UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

J. PATRICK COLLINS, *et al.*, Plaintiffs, v. THE FEDERAL HOUSING FINANCE AGENCY, *et al.*, Defendants.	Civil Action No. 4:16-CV-03113

MEMORANDUM OF DEFENDANTS FEDERAL HOUSING FINANCE AGENCY AS CONSERVATOR FOR FANNIE MAE AND FREDDIE MAC AND FHFA DIRECTOR MELVIN L. WATT IN SUPPORT OF MOTION TO DISMISS

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INTRODUCTION

This litigation is one of the latest in a series of suits brought by shareholders of the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac," and, together with Fannie Mae, the "GSEs" (government-sponsored enterprises)). Plaintiffs, like the shareholders in the previous suits, challenge an amendment (the "Third Amendment") to the Senior Preferred Stock Purchase Agreements ("PSPA") between the U.S. Department of the Treasury ("Treasury") and the Federal Housing Finance Agency as Conservator of each of the GSEs ("FHFA" or "Conservator"). Three federal district courts—for the District of Columbia, the Southern District of Iowa, and the Eastern District of Kentucky—already have dismissed twelve nearly identical lawsuits. Plaintiffs' claims under the Administrative Procedure Act ("APA") are precluded as a matter of law by these prior decisions. Moreover, even if the APA claims were not precluded, they suffer from the same fundamental and incurable legal infirmities as the claims in those actions and thus must be dismissed on that basis as well. And Plaintiffs' only new claim, alleging a violation of the constitutional separation of powers, is entirely without merit.

Plaintiffs ask the Court to re-write the PSPAs between the Treasury and the Conservator. Pursuant to the PSPAs, Treasury invested $187 billion into the GSEs and remains contractually committed to invest up to an additional $258.1 billion if necessary to prevent the mandatory placement of the GSEs into statutory receivership and liquidation. In return, Treasury received senior preferred stock in the GSEs, with a liquidation preference that increased dollar-for-dollar with the amount that Treasury invested. Under the Third Amendment, the dividend was changed from a fixed dividend to a variable dividend based on the GSEs' net worth at the time of payment, and the Third Amendment expressly relieves them of their obligation to pay a periodic commitment fee. Plaintiffs want to maintain those aspects of the agreements that they like—*i.e.*, the unprecedented and continuing financial support from Treasury—and discard the parts they do not like—*i.e.*, the Third Amendment. Through this litigation, in direct contravention of statutory authority, Plaintiffs seek to rescind the Third Amendment, thereby rewarding themselves at the expense of federal taxpayers, who risked—and continue to risk—hundreds of billions of dollars.

Plaintiffs would have the Court second-guess the operational judgments of the Conservator. But HERA precludes judicial review of such matters. Congress has expressly authorized the Conservator to take action that the Conservator alone determines is in the best interests of the GSEs or FHFA, and HERA provides that such decisions are committed to the Conservator's discretion and insulated from judicial review. Thus, as with the claims asserted in each of the twelve similar cases brought by shareholders in other federal courts, Plaintiffs' APA claims fail as a matter of law.

Unlike any of the plaintiffs before them, Plaintiffs also claim that FHFA's structure violates the Constitution because it is headed by a Director who is removable for cause. But Supreme Court precedent going back almost a century confirms the constitutional standing of independent agencies headed by individuals not removable at will, and FHFA fits directly within this paradigm. Even if they had any merit, which they do not, Plaintiffs' separation of powers arguments would not provide a basis for invalidating the Third Amendment, giving the Court ample independent grounds to dismiss Plaintiffs' constitutional claim.

