

the referral will be provided to respondents in the same manner as an internal referral. However, where immediate notification to a respondent of an external referral is deemed inappropriate, OGC will notify the Commission of the referral within 5 days of receipt of the referral from the governmental agency. In cases where, due to law enforcement purposes, the referral document may not be provided to a respondent, OGC will provide the respondent with a letter containing sufficient information regarding the facts and allegations to afford the respondent an opportunity to demonstrate that no action should be taken. Absent exercise of the Commission's discretion (by the affirmative vote of four Commissioners), OGC will not proceed with an enforcement proceeding based on an external referral until the referral or substitute informational letter is provided to the respondent.

III. Conclusion

This notice establishes agency practices or procedures. This notice does not constitute an agency regulation requiring notice of proposed rulemaking, opportunities for public participation, prior publication, and delay effective under 5 U.S.C. 553 of the Administrative Procedures Act ("APA"). The provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), which apply when notice and comment are required by the APA or another statute, are not applicable. The above provides general guidance concerning notice to respondents in non-complaint generated matters and announces the general course of action that the Commission intends to follow. This notice sets forth the Commission's intentions concerning the exercise of its discretion in its enforcement program. However, the Commission retains that discretion and will exercise it as appropriate with respect to the facts and circumstances of each matter it considers. Consequently, this notice does not bind the Commission or any member of the general public.

On behalf of the Commission.

Dated: July 29, 2009.

Steven T. Walther,

Chairman, Federal Election Commission.

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BILLING CODE 6715-01-P

FEDERAL HOUSING FINANCE AGENCY

[No. 2009-N-10]

Federal Home Loan Bank Collateral for Advances and Interagency Guidance on Nontraditional Mortgage Products

AGENCY: Federal Housing Finance Agency.

ACTION: Notice of study and recommendations and request for comment.

SUMMARY: Section 1217 of the Housing and Economic Recovery Act of 2008 (HERA) requires the Director of the Federal Housing Finance Agency (FHFA) to conduct a study on the extent to which loans and securities used as collateral to support Federal Home Loan Bank (FHLBank) advances are consistent with the interagency guidance on nontraditional mortgage products. The study must be submitted to the Committee on Banking, Housing and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives no later than July 30, 2009, one year after the date of the HERA enactment. Further, the study (the HERA Section 1217 Study) must consider and recommend any additional regulations, guidance, advisory bulletins, or other administrative actions necessary to ensure that the FHLBanks are not supporting loans with predatory characteristics. Section 1217 of HERA also requires that the public have an opportunity to comment on any recommendations made as a result of the study. This Federal Register Notice is intended to inform the public about the HERA Section 1217 Study and provide the public with the requisite opportunity to comment.

DATES: Comments must be received on or before October 2, 2009.

ADDRESSES: You may submit your comments on the HERA Section 1217 Study, identified by a subject line of "HERA Section 1217 Study," by any of the following methods:

- *U.S. Mail, United Parcel Post, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/HERA Section 1217 Study, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.

- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/HERA Section 1217 Study, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at

the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

- *E-mail:* Comments to Alfred M. Pollard, General Counsel, may be sent by e-mail at RegComments@fhfa.gov. Please include "HERA Section 1217 Study" in the subject line of the message.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by e-mail to FHFA at RegComments@fhfa.gov to ensure timely receipt by the agency. Please include "HERA Section 1217 Study" in the subject line of the message.

FOR FURTHER INFORMATION CONTACT:

Louis M. Scalza, Associate Director, (202) 408-2953 or Linda L. Campbell, Senior Bank Examiner, (202) 408-2586, Division of Federal Home Loan Bank Regulation; or Neil R. Crowley, Deputy General Counsel, Office of General Counsel, (202) 343-1316, Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006. The telephone number for the Telecommunications Device for the Deaf is (800) 877-8339.

SUPPLEMENTARY INFORMATION: Section I of this Notice provides background on FHFA, the FHLBank System, and the collateral securing FHLBank advances. Section II summarizes the provisions of the interagency guidance and three Federal Housing Finance Board (FHFB) advisory bulletins relating to nontraditional, subprime, and anti-predatory lending. Section III describes the resources used to complete the HERA Section 1217 Study, including a collateral data survey that FHFA conducts annually, in-depth secured credit reviews performed during recent examinations, and a specific questionnaire related to the HERA Section 1217 issues that FHFA sent to the FHLBanks. Sections IV and V of this report present FHFA's analysis and conclusions from the HERA Section 1217 Study and Section VI requests comments on specific related questions.

The HERA Section 1217 Study reports that FHLBanks' reliance on collateral described as nontraditional, subprime or Alt-A declined during 2008, accounting for about one-fifth of collateral securing advances as of December 31, 2008. Some portion of this collateral predates the issuance of the interagency guidance, but the FHLBanks need to manage and mitigate the risks associated with all of the collateral supporting advances.

FHFA, through advisory bulletins issued by the prior regulator of the

FHLBanks, the FHFB, has issued explicit written guidance to the FHLBanks on anti-predatory, nontraditional, and subprime lending. The FHLBanks have adopted policies which address nontraditional and subprime collateral, although in-depth secured credit reviews found some weaknesses in those policies and practices. The FHLBanks' responses to an FHFA questionnaire indicate that they have adopted policies, procedures and practices that would require that loans and MBS used as collateral to support advances be consistent with the interagency guidance. FHFA will continue to assess the adequacy of the FHLBank's policies and procedures and monitor the FHLBank's remediation efforts. FHFA determines the appropriateness of issuing additional guidance based on examination results and its assessment of legislative developments.

