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October 14, 2009

Mr. Alfred M. Pollard  
General Counsel  
Federal Housing Finance Agency  
Fourth Floor  
1700 G Street, NW, 4<sup>th</sup> Floor  
Washington, DC 20552

Attention: Comments/HERA Section 1217 Study

Dear Mr. Pollard:

The American Bankers Association (“ABA”) is pleased to submit comments on the study and request for comment included in Section 1217 of the Housing and Economic Recovery Act of 2008 (“HERA”). The American Bankers Association brings together banks of all sizes and charters into one association. ABA works to enhance the competitiveness of the nation's banking industry and strengthen America's economy and communities. Its members – the majority of which are banks with less than \$125 million in assets – represent over 95 percent of the industry's \$13.3 trillion in assets and employ over 2 million men and women.

In its request for comments, the FHFA poses five questions which we address in detail below.

- I. Should FHFA replace its existing guidance on nontraditional, subprime or anti-predatory lending with a formal regulatory standard?

The ABA does not believe that a formal regulatory standard from FHFA is necessary at this time. Regulations prohibiting predatory lending are properly the purview of the primary financial institution regulatory agencies. Guidance issued by the FHFA is an important element in ensuring that loans with predatory characteristics are not accepted as collateral by the Federal Home Loan Banks, but the main avenue to prevent predatory loans is to ensure that they are not made at all. The guidance issued by the FHFA, relying upon compliance by FHLBank members with guidance and regulation from the primary regulatory agencies, is the least burdensome, most efficient method for ensuring that the Banks do not accept collateral with predatory characteristics.

The primary regulators have taken dramatic actions in recent years to further prevent any predatory practices. Changes to Reg. Z (Truth in Lending) have just taken effect, with additional changes proposed for next year. HUD has a significant revision to the Real Estate Settlement Procedures Act (RESPA) pending. The SAFE Mortgage Registration and Licensing Act is in the process of being implemented. All of these changes, as well as potential significant statutory changes being considered

by Congress, are already having dramatic impacts on the mortgage and broader lending markets.

Fortunately, predatory loans (and the less regulated, poorly capitalized originators commonly associated with such loans) have largely been eliminated. Less fortunately, credit markets continue to tighten for many borrowers, as legitimate lenders struggle to comply with the many new regulatory requirements and liabilities. Adding yet another layer of regulatory burden in the form of an FHFA regulation would be counterproductive. The existing guidance, ensuring the collateral accepted by the FHLBanks is consistent with standards developed by the primary regulatory agencies, is both efficient and sufficient. We would, however, recommend that if changes to the guidance are considered, that FHFA issue proposed guidance for notice and comment.

II. Does any guidance contained in Advisory Bulletins 2005-AB-08, 2007-AB-01, and 2008-AB-02 need additional emphasis or clarification?

ABA is concerned that in Section V of the HERA study, the FHFA announced its intent to “clarify” the restrictions on acceptance of Private Label Mortgage Backed Securities (PLMBS) that are presented in its **Advisory Bulletin 2008-AB-02** (“2008-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 concern with this clarification is that it may cause an outcome that is unwarranted and counter to the best interests of the FHLBanks, their members and the customers they serve. We recognize and agree with the intent of the Advisory, to restrict the funding of predatory loans by restricting their purchase (either as whole loans or as part of MBS). However, the “clarification” announced in the study would cause performing PLMBS held by one FHLBank or member to be ineligible for sale to another FHLBank or member if the original purchase was made after July 10, 2007. Such clarification unfairly penalizes a FHLBank or member institution, who purchased such PLMBS in good faith believing it to be in compliance with the FHFA guidance, by making that PLMBS illiquid. Further, we believe that this clarification does nothing to curb predatory lending. Although the objective may be to deter institutions from trading in and profiting from such securities by reducing their liquidity (*i.e.*, by restricting their contribution to an institution’s advance availability after a date certain), we believe the market is addressing this issue and that loans made to borrowers that, for instance, cannot make payments at the fully indexed rate, have had their values significantly deteriorate due to elevated delinquency and loss rates. There is no public benefit to arbitrarily reducing the liquidity of otherwise performing assets. Instead, we urge the FHFA to consider a clarification which prohibits the purchase of such PLMBS on a prospective basis.

III. Should FHFA explicitly address other mortgage loan features as a control against predatory lending?

As we indicated in our answer to question I., ABA believes that the proper regulation prohibiting predatory lending practices is best housed at the primary financial institution regulatory agencies. Therefore we do not believe that FHFA should attempt to regulate specific loan features.

- IV. Should FHFA seek any additional statutory authority to support its ability to prohibit an FHLBank from accepting loans with predatory characteristics as collateral for advances?

We do not believe that any additional statutory authority is needed at present. However, we do note that significant changes are being considered by Congress with regard to the regulatory structure of virtually the entire financial industry. As legislation moves forward this question should be readdressed.

- V. Should FHFA be formally and directly involved when federal financial institution regulatory agencies look to modify or enhance guidance with respect to nontraditional or subprime mortgage products?

As indicated above, we believe that the proper venue for regulation of nontraditional and subprime lending is with the primary financial institution regulators. We do, however, believe that it is important that coordination exist between the primary regulators and the regulators of the secondary market, specifically including the FHFA. Therefore, ABA supports a consultative role for the FHFA on such regulation to ensure that unintended consequences are avoided and that regulations can be carried out in the most efficient, least burdensome fashion.

## **Conclusion**

We appreciate this opportunity to comment on the collateral study and recommendations. Should you have any questions, or wish to discuss any of our comments in greater detail, please do not hesitate to contact the undersigned, or ABA Vice President and Sr. Counsel, Joseph Pigg at 202-663-5480 or [JPigg@aba.com](mailto:JPigg@aba.com). Thank you.

Sincerely,



Robert R. Davis