer must apply for financing through DR Horton's affiliated mortgage lender, DHI Mortgage within five days after entering into a purchase agreement. The buyer may apply to another lender in addition to, but not instead of, DHI Mortgage.

The buyer is considered in default of the purchase contract if the buyer uses an outside lender and is not able to close by the closing date. If the outside lender is not able to close by the DR Horton set closing date, DR Horton has the right to cancel the purchase agreement and keep the buyer's deposit, which is often $5,000 or more. DR Horton may, in its sole discretion, choose to extend the closing date and charge the buyer $300 per day until closing.

KB Home **(Exhibit B)**

The "financing agreement" that is part of the KB Home purchase agreement states that KB will not accept any government finance programs such as FHA, VA, or state programs from an outside lender.

The "financing agreement" imposes several penalties on buyers if they use an outside lender and the outside lender doesn't meet KB's timeline for closing. There is a $500 late charge if the loan documents are not at the title company 14 days before closing and there is a penalty of $300 per day if the deal does not close by the KB's estimated closing date.

Lennar Homes **(Exhibit C)**

Home buyers must apply for financing with Lennar's affiliated mortgage lender, Universal American Mortgage Corporation within five days of entering into a purchase agreement. The buyer may apply to another lender in addition, but not instead of applying through Universal American.

If the buyer decides to finance the purchase through an outside lender and does not close by the closing date, Lennar may cancel the purchase contract and keep the buyer's deposit.

Pulte Homes (**Exhibit D**)

The attached Pulte purchase agreement requires not only that the buyer apply for financing through Pulte Mortgage but also the specific type of mortgage the buyer has to apply for – a five year interest only loan.

The contract states that Pulte will reduce the required deposit to $25,000 if the buyer finances through Pulte Mortgage, but if the buyer chooses "to finance through any other mortgage company, the earnest deposit will be $50,000 and will be nonrefundable even if you fail to secure financing."

The purchase agreements and process used by the builders seem designed to limit the choices of their homebuyers. There are many cases in which homebuyers are steered to the builder's own mortgage company and offered incentives or discounts, but are actually charged higher rates or fees.

This can be seen in the example below of what happened to one homebuyer, who reported that the builder steered him away from a much better mortgage product towards a more costly product.

Troy Monson is in the Air Force. When he and his wife Jennifer went to purchase their home from Lennar in Arizona, they wanted to use his VA certificate. However, the Lennar salesperson convinced them to get a loan through Lennar's mortgage company instead.

The salesperson lied and told the Monsons that they could only use their VA certificate one time and that they should save it for the future. The salesperson also said that if they got financing through Lennar's mortgage company, Universal Mortgage, that Lennar would pay the closing costs.

With a VA loan the borrower can get 100% financing. The Monsons had excellent credit and should have qualified for the market rate, which at the time they got their loans in July 2006 was under 6%. Instead, Universal gave them a first mortgage for $169,000, which is an interest-only ARM that starts at 7.25% and can go as high as 12.25%, and a second mortgage for $42,400 with a variable rate that started at 8.625%.

Appraisal Fraud

The following is an example of the steps an homebuilder affiliated lender is willing to take in order to close a sale, as compared to an outside lender.

Nathan Johnson sought to purchase a home from KB Home for $394,000. He tried to get a mortgagee through the Navy Federal Credit Union. However the Navy Federal appraiser valued the home at just $351,000. The Navy Federal appraiser refused to use two of the sales that KB had submitted as comparables because the properties had a gross living area more than twenty percent higher than the subject property. The appraiser noted that

> *"[T]he inclusion of either or both of these sales . . . would be inappropriate and may give the impression that the appraisal's purpose was to target a predetermined value range."* (The appraisal is attached as **Exhibit E**)

Rather than lower the price, KB Home had Countrywide do its own appraisal which found that the house was worth $394,000, and Countrywide KB made a first and second mortgage for the full amount. (The Countrywide appraisal is attached as **Exhibit F**)

Mr. Johnson and his wife had just relocated from California and were expecting a baby soon and so felt they had to go ahead with the purchase. Now the couple owes significantly more than their home is worth. Maricopa County recently lowered the home's assessed value from $269,000 to $187,200.

We have had an appraiser review several of the appraisals that were done by KB Home's affiliated lender Countrywide KB on homes that were being sold by KB, and the reviews found a number of irregularities. The independent appraiser's review shows that the KB affiliated appraisers overlooked sales that were more similar in size and closer geographically in favor of sales of homes of dissimilar sizes that were much farther away (10 miles in one case). (Several of these reviews are included as **Exhibit E**)

We believe that through their loan originations, homebuilders played a large role in creating the current housing crisis. If builders' sales and lending practices continue unabated, it will lead to more problems in the future for individual homeowners, entire communities, and the Enterprises.

Thank you again for the opportunity to comment on this important matter. Please contact us if you have any questions regarding this letter.

Sincerely,

Terence M. O'Sullivan

TERENCE M. O'SULLIVAN
General President

Endnotes

[1] D.R. Horton, Fourth Quarter Earnings Call, November 14, 2006
[2] KB Home 2007 10-K, February 13, 2007. KB's lower capture rate than the other builders may be due to their mortgage operation being a joint venture with Countrywide and not a wholly owned subsidiary of the company.
[3] Lennar 2007 Annual Report
[4] Pulte 2007 10-K, February 25, 2008