I. Background

A. Federal Housing Finance Agency

Effective July 30, 2008, HERA, Public Law 110–289, 122 Stat. 2654 (2008), transferred the supervisory and oversight responsibilities of the Office of Federal Housing Enterprise Oversight (OFHEO) over the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, Enterprises), and the oversight responsibilities of the FHFB over the FHLBanks and the Office of Finance (which acts as the FHLBanks' fiscal agent) to FHFA, a new independent agency of the Federal Government. FHFA is responsible for ensuring that the Enterprises and the FHLBanks operate in a safe and sound manner, maintain adequate capital and internal controls, foster liquid, efficient, competitive and resilient national housing finance markets, and carry out their public policy missions through authorized activities. See § 1102, Public Law 110–289, 122 Stat. 2663–64. The Enterprises and the FHLBanks continue to operate under regulations promulgated by OFHEO and the FHFB until FHFA issues its own regulations. See *id.* at §§ 1302, 1312, 122 Stat. 2795, 2798. The Division of Federal Home Loan Bank Regulation is the principal organizational unit within FHFA responsible for supervision of the FHLBanks.

B. The FHLBank System

The twelve FHLBanks are instrumentalities of the United States organized under the Federal Home Loan Bank Act (Bank Act). See 12 U.S.C.

1423, 1432(a). The FHLBanks are cooperatives; only members of an FHLBank may own the capital stock of an FHLBank and only members or certain eligible housing associates (such as state housing finance agencies) may obtain access to the products provided by an FHLBank. See 12 U.S.C. 1426, 1430(a), 1430b. Each FHLBank is managed by its own board of directors and serves the public by enhancing the availability of residential mortgage and community lending credit through its member institutions. See 12 U.S.C. 1427. Any eligible institution (principally, federally-insured depository institutions or state-regulated insurance companies) may become a member of an FHLBank by satisfying certain criteria and by purchasing a specified amount of the FHLBank's capital stock. See 12 U.S.C. 1424, 1426; 12 CFR part 931.

As government sponsored enterprises (GSEs), the FHLBanks are normally able to borrow funds in the capital markets on terms more favorable than could be obtained by most private entities. Until recently, the FHLBank System could borrow funds at a modest spread over the rates on U.S. Treasury securities of comparable maturity, across a wide range of maturities. In 2008, market conditions contributed to substantially wider spreads between FHLBank consolidated obligations and U.S. Treasuries, particularly at longer maturities. Although the wider spreads may have contributed to a decline in advances that began in the fourth quarter of 2008, the FHLBanks continue to serve as a source of liquidity to their members.

The FHLBanks pass along their GSE funding advantage to their members—and ultimately to consumers—by providing advances (secured loans) and other financial services at rates that would not otherwise be available to their members. Some of the FHLBanks also have Acquired Member Asset (AMA) programs whereby they acquire fixed-rate, single-family mortgage loans from participating member institutions.

The FHLBanks raise funds in the capital markets by issuing consolidated obligations consisting of bonds and discount notes. Consolidated obligations are issued by the Office of Finance on behalf of the twelve FHLBanks and are the principal source of funding not only for FHLBank advances, but also for AMA programs, and investments. Although an FHLBank is primarily liable for the portion of the consolidated obligations corresponding to the proceeds received by that FHLBank, each FHLBank is also jointly and severally liable with the other eleven

FHLBanks for the payment of principal of, and interest on, all consolidated obligations. See 12 U.S.C. 1431; 12 CFR 966.9.

C. Collateral Securing FHLBank Advances

The United States Government established the Federal Home Loan Bank System in 1932 to stimulate mortgage finance by providing liquidity from the FHLBanks to its member financial institutions. Members, generally financial institutions, increase liquidity by obtaining advances from the FHLBanks. Those advances are secured by eligible collateral, typically government securities, residential mortgages, or other real estate related collateral (e.g., commercial real estate loans, home equity lines of credit and second mortgage loans). Total advances at the end of June 2009 were \$721 billion, down from a peak exceeding \$1 trillion in October 2008.

All advances are collateralized, which protects the FHLBank should the member default. The FHLBanks secure member advances in several ways: a blanket lien on all or specific categories of a member's assets, a lien on specific member assets for which the member provides a listing of collateral characteristics to the FHLBank, a lien on assets that a member delivers to the FHLBank, or some combination thereof. The level of collateralization depends on the level of risk associated with the collateral. To date, the FHLBanks have never incurred a credit loss on an advance.

A member may pledge only the following types of collateral for an advance: (a) Fully disbursed, whole first mortgages on improved residential property not more than 90 days delinquent; (b) securities issued, insured, or guaranteed by the U.S. Government or any agency thereof; (c) cash or deposits of an FHLBank; (d) other real estate related collateral acceptable to the FHLBank, provided the value of such collateral is readily ascertainable and the FHLBank can perfect its interest in the collateral; and (e) for institutions that qualify as "community financial institutions" (CFIs), secured loans for small business, agriculture, or community development activities, or securities representing a whole interest in such secured loans. See 12 U.S.C. 1430(a)(3) as amended. Whole first mortgage loans on residential real property represent the largest source of member-provided collateral to the System. As of December 31, 2008, whole residential mortgage loans pledged as collateral for advances

were \$859 billion or 59.7 percent of the total collateral securing advances.

II. HERA Section 1217 Study Regulatory Guidance

HERA Section 1217, which mandated this study, specifically refers to interagency guidance on nontraditional mortgage products. This section provides a summary of the interagency guidance on nontraditional mortgage products along with the related statement on subprime residential mortgage lending. It then summarizes the advisory bulletins issued by the FHFB to apply the principles of the interagency guidance to the supervision of the FHLBanks, as well as an advisory bulletin on anti-predatory lending.¹

A. Interagency Guidance

The term “interagency guidance” is not specifically defined in the HERA legislation. For purposes of this report, FHFA uses the term “interagency guidance” to mean the guidance issued jointly by five federal financial institution regulatory agencies—the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration—concerning nontraditional mortgage products and subprime lending.² The principal interagency guidance on nontraditional and subprime residential mortgage loans can be summarized as follows.

