I. Background


The Commission received numerous comments regarding respondents in non-complaint generated matters not receiving notice when a matter has been referred to the Commission’s Office of General Counsel (“OGC”) for enforcement. One commenter opined that the Commission should never find reason to believe (“RTB”) that a violation occurred without first giving the respondent the opportunity to respond. Another commenter recommended instituting a program whereby potential respondents in non-complaint generated matters are given a written summary of the matter and an opportunity to respond in writing before the Commission makes an RTB finding, in order to put respondents on notice about the potential outcome of the proceeding. Other commenters urged the Commission to adopt procedures to notify committees of any internal referral, and to implement procedures to provide respondents with the opportunity to review and respond to any adverse course of action recommended by OGC before the Commission considers such recommendation.

II. Procedures for Notice to Respondents in Non-Complaint Generated Matters

The Commission is issuing a new agency procedure to provide notification to respondents of enforcement proceedings based on information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities (i.e., non-complaint generated matters). See 2 U.S.C. 437g. In matters generated by complaints, the Commission may take no action on the complaint (other than dismissal) until respondents have at least 15 days after notification of the allegations contained in the complaint to answer the allegations. See 2 U.S.C. 437g(a)(1). However, the statute does not afford respondents the same opportunity to answer allegations in non-complaint generated matters. This agency procedure is intended to provide respondents in non-complaint generated enforcement matters with notice of the basis of the allegations, and an opportunity to respond.

For matters arising from a referral from the Commission’s Reports Analysis Division or Audit Division (“internal referrals”), respondents will be notified of the referral within five days of receipt of the referral by OGC. The notice will contain a copy of the referral document and a cover letter setting forth the basis of the referral and potential violations of the Act and/or Commission regulations that arise based upon the referral. The respondent will then be given an opportunity to demonstrate that no action should be taken based on the referral, by submitting, within 15 days from receipt of the referral document and cover letter, a written explanation of why the Commission should take no action. The Commission will not take any action, or make any RTB finding against a respondent based on an internal referral unless it has considered such response or unless no such response has been served upon the Commission within 15 days.

Under current Commission practice, non-complaint generated matters based on referrals from the U.S. Department of Justice or any other law enforcement or governmental agency (“external referrals”) are also deemed to be matters based on information ascertained in the normal course of carrying out its supervisory responsibilities. Under the new procedures, if OGC intends to initiate an enforcement proceeding based on an external referral, notice of
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.

Dated: July 29, 2009.

Steven T. Walther,
Chairman, Federal Election Commission.

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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

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

Chairman, Federal Election Commission.

On behalf of the Commission.

FOR FURTHER INFORMATION CONTACT:

Louis M. Scalza, Associate Director, (202) 408–2553 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

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

The GER 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
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