NATURE AND STAGE OF PROCEEDINGS

Plaintiffs, who claim to own shares of stock in the GSEs, Compl. ¶¶ 35-37, allege that the Third Amendment "expropriated" the value of their stock by requiring the GSEs to pay dividends to Treasury in the amount of their net worth at the time of payment. *Id.* ¶ 32. Plaintiffs filed their Complaint for Declaratory and Injunctive Relief on October 20, 2016 against FHFA and its Director, and also against Treasury and its Secretary. *Id.* ¶¶ 38-41. They contend that FHFA and Treasury lacked the legal authority to enter into the Third Amendment. *Id.* ¶¶ 155-82. They also contend that the Third Amendment must be set aside because FHFA is "headed by a single person who was not removable by the President at will." *Id.* ¶ 189. This is one of seventeen lawsuits brought by GSE shareholders in federal district courts challenging the Third Amendment. None thus far has survived a motion to dismiss.[1]

[1] The *Perry Capital* and *Robinson* decisions are currently on appeal. *See Perry Capital LLC v. Lew*, Nos. 14-5243, 14-5254, 14-5260, 14-5262 (D.C. Cir.); *Robinson v. FHFA*, No. 16-6680 (6th Cir.). The Southern District of Iowa dismissed a similar case on issue preclusion grounds, and the plaintiff did not appeal. *Cont'l W. Ins. Co. v. FHFA*, 83 F. Supp. 3d 828 (S.D. Iowa 2015). Similar lawsuits have been filed by other GSE shareholders. *Jacobs v. FHFA*, No. 1:15-cv-00708 (D. Del.); *Saxton v. FHFA*, No. 1:15-cv-00047 (N.D. Iowa); *Roberts v. FHFA*, No. 1:16-cv-2107 (N.D. Ill.); *Voacolo v. Fed. Nat'l Mortg. Ass'n*, No. 1:16-cv-1324 (D.D.C.). Treasury and FHFA filed motions to dismiss in each of these cases. The *Voacolo* action was dismissed without prejudice on December 19, 2016 after the plaintiff failed to respond to the dispositive motions.

BACKGROUND

I. FANNIE MAE AND FREDDIE MAC

Fannie Mae and Freddie Mac are government-sponsored enterprises, chartered by Congress, that provide liquidity to the mortgage market by purchasing residential loans from banks and other lenders, thereby facilitating the ability of lenders to make additional loans. *See* Compl. ¶ 2. These entities, which own or guarantee trillions of dollars of residential mortgages and mortgage-backed securities ("MBS"), have played a key role in housing finance and the U.S. economy. *See id.*

Throughout the first half of 2008, the GSEs suffered multi-billion dollar losses on their mortgage portfolios and guarantees. *See* Compl. ¶ 46. "By 2008, the United States economy faced dire straits, in large part due to a massive decline within the national housing market . . . . Given the systemic danger that a Fannie Mae or Freddie Mac collapse posed to the already fragile national economy, among other housing market-related perils, Congress enacted the Housing and Economic Recovery Act ('HERA') on July 30, 2008." *Perry Capital v. Lew*, 70 F. Supp. 3d 208, 215 (D.D.C. 2014) (citing Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, 122 Stat. 2654 (2008)); *see also* Compl. ¶ 4. HERA created FHFA, an independent federal agency, to supervise and regulate Fannie Mae, Freddie Mac, and the Federal Home Loan Banks. 12 U.S.C. §§ 4501 *et seq.*; *see also* Compl. ¶ 4.

HERA also granted the Director of FHFA the discretionary authority to place Fannie Mae and Freddie Mac in conservatorship "for the purpose of reorganizing, rehabilitating, or winding up the affairs of a regulated entity." 12 U.S.C. § 4617(a)(2).

HERA provides that, upon its appointment as the conservator or receiver, FHFA would "immediately succeed to . . . all rights, titles, powers, and privileges of the regulated entity, and of any stockholder, officer, or director of such regulated entity with respect to the regulated entity and the assets of the regulated entity." *Id.* § 4617(b)(2)(A)(i). The statute accords the conservator the power to "operate" and "conduct all business" of the GSEs, *id.* § 4617(b)(2)(B)(i), including the power to take such action as may be "appropriate to carry on the business of the regulated entity and preserve and conserve the assets and property of the regulated entity," *id.* § 4617(b)(2)(D)(ii), and to "transfer or sell" any of the GSEs' assets or liabilities, *id.* § 4617(b)(2)(G).