Interagency Guidance on Nontraditional Mortgage Product Risks (2006)

The federal financial institution regulatory agencies issued the *Interagency Guidance on Nontraditional Mortgage Product Risks* on October 4, 2006. This notice instructs financial institutions on how to offer nontraditional mortgage products in a safe and sound manner and in a way that clearly discloses the benefits and risks to borrowers. The guidance focuses on nontraditional residential mortgage products that permit borrowers to defer payment of principal or interest, including interest-only residential

mortgage loans, payment option adjustable-rate residential mortgage loans, and negative amortization residential mortgage loans. It also covers other higher-risk practices often associated with nontraditional residential mortgage loans, such as simultaneous second-lien residential mortgage loans, variable interest rates with below-market introductory rates, and the use of reduced documentation in the evaluation of an applicant's creditworthiness. The guidance establishes that financial institutions should recognize and mitigate the risks inherent in these products by ensuring that loan terms and underwriting standards are clearly disclosed and consistent with prudent lending practices, including credible consideration of a borrower's repayment capacity.

Statement on Subprime Mortgage Lending (2007)

The federal financial institution regulatory agencies subsequently issued the *Statement on Subprime Mortgage Lending* on July 10, 2007. The Statement addresses issues relating to certain adjustable-rate mortgage products that can cause the borrower's monthly payment to increase significantly and potentially become unaffordable. The Statement establishes prudent safety and soundness and consumer protection standards that should be followed to ensure that consumers, especially subprime borrowers, obtain loans they can afford to repay and receive information that adequately describes product features. These standards include qualifying the borrower using a fully-indexed interest rate (*i.e.*, the interest rate after any lower, introductory interest rate in the early period of a loan) and a fully-amortizing repayment schedule. The standards also convey the regulators' expectation that stated income and reduced documentation should be accepted by the lender only if there are documented mitigating factors that clearly minimize the need for verification of a borrower's repayment capacity. The Statement reiterates that institutions should develop strong control systems to monitor compliance with risk management and consumer protection policies and practices, including clear disclosures to customers and limits on prepayment penalties.

B. FHFB Guidance

FHFA—like its predecessor agencies the Federal Housing Finance Board and the Office of Federal Housing Enterprise Oversight—is mindful of the potential risk to the FHLBanks and the impact on

the public if the FHLBanks were to provide liquidity to support predatory loans or inappropriately underwritten nontraditional and subprime residential mortgage loans. Accepting such loans as collateral for advances could pose a safety and soundness risk to the FHLBanks and would also be inconsistent with the overarching housing finance mission of the FHLBanks.

As a result of concerns about predatory lending, in 2005 the former FHFB issued an advisory bulletin to the FHLBanks requiring each FHLBank to establish and communicate to its member institutions its anti-predatory lending policies. The FHLBanks were required to establish those policies to avoid accepting loans with predatory characteristics as collateral for advances. In 2007 and 2008, the FHFB also issued advisory bulletins on nontraditional and subprime residential mortgage loans as a complement to the interagency guidance. The FHFB guidance established that any nontraditional or subprime mortgage loans originated or acquired by the member after July 10, 2007 could serve as eligible collateral only if those loans were underwritten consistent with the interagency guidance. The 2007 and 2008 guidance expanded the reach of the interagency guidance by establishing that the standards in the interagency guidance would apply not just to loans purchased by the FHLBanks, but also to whole loans collateralizing advances and to loans underlying MBS that serve as collateral for advances or that the FHLBanks purchase as investment securities. Further, the FHFB instructed the FHLBanks to apply the interagency standards to loans and MBS accepted as collateral from FHLBank member institutions that were not otherwise directly subject to the interagency guidance, *e.g.*, insurance companies. The following provides a summary of the three advisory bulletins.

Advisory Bulletin 2005–AB–08

In August of 2005, the FHFB issued Advisory Bulletin 2005–AB–08, *Guidance on FHLBank Anti-Predatory Lending Policies*. This Bulletin establishes that each FHLBank must have in place comprehensive anti-predatory lending policies to govern the purchases of residential mortgage loans and the level of advances that can be made to its members. Although the advisory bulletin acknowledged that there is no single definition of predatory lending in federal, state, and local laws and regulations, it noted that over the preceding several years, federal, state, and local jurisdictions had adopted anti-

¹ Advisory bulletins provide guidance to the FHLBanks regarding particular supervisory issues. Although an advisory bulletin does not have the force of a regulation or an order, it is integrated into the examination programs. Advisory bulletins are effective upon issuance and remain in effect until rescinded.

² Although HERA specifically refers to the interagency guidance on nontraditional mortgage products, the FHFA believes that the issue of subprime mortgage lending is closely related. Therefore, the FHFA has expanded the scope of the study to include subprime lending.

predatory lending measures to combat abusive practices in the mortgage market.

The 2005 advisory bulletin requires that the FHLBanks' policies preclude purchasing residential mortgage loans or accepting as eligible collateral for advances loans that violate applicable federal, state, or local anti-predatory lending laws. The FHLBanks' anti-predatory lending policies must also, at a minimum, address: residential mortgage loans subject to the Home Ownership and Equity Protection Act (HOEPA), prepaid single-premium credit life or similar insurance, prepayment penalties beyond the early years of the loan, and mandatory arbitration. In addition, the FHLBanks must require each member to certify that it is aware of the FHLBanks' anti-predatory lending policies and will comply with those policies in the sale of residential mortgage loans to the FHLBank or when obtaining advances from the FHLBank. Each FHLBank must also develop written procedures and standards for verifying member compliance with its anti-predatory lending mortgage purchase and advance policies, paying particular attention to any loans that are otherwise not subject to review by a federal financial institution supervisory agency. Finally, each FHLBank must have agreements in place with its members to provide for replacement or indemnity for any loan or collateral that is found to be in noncompliance with the FHLBanks' policies. See <http://www.fhfb.gov/webfiles/4201/2005-AB-08.pdf>.

