



"We Create Lending Solutions"®

October 1, 2009

Alfred M. Pollard, General Counsel  
Federal Housing Finance Agency  
Fourth Floor, 1700 G Street N.W.  
Washington, DC 20552

Attention: Comments/HERA Section 1217 Study, FHFA

Dear Mr. Pollard:

As a member of the FHLB system, Sterling Bank & Trust, FSB would like to take this opportunity to provide comments on the HERA Section 1217 Study. Specifically, we would like to comment on 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, 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."

Sterling Bank & Trust, like many of our peers, provided liquidity into the PLMBS market by purchasing seasoned, AAA rated PLMBS securities at a time when many holders of these securities were forced sellers because of FASB rules or other regulatory reasons. Sterling relies on the collateral value available through pledging its PLMBS with the FHLB.

The opportunity presented itself because there were many more sellers than buyers of PLMBS, and market prices of the securities became disproportionate to risk of holding the securities. The impact of these disproportionate prices contributed to the collapse of the housing market by freezing access to residential credit, widening spreads, and halting new securitizations. To facilitate recovery of the housing market, the administration came up with several government programs created to return liquidity to the credit markets. Over time the prices of highly rated, seasoned PLMBS have rebounded

considerably, evidencing that the markets are well on their way to recovery. We believe changing the interpretation of AB-02, as described above, would be contrary to the recovery efforts, by again creating a situation of forced selling, and add to the time it will take for the credit markets to fully recover.

Other comments as they pertain to the Sterling Bank & Trust and other FHLB member banks are outlined below.

**(1) The retroactive requirement to provide representation and warranties on loans originated prior to the effective date of the original guidance placed on the issuer of the security will likely be declined** - The specific requirement contained in AB-02 states that for securities issued after July 10, 2007 (the "trigger date") to be eligible as collateral, issuers must provide representations and warranties that the underlying loans are in compliance with interagency regulatory guidance on sub-prime and nontraditional mortgage lending. As we understand, due to the liability involved no issuer of a security will provide such a representation or warranty. Including this requirement will thus effectively eliminate PLMBS as a form of eligible collateral.

**(2) The requirement is unfairly placed on loans that were not subject to regulatory guidance** – Pools of loans backing PLMBS which are simply purchased after the trigger date will in many cases contain loans that were originated exclusively before the issuance of the Interagency Guidance. The reasons why the eligibility of such securities should be restricted are unclear.

**(3) This mandate is contrary to efforts by the current administration to improve liquidity in the credit markets for loan securitizations, and objectives regarding the availability of credit** – This requirement will constrain the market for sale of whole loans and the securitization of residential loan assets, which in turn will have an adverse impact on the availability of credit to purchase homes. This is due to the impact on (i) loan sales and securitization and (ii) the availability of advances to support residential lending by the FHLBanks themselves. Consequently, on the margin this will have an adverse impact both on individuals seeking a loan and on the economy.

Furthermore, the "purchase date" requirement will effectively ensure this market remains illiquid as FHLB members will effectively be locked out of participating as an investor. For investors currently holding PLMBS, the "purchase date" requirement may increase the liquidity premium on such securities and drive down prices, creating more loss for investors holding such securities as available-for-sale.

**(4) The implementation process should be subject to further review by the FHFA** – The HERA study presents the "purchase date" requirement as a "clarification," whereby AB-02 *clearly referred to the issue date*. The substitution of "purchase date" for "issue date" is a new requirement. As such, formal guidance should be issued (in the form of a new advisory bulletin or otherwise) to state this requirement. Only securities issued after July 10, 2007 and purchased after the date of any new guidance, in whatever form it takes, should be subject to the representation and warranty requirement. Failing to adjust

the implementation date of any requirement runs contrary to language contained elsewhere in the HERA study.

We appreciate the opportunity to provide input on this issue. We support the effort to improve the quality of residential loan underwriting and the underlying premise behind interagency regulatory guidance to prevent the negative impact on both borrowers and lenders of poor policies, procedures, and practices as they relate to sub-prime and nontraditional mortgage lending. As noted above, we believe the restrictions on accepting privately issued securities--based simply on their purchase date--adversely and unfairly impacts loans and investors by applying an impossible standard -- compliance with future interagency guidance, serves to further freeze access to residential credit in a time that calls for increasing access to credit, and serves to unfairly subject different institutions owning the same or similar assets to different eligibility requirements. For these reasons, interagency guidance compliance requirements should be restricted to the primary focus of that guidance, the proper underwriting of whole loans made *after* the issuance of the guidance. Any requirements should not be implemented retroactively; thus private label mortgage backed securities issued prior to July 10, 2007 should remain eligible as FHLB collateral.

Sincerely,

Sterling Bank & Trust

A handwritten signature in blue ink, appearing to read "Kevin Kistulnetz", is written over a light blue rectangular background.

Kevin Kistulnetz  
Asset Liability Manager