In early September 2008, FHFA became conservator of Fannie Mae and Freddie Mac. Compl. ¶ 7.[2] At that time, the GSEs' financial exposure on their combined guaranteed mortgage-backed securities and debt outstanding totaled more than $5.4 trillion, and their net worth and public stock prices had fallen sharply. Fed. Hous. Fin. Agency, *FHFA Fact Sheet: Questions & Answers on Conservatorship*,

[2] The Complaint includes allegations that appear to question the placement of the GSEs into conservatorship. *See, e.g.*, Compl. ¶ 58 (alleging that the GSEs "were not in financial distress" in September 2008 and that their directors consented to conservatorship only because they wanted to avoid "intense scrutiny from federal agencies"). These allegations are not only inconsistent with the factual record and reflect speculation, but are irrelevant because Plaintiffs seek *no* relief with respect to the placement of the GSEs into conservatorship. Indeed, it would be impossible for Plaintiffs to do so because HERA grants the GSEs the exclusive right to make such a challenge, and requires that it be made within 30 days of the appointment. 12 U.S.C. § 4617(a)(5).

http://www.fhfa.gov/Media/PublicAffairs/Pages/Fact-Sheet-Questions-and-Answers-on-Conservatorship.aspx (cited in Compl. ¶¶ 59, 60).[3]

II. TREASURY'S PSPAS WITH THE GSES

Also in September 2008, Treasury used the statutory authority granted by HERA, *see* 12 U.S.C. §§ 1455(*l*), 1719(g), to purchase securities issued by the GSEs. *See* Compl. ¶¶ 62-63. Treasury entered into the PSPAs with each GSE, through FHFA as Conservator. *See* Ex. A, Amended & Restated Preferred Stock Purchase Agreements (cited in, *e.g.*, Compl. ¶ 75). Under the PSPAs, Treasury committed to advance funds to each GSE for each quarter in which that GSE's liabilities exceeded its assets, in accordance with GAAP, so as to maintain the positive net worth of that GSE. Fannie Mae PSPA § 2.2; Freddie Mac PSPA § 2.2.

Treasury's statutory authority to provide funding to the GSEs required that the investment "protect the taxpayer." 12 U.S.C. §§ 1455(*l*)(1)(C), 1719(g)(1)(C). In exchange for the continuing funding commitment that it provided to the GSEs, Treasury received senior preferred stock with a liquidation preference,[4] warrants to purchase 79.9 percent of each GSE's common stock, Compl. ¶ 8, and entitlement to periodic

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[3] Documents incorporated within a complaint by reference are considered part of the pleadings, and may be cited in this motion to dismiss, which raises a facial challenge to whether the complaint has stated any claim over which this Court has subject-matter jurisdiction. *See Chhim v. Univ. of Tex. at Austin*, 836 F.3d 467, 470 n.3 (5th Cir. 2016). Additionally, courts may take judicial notice of the existence of statements in public documents such as Securities and Exchange Commission filings. *See Abecassis v. Wyatt*, 785 F. Supp. 2d 614, 650-51 (S.D. Tex. 2011).

[4] A liquidation preference is "[a] preferred shareholder's right, once the corporation is liquidated, to receive a specified distribution before common shareholders receive anything." *Liquidation preference*, BLACK'S LAW DICTIONARY (9th ed. 2009).

commitment fees. Fannie Mae PSPA §§ 3.1-3.4; Freddie Mac PSPA §§ 3.1-3.4. The value of the liquidation preference on Treasury's senior preferred stock was $1 billion from each GSE, and it increased dollar-for-dollar as either Fannie Mae or Freddie Mac drew on its PSPA funding. Compl. ¶ 68; Fannie Mae PSPA § 3.3; Freddie Mac PSPA § 3.3. Currently, Treasury has a combined liquidation preference of $189.5 billion for the two GSEs. *See* Compl. ¶¶ 25, 87, 152. (This reflects approximately $187.5 billion in draws, plus the initial $2 billion in liquidation preference. *See id.* ¶ 152.)