Advisory Bulletin 2007-AB-01

Issued in April 2007, Advisory Bulletin 2007-AB-01, *Nontraditional and Subprime Residential Mortgage Loans*, requires the FHLBanks to implement policies and risk management practices that establish risk limits for, and mitigation of, credit exposure on nontraditional and subprime mortgage loans. The advisory

bulletin requires that an FHLBank's policies and procedures must address how the FHLBank measures, monitors and controls risks arising from exposures to nontraditional and subprime mortgage loans. The advisory bulletin further requires that an FHLBank's policies must be discussed with and approved by its board of directors and must identify the attributes of nontraditional and subprime residential mortgage loans that have the potential for increased risk. The policies should establish limits and require regular monitoring of exposure to nontraditional and subprime residential mortgage loans, including limits and acceptable adjustments to collateral coverage requirements or "haircuts." The procedures for monitoring collateral securing advances should allow an FHLBank to identify the volume of nontraditional and subprime residential mortgage loans pledged to secure advances. Finally, the collateral review procedures should also include assessments and testing of member underwriting and monitoring of nontraditional and subprime loans and address the acceptance of MBS with nontraditional and subprime collateral. See <http://www.fhfb.gov/webfiles/6372/2007-AB-01.pdf>.

Advisory Bulletin 2008-AB-02

Issued in July 2008, Advisory Bulletin 2008-AB-02, *Application of Guidance on Nontraditional and Subprime Residential Mortgage Loans to Specific FHLBank Assets*, provides written guidance regarding residential mortgage loans purchased under the FHLBank's Acquired Member Assets programs, investments in private-label MBS, and collateral securing advances. The advisory bulletin states that residential mortgage loans that were originated or acquired by the member after July 10, 2007 may be included in calculating the amount of advances that can be made to a member only if those loans were

underwritten consistent with all aspects of the interagency guidance. The guidance in the advisory bulletin applies to whole mortgage loans and to the residential mortgage loans that underlie private-label MBS used as collateral for advances.

Further, the advisory bulletin requires the FHLBanks to take the quality control steps necessary to ensure compliance with the 2006 and 2007 interagency guidance on nontraditional and subprime mortgage loans. Those quality controls include requiring the adoption of business practices including, but not limited to: conducting due diligence on the mortgages or assets it acquires or collateralizes itself, relying on an independent third party to assess compliance, or relying on certifications, representations or warranties provided by the member. The FHLBanks may rely on representations and warranties and third-party assurances only if the FHLBank has a credible plan to test and verify their dependability. See <http://www.fhfb.gov/webfiles/6906/2008-AB-02.pdf>.

Coverage and Applicability of FHFB Guidance

According to Advisory Bulletin 2008-AB-02, in order to be eligible collateral for advances, nontraditional and subprime residential mortgage loans originated or acquired by a member after July 10, 2007—and such loans backing private-label MBS issued after that date—must conform to the interagency guidance. By adopting the effective date of the interagency guidance,³ the FHFB chose not to apply the advance collateral guidance retroactively. To have done so might have reduced access to liquidity and potentially added to the financial stress of some FHLBank member institutions at a time of increasing uncertainty in financial and housing markets.

Recap of the Three FHFB Advisory Bulletins

FHFB advisory bulletins	2005-AB-08	2007-AB-01	2008-AB-02
Anti-predatory lending policies and procedures	X		
Home Ownership and Equity Protection Act	X		
Single-premium credit life or similar insurance	X		
Prepayment penalties beyond the early loan years	X		
Mandatory arbitration	X		
Nontraditional and subprime mortgage loan risk management		X	
Mitigation of nontraditional and subprime credit exposure		X	
Nontraditional and subprime collateral limitations		X	
Compliance with interagency guidance on nontraditional and subprime mortgage lending			X
Whole loans securing advances			X
MBS with underlying applicable loans securing advances			X

³ Statement on Subprime Mortgage Lending, 72 FR 37569 (July 10, 2007).

III. HERA Section 1217 Study Resources

For purposes of the HERA Section 1217 Study, FHFA primarily relied on three resources: a collateral data survey that FHFA conducts annually, in-depth secured credit reviews performed during recent examinations, and a questionnaire related to the HERA Section 1217 issues that FHFA sent to the FHLBanks. This section describes each of these information resources.

A. Collateral Data Survey

Each year FHFA surveys the FHLBanks and prepares a report on the levels and trends in collateral securing advances by type and FHLBank. The collateral data survey collects information on the minimum levels of collateral required by the FHLBanks' policies to secure outstanding advances. The survey focuses on the minimum levels of collateral required by FHLBank policies because most FHLBanks file a blanket lien on the assets of most of their borrowing members. The volume of collateral under blanket lien, however, is generally not the most meaningful indicator of collateral protection because it does not indicate the quality or liquidity of the collateral. In general, the FHLBanks that utilize a blanket lien establish a "collateral hierarchy" in which they first consider the highest quality and most liquid collateral when calculating collateral coverage before they look to other types of collateral. Thus, for the collateral data survey, the FHLBanks report the collateral that they would rely upon first to cover any repayment shortfall resulting from member default on an outstanding advance. The FHLBanks report in the collateral data survey the levels of collateral that consists of subprime and nontraditional residential mortgage loans, and Alt-A and subprime private-label MBS.⁴ The FHLBanks may use estimates for subprime and nontraditional mortgage loan amounts when the actual data are not available for all members, such as members to which an FHLBank lends by using a blanket lien on the members' assets.

B. Secured Credit Reviews

FHFA evaluates the policies, procedures and practices of each FHLBank as part of its examination and supervision program. FHFA regulates the FHLBanks and does not, in the normal course of an examination, examine the individual loans or MBS pledged by the FHLBanks' member institutions.⁵ During examinations of the FHLBanks, FHFA evaluates the FHLBanks' collateral policies, how the FHLBank manages and secures its collateral positions, and the measures the FHLBank takes to protect itself from risk. The FHLBanks are required to have appropriate controls in place to protect their financial safety and soundness, to adhere to regulatory guidance, and to carry out their housing finance mission.

