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September 25, 2009

Alfred M. Pollard, General Counsel
Federal Housing Finance Agency
RegComments@fhfa.gov

Subject: HERA Section 1217 Study

Dear Mr. Pollard:

On behalf of Independent Bank, Ionia, Michigan, I would like to thank the Federal Housing Finance Agency, the regulator of the Federal Home Loan Banks, for the opportunity to comment on the HERA Section 1217 Study. I have a few concerns about the restrictions being placed on an FHLBank's ability to accept private-label mortgage-backed securities (PLMBS) and certain acquired whole loans as collateral for advances.

In Section V of the HERA study presented to Congress at the end of July 2009, the FHFA announced its intent to "clarify" the restrictions on acceptance of PLMBS that are presented in its **Advisory Bulletin 2008-AB-02** ("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." (emphasis supplied)

My concerns include the following.

- For securities issued or purchased after July 10, 2007, to be eligible as FHLBank collateral, the issuer of the security must provide representations and warranties that the underlying loans are in compliance with regulatory guidance on subprime and nontraditional mortgage lending. However, because of the liability involved, issuers will not provide such representations or warranties. Therefore, PLMBS will be increasingly eliminated as a form of eligible collateral.
- The prospectus for these investments describes the underwriting guidelines used to originate the loans in the securitization transaction. Furthermore, the transaction documents already contain representations and warranties that the loans were made in compliance with all applicable local, state and federal laws and regulations in all material respects.



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- By using the purchase date instead of the issue date, the market for sale of whole loans and the securitization of residential loan assets will be constrained, which will adversely impact the availability of credit to purchase homes. It will further freeze access to residential credit, which is contrary to current administration and congressional objectives.
- Additionally, using the purchase date adversely and unfairly impacts loans and investors by applying an impossible, retroactive standard. It will effectively ensure the PLMBS market remains illiquid as FHLBank members will effectively be locked out of participating as investors. For investors currently holding PLMBS, the "purchase date" requirement may increase the liquidity premium on such securities and drive down their market price, creating increased losses for investors holding such securities as available-for-sale.
- The possibility of re-securitizations is eliminated. Securities issued prior to July 10, 2007, cannot, by definition, comply with future guidance. Re-securitizations are important to the recovery of the housing markets.
- The original regulatory guidance clearly refers to the "issue date." Substituting "purchase date" is a new requirement, and, as such, if implemented should be done by the regulatory process with public notice and opportunity for comment.

In summary, I believe that any FHLBank collateral requirement should not be implemented retroactively; thus PLMBS issued prior to July 10, 2007, should remain eligible as FHLBank collateral regardless of purchase date. My institution certainly supports responsible underwriting of subprime and nontraditional mortgage lending and appropriate borrower disclosures; however, I do not believe the FHFA intended clarification achieves this goal.

I appreciate your consideration of my comment.

Dean M. Morse
Finance Officer