Under the PSPAs, Treasury received quarterly dividends on the total amount of its senior preferred stock. *See* Compl. ¶ 10. Prior to the Third Amendment, the GSEs paid dividends at an annual rate of ten percent of their respective liquidation preferences ($19 billion per year). Ex. B, Fannie Mae Senior Preferred Stock Certificate § 2; Freddie Mac Senior Preferred Stock Certificate § 2 (cited in Compl. ¶ 77).

The PSPAs required the GSEs to pay a quarterly periodic commitment fee to Treasury beginning on March 31, 2010. Compl. ¶ 76; Fannie Mae PSPA §§ 3.1, 3.2; Freddie Mac PSPA §§ 3.1, 3.2. The periodic commitment fee "is intended to fully compensate [Treasury] for the support provided by the ongoing Commitment following December 31, 2009." Compl. ¶ 76 (quoting PSPAs § 3.2). The amount of the fee was to be "determined with reference to the market value of the Commitment as then in effect," as mutually agreed between Treasury and the GSEs, in consultation with the Chairman of the Federal Reserve. PSPAs § 3.2. The PSPAs permitted Treasury, in its sole discretion, to waive the fee for up to one year at a time based on conditions in the mortgage market. *Id.*; Compl. ¶ 76. Treasury and FHFA initially delayed implementation of the periodic commitment fee and Treasury then waived the periodic commitment fee in 2011 and 2012. *See* Compl. ¶¶ 76, 119.

The PSPAs were amended twice in 2009—first to raise the funding commitment for each GSE from $100 billion to $200 billion, and then, in the Second Amendment, to raise the commitment according to a formula that would become capped at the end of 2012. Ex. C, Second Amendment to Amended & Restated Fannie Mae PSPA (Dec. 24, 2009); Second Amendment to Amended & Restated Freddie Mac PSPA (Dec. 24, 2009). The remaining capacity in Treasury's funding commitment to Fannie Mae is now $117.6 billion (over and above the $116.1 billion already provided) and the remaining capacity in Treasury's commitment to Freddie Mac is now $140.5 billion (over and above the $71.3 billion already provided). *See* Compl. ¶ 87.

As of August 8, 2012, Fannie Mae had drawn approximately $117 billion and Freddie Mac had drawn approximately $72 billion from Treasury. *See* Compl. ¶ 87. Under the terms of the PSPAs, these draws were necessary to maintain the positive net worth of each company and avoid mandatory statutory receivership. *See* 12 U.S.C. § 4617(a)(4)(A).

In August 2012, Treasury and FHFA, acting as Conservator for the GSEs, entered into the Third Amendment to the PSPAs. Compl. ¶ 104. The Third Amendment eliminated the payment of a fixed dividend and suspended the periodic commitment fee. *Id.* ¶¶ 112, 119. Instead, the GSEs now pay a quarterly variable dividend—referred to in the Complaint as a "net worth sweep"—based on the GSEs' earnings after accounting for prescribed capital reserves.[5] Ex. D, Third Amendment to Amended & Restated Fannie Mae PSPA § 4 (Aug. 17, 2012); Third Amendment to Amended & Restated Freddie Mac PSPA § 4 (Aug. 17, 2012). If a GSE's net worth is negative in a quarter, no dividend is due. *Id.*

STATEMENT OF THE ISSUES AND STANDARD OF REVIEW

Defendants move to dismiss all claims pursuant to Rule 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. Where, as here, a motion to dismiss for lack of jurisdiction is limited to a facial attack on the pleadings, it is subject to the same standard as a motion brought under Rule 12(b)(6). *See Lee v. Verizon Commc'ns, Inc.*, 837 F.3d 523, 533 & n.16 (5th Cir. 2016) ("Where, as here, the movant mounts a 'facial attack' on jurisdiction based only on the allegations in the complaint, the court simply considers 'the sufficiency of the allegations in the complaint because they are presumed to be true.'" (quoting *Paterson v. Weinberger*, 644 F.2d 521, 523 (5th Cir. 1981))). Under this standard, a court must "identify[] pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth." *Doe v. Robertson*, 751 F.3d 383, 387 (5th Cir. 2014) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009)). "When there are well-pleaded factual allegations, a court should assume their veracity and then

[5] Those annual earnings historically averaged below $19 billion, the amount owed under the fixed dividend. *See* Fannie Mae, Quarterly Report (Form 10-Q) (Aug. 8, 2012) at 4 ("The amount of this dividend payment exceeds our reported annual net income for every year since our inception."); Freddie Mac, Quarterly Report (Form 10-Q) (Aug. 7.