In recognition of the rapid and serious deterioration in the residential mortgage market, as part of its examination process, FHFA conducted in-depth secured credit reviews in 2008–2009, which focused on the advances and collateral policies and practices of the FHLBanks. FHFA examiners commenced the in-depth reviews with FHLBank examinations opening the second quarter of 2008, prior to the passage of HERA. The review process was designed to closely evaluate whether the FHLBanks have taken appropriate steps to control and value collateral, secure advances, and plan for the potential for member failures. The review work program covered collateral risk management in seven areas: collateral control, haircut and valuation methodologies, risk limits, member failure plans, member monitoring, insurance company members, and nontraditional and subprime mortgage loan products. The last of the in-depth secured credit reviews was completed in the second quarter of 2009.

C. HERA Section 1217 Questionnaire

To complement the existing information on FHLBank collateral and in response to Section 1217 of HERA, FHFA's Division of Federal Home Loan Bank Regulation developed the HERA Section 1217 Questionnaire and delivered it to the FHLBanks in March 2009. The Section 1217 questionnaire was used to obtain consistent

information regarding the FHLBanks' policies, procedures, and practices on nontraditional and subprime residential mortgage loans acceptable as collateral for advances, either directly or through MBS that are backed by such loans. The questionnaire also requested information on anti-predatory lending policies, procedures, and practices. The questionnaire focused on whether the loans and securities used as collateral to support FHLBank advances are consistent with the requirements of the advisory bulletins and the interagency guidance on nontraditional and subprime mortgage products and anti-predatory lending. The questionnaire was also designed to complement the in-depth secured credit reviews, particularly to gauge the extent to which the FHLBanks are addressing concerns raised in the secured credit reviews regarding the acceptance of nontraditional and subprime residential mortgage loans as collateral for advances.

IV. HERA Section 1217 Study Results

This section presents an analysis of the information obtained for the HERA Section 1217 Study through the collateral data survey, the secured credit reviews, and the follow-up questionnaire to the FHLBanks. The analysis focuses on the extent to which loans and securities used as collateral supporting FHLBank advances are consistent with the interagency guidance on nontraditional and subprime mortgage products.

A. FHLBank Collateral

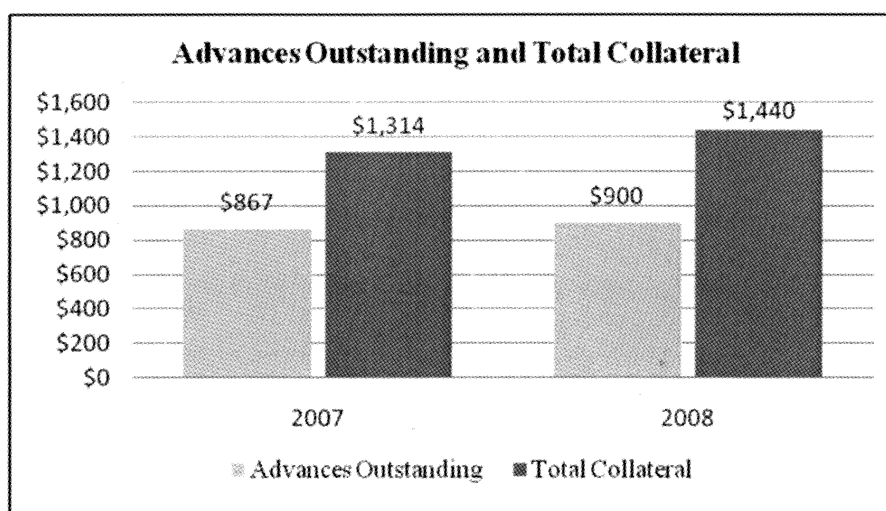
The tables below summarize information from the collateral surveys for year-ends 2007 and 2008 showing the types and amounts of collateral upon which the FHLBanks rely to secure advances. As of December 31, 2007, the par value of FHLBank advances outstanding totaled \$867 billion and the FHLBanks reported that the collateral on which they were relying to secure those advances totaled \$1.3 trillion. As of December 31, 2008, the par value of FHLBank advances outstanding increased to \$900 billion, secured by collateral totaling \$1.4 trillion.

⁴ An industry standard definition of Alt-A does not exist. Alt-A MBS have traditionally been considered to be those backed by mortgage loans to borrowers with prime credit scores but with features that included, for example, low or no borrower income or asset verification. Subprime

private-label MBS are those backed by residential mortgage loans to subprime borrowers. Since there is no industry standard for a credit score threshold under which a borrower is considered subprime, the FHLBanks may use different credit score

thresholds in reporting subprime residential mortgage loans in the survey.

⁵ The FHFA only evaluates or examines the collateral under compelling circumstances such as might be presented by large member institutions experiencing known financial stress.



From 2007 to 2008, whole loan collateral declined from \$890 billion to \$859 billion, a decrease of \$31 billion or 8 percentage points, yet whole loans

continue to comprise the majority of the collateral securing advances at the FHLBanks. During this period, MBS and other real estate related collateral grew

as a component of total collateral securing advances.