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determine whether they plausibly give rise to an entitlement to relief." *Id.* (quoting *Iqbal*, 556 U.S. at 679). "A complaint must fail if it offers only 'naked assertions devoid of further factual enhancement.'" *Id.* (quoting *Iqbal*, 556 U.S. at 678).

SUMMARY OF ARGUMENT

There are at least four independent bases for dismissal of Plaintiffs' claims—each purely legal.

First, the Court lacks jurisdiction over Plaintiffs' APA claims, which seek equitable and declaratory relief, because "no court may take any action to restrain or affect the exercise of powers or functions of the [FHFA] as a conservator." 12 U.S.C. § 4617(f). Because the Conservator acted squarely within its statutory powers in executing the PSPAs and the Third Amendment, Section 4617(f) bars Plaintiffs' APA claims, notwithstanding allegations that the Third Amendment was unwise, unnecessary, or improperly motivated.

Second, Plaintiffs' APA claims fail because the Conservator "succeed[ed]" by operation of law to "all" shareholder rights during conservatorship, including Plaintiffs' rights to pursue APA claims on behalf of the GSEs, or based on their stock certificates, or otherwise relating to their status as shareholders. *See* 12 U.S.C. § 4617(b)(2)(A)(i).

Third, Section 4623(d) of HERA, which bars judicial action that would "affect" supervisory actions taken by FHFA in its capacity as Regulator of the GSEs, provides

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2012) at 8 ("our annual cash dividend obligation to Treasury on the senior preferred stock

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another independent ground for dismissing Plaintiffs' APA claims. Plaintiffs' requested relief under the APA is barred because it would interfere with the October 2008 decision of FHFA as Regulator to suspend capital classifications.

Fourth, Plaintiffs' claim about FHFA's structure (Count IV) fails because this structure fits within a paradigm that has been upheld by more than a century of Supreme Court precedent. Although Plaintiffs' claim fails for this reason alone, the Court need not even reach the merits of this argument for three reasons: (1) even if the Court found that FHFA's structure was unconstitutional, this would not result in invalidation of the agency's past actions; (2) FHFA's adoption of the Third Amendment in its capacity as Conservator of Fannie Mae and Freddie Mac was not a governmental function; and (3) when FHFA adopted the Third Amendment in August 2012, FHFA was headed by an *Acting* Director who does not enjoy the statutory protection from removal that applies to a permanent, Senate-confirmed Director.

Finally, as explained in Treasury's Brief, Plaintiffs' APA claims, which are derivative in nature, are barred under the doctrine of issue preclusion by the dispositive holding in materially identical suits that HERA prohibits shareholder plaintiffs from bringing derivative claims on behalf of the GSEs. *See* Treasury Br. at Argument §§ III, IV.

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of $7.2 billion exceed[s] our annual historical earnings in all but one period.").

ARGUMENT

I. SECTION 4617(F) BARS PLAINTIFFS' APA CLAIMS[6]

To enable the Conservator to carry out its functions, Congress expressly insulated the Conservator's actions from judicial second-guessing, mandating that "no court may take any action to restrain or affect the exercise of powers or functions of the Agency as a conservator." 12 U.S.C. § 4617(f). Courts consistently apply Section 4617(f) to bar all claims, such as those advanced in this action, seeking relief that would "restrain or affect" the exercise of the powers of FHFA as Conservator of the GSEs. *See, e.g.*, *Cty. of Sonoma v. FHFA*, 710 F.3d 987, 993 (9th Cir. 2013); *Leon Cty. v. FHFA*, 700 F.3d 1273, 1278-79 (11th Cir. 2012).

These decisions under HERA are consistent with the substantial body of case law interpreting the materially identical provision governing Federal Deposit Insurance Corporation ("FDIC") conservatorships and receiverships, 12 U.S.C. § 1821(j). Section 1821(j) "effect[s] a sweeping ouster of courts' power to grant equitable remedies," *Courtney v. Halleran*, 485 F.3d 942, 948 (7th Cir. 2007) (quoting *Freeman v. FDIC*, 56 F.3d 1394, 1399 (D.C. Cir. 1995)), "regardless of [the claimant's] likelihood of success on the underlying claims," *281-300 Joint Venture v. Onion*, 938 F.2d 35, 39 (5th Cir.

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[6] Plaintiffs seek only equitable and declaratory relief in the Complaint. They ask the Court *inter alia* to declare the Third Amendment a violation of HERA and arbitrary and capricious, to vacate the Third Amendment, to enjoin Treasury to return to the GSEs all payments made pursuant to the Third Amendment, and to enjoin FHFA and Treasury from "taking any action whatsoever" pursuant to the Third Amendment. Compl. ¶¶ 190(a)-(g).

1991).[7] "The Fifth Circuit has found this provision to be an anti-injunctive bar prohibiting courts from restraining the FDIC. Thus, because of this provision, claims for injunctive relief cannot be sustained against the FDIC." *Cantu v. Plainscapital Bank*, No. 7:15-cv-107, 2016 WL 1107842, at *3 (S.D. Tex. Mar. 21, 2016) (citing *Carney v. Resolution Tr. Corp.*, 19 F.3d 950, 956-57 (5th Cir. 1994)). "Courts have construed § 1821(j) broadly to bar claims for injunctive, declaratory, and equitable relief." *FDIC v. OneBeacon Midwest Ins. Co.*, 883 F. Supp. 2d 754, 761 (N.D. Ill. 2012) (citing *Courtney*, 485 F.3d at 947-48)); *see also Carney*, 19 F.3d at 957-58 (holding that § 1821(j) bars declaratory relief); *Ward v. Resolution Tr. Corp.*, 996 F.2d 99, 102-04 (5th Cir. 1993) (holding that § 1821(j) bars rescission). Indeed, "given the breadth of the statutory language . . . the statute would appear to bar a court from acting in virtually all circumstances." *Nat'l Tr. for Historic Pres. in U.S. v. FDIC*, 21 F.3d 469, 472 (D.C. Cir. 1994) (Wald, J., concurring).

The analysis required to determine whether Section 4617(f) precludes judicial review is straightforward and "quite narrow." *Bank of Am. Nat'l Ass'n v. Colonial Bank*, 604 F.3d 1239, 1243 (11th Cir. 2010) (discussing 12 U.S.C. § 1821(j)). The court "must first determine whether the challenged action is within the [Conservator]'s power or function" under HERA. *Dittmer Props., L.P. v. FDIC*, 708 F.3d 1011, 1017 (8th Cir.

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[7] Section 1821(j) provides that "no court may take any action . . . to restrain or affect the exercise of powers or functions of the [FDIC] as a conservator or a receiver." 12 U.S.C. § 1821(j). "In analyzing the limits of the Court's authority under § 4617(f), the Court may turn to precedent relating to [Section 1821(j)]." *Kuriakose v. Fed. Home Loan Mortg. Corp.*, 674 F. Supp. 2d 483, 493 (S.D.N.Y. 2009) (collecting cases).

2013) (citing *Bank of Am.*, 604 F.3d at 1243). If so, the Conservator "is protected from all court action that would 'restrain or affect' the exercise of those powers or functions." *Bank of Am*., 604 F.3d at 1243; *see also Cty. of Sonoma*, 710 F.3d at 992 ("If the [challenged action] falls within FHFA's conservator powers, it is insulated from review and th[e] case must be dismissed."); *Town of Babylon v. FHFA*, 699 F.3d 221, 228 (2d Cir. 2010) ("A conclusion that the challenged acts were directed to an institution in conservatorship and within the powers given to the conservator ends the [§ 4617(f)] inquiry."). Even allegations that a conservator acted "improperly or unlawfully" cannot overcome § 4617(f) as long as the conservator "did not engage in an activity outside its statutory powers." *Ward*, 996 F.2d at 103 (applying § 1821(j)).