Collateral type	2007 collateral (\$ billions)	2007 (%)	2008 collateral (\$ billions)	2008 (%)
Whole Loans	\$890	67.7	\$859	59.7
Mortgage-backed Securities	195	14.8	218	15.1
Other Securities	6	0.5	17	1.2
Other Real Estate Related Collateral	213	16.2	329	22.8
Community Financial Institutions	10	0.8	17	1.2
Total Collateral	1,314	100.0	1,440	100.0

The collateral surveys for year-ends 2007 and 2008 show nontraditional and subprime residential mortgage loans declined as a proportion of the collateral on which the FHLBanks rely to secure advances. As of December 31, 2007, nontraditional and subprime residential mortgage loans represented \$410 billion or 31.2 percent of total advance collateral of \$1.3 trillion. Subprime

MBS and Alt-A MBS accounted for 3.3 percent of reported collateral. As of December 31, 2008, nontraditional and subprime residential mortgage loans represented \$267 billion or 18.5 percent of total advance collateral of \$1.4 trillion, a decline of 12.7 percentage points from 2007. Additionally, subprime MBS and Alt-A MBS represented 2.0 percent of reported

collateral, a decline of 1.3 percentage points from the previous year-end.⁶ Based on the totals reported, the FHLBanks relied on higher levels of nontraditional mortgage loan collateral than subprime mortgage loan collateral and higher levels of Alt-A MBS collateral than subprime MBS collateral.

Collateral type	2007 collateral (\$ billions)	2007 (%)	2008 collateral (\$ billions)	2008 (%)
Subprime Mortgage Loans	\$80	6.1	\$56	3.9
Nontraditional Mortgage Loans	297	22.6	186	12.9
Mortgage Loans that are both Subprime and Nontraditional	34	2.6	24	1.7
Private-label Subprime MBS	2	0.2	10	0.7
Private-label Alt-A MBS	41	3.1	19	1.3
Subtotal: Subprime/Nontraditional/Alt-A	454	34.6	295	20.5
Other Collateral	860	65.4	1,145	79.5
Total Collateral	1,314	100.0	1,440	100.0

As of December 31, 2008, collateral described as nontraditional, subprime or Alt-A accounted for about one-fifth of

the collateral securing advances at FHLBanks. This number is best understood as an approximation, given

the varying definitions of these terms in the financial industry in recent years. For example, purchasers of private-label

⁶ Percentages from the table may not sum to the exact figures reported in the text due to rounding.

MBS, including FHLBank member institutions, relied on rating agency characterization of the securities at the time of issuance. However, these designations might not capture all the variation in underlying loans within a given security nor would they reflect any subsequent deterioration in the quality of the underlying collateral.

Some portion of collateral described as nontraditional, subprime or Alt-A was originated or purchased prior to July 10, 2007, and therefore, under the guidance in FHFB's advisory bulletins, is not required to conform to the interagency guidance. The collateral survey does not contain information sufficient to allow FHFA to determine how much of the collateral would be subject to the interagency guidance. However, the FHFB guidance does require the FHLBanks to have policies in place to ensure that subprime and nontraditional loans that were originated or acquired by the FHLBank member subsequent to the issuance of the interagency guidance and certain effective dates in the FHFB advisory bulletins may not be pledged as collateral for advances if they do not conform to the guidance.

B. FHLBank Policies and Procedures Regarding Nontraditional and Subprime Collateral—Findings From the Secured Credit Reviews

As part of its examination process, FHFA conducted in-depth reviews of the FHLBanks' policies and procedures regarding secured credit. One part of FHFA's in-depth reviews of secured credit focused directly on subprime lending and nontraditional loan products. Other aspects of the secured credit reviews that are relevant for this study included collateral control, member monitoring, and haircut and valuation methodologies.

Although the reviews found that the FHLBanks had policies regarding the acceptance of subprime and nontraditional loans as collateral for advances, examiners questioned, in some cases, the appropriateness of the policies and implementing procedures and practices. In addition, a number of FHLBanks had difficulty determining their exposure to nontraditional and subprime residential mortgage loan collateral used to support FHLBank advances. Examiners identified weaknesses in FHLBanks' assessments and testing of member underwriting and monitoring of nontraditional and subprime loans, haircuts and discounts for nontraditional and subprime collateral, risk limits on the acceptance of these types of collateral, and board reporting of exposures to the collateral.

Specifically, examiners noted the following:

- Five FHLBanks did not require an assessment of member underwriting of nontraditional or subprime loans to ensure consistency with interagency guidance as part of their onsite collateral review procedures. Of the remaining FHLBanks, three did not consistently document their review of member underwriting of nontraditional or subprime loans.
- Three FHLBanks lacked analytical support or validation for haircuts used for subprime and nontraditional mortgage products. Two FHLBanks did not have differentiated haircuts for conventional mortgage loan collateral and nontraditional and subprime mortgage loan collateral.
- Four FHLBanks did not have risk limits on the volume of nontraditional and subprime mortgage loan collateral that members may pledge to support FHLBank advances.
- Three FHLBanks did not regularly report exposures of nontraditional and subprime collateral to their boards of directors.

FHFA examination staff communicated these weaknesses and expectations for corrective action to executive management and the boards of directors of the individual FHLBanks. Each FHLBank receiving regulatory criticisms of its policies committed to correct the weaknesses, and the examination staff has begun evaluating the FHLBanks' corrective actions through follow-up visitations and examinations. FHLBanks that have not adequately addressed the weaknesses identified during the secured credit reviews will be subject to a commensurately stricter supervisory response. Unsatisfactory remediation of adverse examination findings would be a factor that FHFA considers when determining whether formal supervisory enforcement actions would be warranted in the future.

C. Responses to the HERA Section 1217 Questionnaire

The Section 1217 Questionnaire complements and in some cases updates the information from the in-depth secured credit reviews. The responses provide the FHLBanks' perspectives on a consistent set of questions. During on-site examinations, FHFA will review documents and independently evaluate the FHLBanks' policies, procedures and practices. FHFA will draw final conclusions about the FHLBanks' progress in addressing criticisms from the secured credit reviews and in adhering to the advisory bulletins related to the interagency guidance after

completion of the next annual examinations of the FHLBanks.

1. Do the FHLBanks have policies that exclude from eligible collateral for advances residential mortgage loans and MBS backed by such loans that do not conform to the interagency guidance?

Nine of the twelve FHLBanks have board-approved policies to exclude from eligible collateral for advances nontraditional and subprime residential mortgage loans originated or acquired by the member after July 10, 2007 that do not conform to the interagency guidance, as well as private-label MBS issued after July 10, 2007, with underlying nontraditional or subprime residential mortgage loans that do not conform to the interagency guidance. The other three FHLBanks have adopted policies addressing, but not specifically excluding, the acceptance of applicable nontraditional and subprime residential mortgage loans or private-label MBS used as collateral for advances.

2. Do the FHLBanks require members to certify that residential mortgage loans used to calculate eligible collateral comply with the interagency guidance and obtain and provide to the FHLBank certifications from securities issuers that loans underlying private-label MBS serving as collateral conform to the interagency guidance?

All of the FHLBanks' policies require members to certify that the nontraditional and subprime residential mortgage loans used to calculate eligible collateral comply with the interagency guidance. One FHLBank, however, requires the certification regarding subprime residential mortgage loans only from members with established subprime lending programs.⁷ Nine FHLBanks require that members pledging private-label MBS certify or deliver to the FHLBank enforceable representations and warranties from the issuer or other credible evidence indicating that the loans backing the MBS comply with the interagency guidance. The remaining FHLBanks do not accept as eligible collateral for advances private-label MBS issued after July 10, 2007 that is collateralized by nontraditional and subprime residential mortgage loans.

⁷ FHFA established that for purposes of determining collateral eligibility the interagency guidance should apply regardless of whether a member has a subprime lending program. FHFA is addressing this matter with the FHLBank.

3. Do the FHLBanks evaluate, test, and validate member and issuer certifications?

To evaluate and test member certifications regarding the conformance of nontraditional and subprime residential mortgage loan collateral to the interagency guidance, the FHLBanks review members' underwriting policies, verify loan documentation on-site at members, or review members' internal or external examination reports.⁸ Regarding validation of certifications from securities issuers that loans underlying private-label MBS originated after July 10, 2007 conform to the interagency guidance, the FHLBanks commonly responded that although they adopted policies to require such certifications, members have not been able to obtain and provide them. Therefore, as a practical matter, the FHLBanks have not accepted private-label MBS originated after July 10, 2007 as collateral for advances.

4. Do the FHLBanks have in place policies and procedures that preclude the acceptance of residential mortgage loans with predatory characteristics as collateral for advances?

All FHLBanks have anti-predatory lending policies or procedures that preclude acceptance as eligible collateral for advances residential mortgage loans that violate applicable federal, state, or local predatory lending laws and other similar credit-related consumer protection laws. In addition, each of the FHLBanks specifically excludes from eligible collateral loans which: have an annual percentage rate or charge points or fees which exceed the thresholds established by HOEPA; include requirements for prepaid, single-premium credit life insurance; include a fee or charge for prepayment beyond the early years of a loan; or require mandatory arbitration to resolve disputes. Seven of the FHLBanks define "early years" for permissible prepayments as a period of five years. Five FHLBanks qualify their collateral ineligibility standard related to mandatory arbitration as a loan requiring mandatory arbitration that is prohibited by any applicable anti-predatory lending laws. One FHLBank qualifies its collateral ineligibility standard related to prepayment penalties as a loan including prepayment fees beyond the early years of the loan to the extent prohibited or

limited by any applicable anti-predatory lending laws. The FHLBanks perform procedures to evaluate and test member underwriting of collateral that are similar to those outlined above for nontraditional and subprime residential mortgage loans.

V. Conclusions and Recommendations

Approximately one-fifth of the collateral supporting FHLBank advances consists of subprime or nontraditional loans or Alt-A or subprime private-label MBS. Although a significant share of the loans or MBS in these categories may have been originated or issued prior to July 10, 2007, and thus not technically subject to the interagency guidance, the FHLBanks still need to manage and mitigate the risks associated with all of the collateral underlying advances. Going forward, the FHLBanks will need to ensure that the collateral supporting advances remains consistent with safety and soundness as well as the overarching housing finance mission of the FHLBanks.

Although all FHLBanks had policies addressing nontraditional and subprime collateral, findings from the in-depth secured credit reviews revealed some weaknesses in policies and practices, particularly in regard to the management of the risks of this type of collateral. The FHLBanks' responses to the HERA Section 1217 Questionnaire indicate that they have adopted policies, procedures, and practices that would require that the loans and MBS used as collateral to support advances be consistent with the interagency guidance. The next cycle of examinations will evaluate whether weaknesses that examiners previously identified in the FHLBanks' policies and practices for subprime and nontraditional residential mortgage loans have been corrected and verify their responses to the HERA Section 1217 Questionnaire regarding application of the principles of the interagency guidance to the acceptance of collateral used to support advances. Through its supervisory programs, FHFA will continue to assess the adequacy of the FHLBank's policies and procedures, determine weaknesses or deficiencies, and monitor the FHLBanks' remediation efforts.

The advisory bulletins issued by FHFB on the subjects of nontraditional and subprime mortgage loans and predatory lending between 2005 and 2008 provide explicit guidance for the FHLBanks. Adoption of the policies and practices expected by the guidance has received and will continue to receive focused attention through supervisory programs and particularly as part of

FHFA's examinations of the FHLBanks. FHFA uses the information obtained through its supervisory program of examinations, targeted reviews and surveys, and off-site monitoring to develop appropriate guidance to facilitate the FHLBanks' mission of providing liquidity to its members. For example, FHFA's Division of Federal Home Loan Bank Regulation has recently prepared guidance for examiners to address questions that the FHLBanks have asked when developing policies and procedures to implement the guidance contained in the advisory bulletins.

FHFA intends to reevaluate whether additional guidance or rules are necessary for the FHLBanks regarding anti-predatory lending or the acceptance of nontraditional or subprime residential mortgages as collateral for advances after the completion of the next cycle of examinations, which will determine if the FHLBanks have appropriately addressed attendant weaknesses identified by the in-depth secured credit reviews that began in 2008. At a minimum, FHFA expects to clarify one point made in Advisory Bulletin 2008-AB-02. 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.

Since the passage of HERA, there have been several legislative developments addressing mortgage lending reform. FHFA is following these developments and intends to update its regulations and guidance, as appropriate, as issues surface in the legislative discussion. FHFA especially notes the provision in the Mortgage Reform and Anti-Predatory Lending Act recently passed by the House of Representatives that adopts a borrower's ability to repay as a minimum standard defined in the law; comments are invited on a question related to the concept of a borrower's ability to repay in the request for comments below.

VI. Request for Comments

FHFA welcomes comments on all aspects of the HERA Section 1217 Study presented in this Notice. FHFA invites comments on the following questions, in particular:

- Should FHFA replace its existing guidance on nontraditional, subprime,

⁸ The results of the secured credit reviews indicate that the quality of the FHLBanks' evaluations of member underwriting and certifications is uneven. FHFA examination staff is addressing identified issues with the FHLBanks.

or anti-predatory lending with formal regulatory standards?

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

- Should FHFA explicitly address other mortgage loan features as a control against predatory lending, or is it sufficient that Advisory Bulletin 2008–AB–02 requires an FHLBank to only accept residential mortgage loans (and such loans backing private-label MBS) as eligible collateral for advances when they conform to the interagency guidance? Some loan features that may be associated with either high risk or potentially predatory loans are addressed in the Federal Reserve Board's Amendments to Regulation Z (Truth in Lending) which will go into effect later in 2009 and 2010. For "higher-priced mortgages," the amended regulation addresses a borrower's ability to repay the loan, prepayment penalties, income verification, and escrow accounts.

- 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?

- As the federal financial institution regulatory agencies, such as through the Federal Financial Institutions Examination Council, look to modify or enhance guidance with respect to nontraditional or subprime mortgage products, should FHFA be formally and directly involved?

Copies of all comments will be posted without change, including any personal information you provide, such as your name and address, on the FHFA internet web site at <http://www.fhfa.gov>. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 414–3751.

Dated: July 29, 2009.

James B. Lockhart III,

Director, Federal Housing Finance Agency.
[FR Doc. E9–18545 Filed 8–3–09; 8:45 am]

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FEDERAL MEDIATION AND CONCILIATION SERVICE

Arbitration Services; Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Notice to Mediation Agencies (Form F–7) Proposed Modifications.

SUMMARY: This notice announces that the Federal Mediation and Conciliation Service (FMCS) agency form F–7 is being revised. Following publication of this Notice and any responsive comments, FMCS will submit to the Office of Management and Budget (OMB) a request for review of this Notice to Mediation Agencies (Agency Form F–7) form. The request will seek OMB approval of a modified Form F–7 and new expiration date of approximately October 1, 2012. FMCS is soliciting comments on specific aspects of the collection as described below.

DATES: Comments must be submitted on or before September 3, 2009.

ADDRESSES: Submit written comments by mail to the Office of Arbitration Services, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427 or by contacting the person whose name appears under the section headed **FOR FURTHER INFORMATION CONTACT**. Comments may be submitted also by fax at (202) 606–3749 or electronic mail (e-mail) to arbitration@fmcs.gov. All comments must be identified by the appropriate agency form number. No confidential business information (CBI) should be submitted through e-mail. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of the information as "CBI." Information so marked will not be disclosed but a copy of the comment that does contain CBI must be submitted for inclusion in the public record. FMCS may disclose information not marked confidential publicly without prior notice. All written comments will be available for inspection in Room 704 at the Washington, DC address above from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

Vella M. Traynham, Director of Arbitration Services, FMCS, 2100 K Street, NW., Washington, DC 20427. Telephone (202) 606–5111; Fax (202) 606–3749.

SUPPLEMENTARY INFORMATION: Copies of the modified Form F–7 are available from the Office of Arbitration Services

by calling, faxing or writing Vella M. Traynham at the address above. Please ask for the form by title and agency form number.

I. Information Collection Requests

FMCS is seeking comments on the following Information Collection Request (ICR).

Title: Notice to Mediation Agencies; Form F–7; OMB No. 3076–0004;

Expiration Date: January 31, 2006.

Type of Request: Reinstatement of a previously approved notice with changes in the substance of the form.

Affected Entities: Parties affected by this information collection are private sector employers and labor unions involved in interstate commerce that file notices for mediation services to the FMCS.

Frequency: Parties complete this form once, which is at the time of an impending expiration of a collective bargaining agreement.

Abstract: Under the Labor Management Relations Act of 1947, 29 U.S.C. 158(d), Congress listed specific notice provisions so that no party to a collective bargaining agreement can terminate or modify that contract, unless the party wishing to terminate or modify the contract sends a written notice to the other party sixty days prior to the expiration date (29 U.S.C. 158(d)(1)), and offers to meet and confer with the other party for the purpose of negotiating a new or modified contract (29 U.S.C. 158(d)(2)). Furthermore, the Act requires that parties notify the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a bargaining dispute (29 U.S.C. 158(d)(3)). The 1974 amendments to the National Labor Relations Act, which extended coverage to nonprofit health care institutions, also created a notification procedure in the health care industry requiring parties to notify each other 90 days in advance of termination and 60 days in advance to FMCS (29 U.S.C. 158(d)). This amendment also requires 30-day notification of bargaining for an initial agreement to the FMCS. To facilitate handling of more than 18,000 such notices a year, FMCS created a specific information collection form. The purpose of this information collection activity is for FMCS to comply with its statutory duty to receive these notices, to facilitate assignment of mediators to assist in labor disputes, and to assist the parties in knowing whether or not proper notice was given. The information from these notices is sent electronically to the appropriate field manager who assigns the cases to a mediator so that the mediator may