By definition, conservators are appointed in difficult circumstances where complex questions are presented and hard choices must be made. *See* 12 U.S.C. § 4617(a)(3). It may be inevitable that shareholders will disagree with some of the Conservator's decisions, as Plaintiffs do here. But if conservators can be hauled into court and put through the rigors of protracted litigation every time a shareholder questions a conservator's decision, conservators will spend an inordinate and unnecessary amount of time litigating their decisions. Jurisdiction-withdrawal statutes such as Section 4617(f) embody Congress's policy that it is more important to enable conservators to focus on the work Congress empowered them to do without the distraction of litigation than it is to leave the courthouse doors open to all claims.[8] As the court in *Perry Capital* observed: "Requiring the Court to evaluate the merits of FHFA's decisionmaking each time it considers HERA's jurisdictional bar would render the anti-injunction provision hollow, disregarding Congress' express intention to divest the Court of jurisdiction to restrain FHFA's 'exercise of [its] powers or functions' under HERA—*i.e.*, *how* FHFA employs its powers or functions." *Perry Capital*, 70 F. Supp. 3d at 226.

A. The Third Amendment Was an Exercise of the Conservator's Broad Powers and Functions Under HERA

HERA grants the Conservator "broad powers to operate Fannie and Freddie" as it sees fit, to "assume complete control" over the GSEs and to exercise "exclusive authority over [their] business operations." *FHFA v. City of Chicago*, 962 F. Supp. 2d 1044, 1058, 1060 (N.D. Ill. 2013). Congress empowered the Conservator to "operate" the GSEs, "carry on the business" of the GSEs, "contract" on behalf of the GSEs, and "transfer or sell any [GSE] asset or liability . . . without any approval, assignment, or consent." 12 U.S.C. § 4617(b)(2). Moreover, Congress authorized the Conservator to exercise all of

[8] Plaintiffs' Complaint underscores the need for Section 4617(f) because it second-guesses myriad decisions of the Conservator, even those that are not the basis of any causes of action. They criticize the write-down of tax assets ("incomprehensibly flawed," Compl. ¶ 84), the establishment of loan loss reserve provisions ("grossly excessive," *id.* ¶ 85), the development of a single securitization utility (merely part of a "broader plan" to "eliminate Fannie and Freddie," *id.* ¶ 133), and the GSEs' risk-sharing agreements with investors ("economically irrational," *id.* ¶ 132). Plaintiffs even assert that the original PSPAs were unnecessary and speculate that the GSEs would have been better off if they had used "separate credit facilities at the Federal Reserve and at the Treasury," pledging "hundreds of billions of dollars" of GSE assets as collateral. *Id.* ¶¶ 7-9. Without Section 4617(f), such second-guessing would be the basis for countless lawsuits against the Conservator.

these powers in the manner the Conservator "*determines* is in the best interests of the [GSEs] or the Agency." *Id*. § 4617(b)(2)(J)(ii) (emphasis added).

By executing the PSPAs and the Third Amendment, the Conservator did precisely that; it exercised its power to "operate the [GSEs]" and to "conduct all business of the [GSEs]" in the manner the Conservator "determines is in the [GSEs' or FHFA's] best interests." 12 U.S.C. § 4617(b)(2)(B)(i), (J)(ii). The PSPAs are funding agreements that provide the GSEs with a capital backstop of hundreds of billions of dollars. Securing funding is a quintessential act for the conservator of a financial institution. As such, the Conservator not only had authority to execute the PSPAs but also has ongoing authority to agree to modify the PSPAs in a manner the Conservator believes, in its judgment, is in the best interests of the GSEs or FHFA. By executing the Third Amendment, the Conservator modified the manner in which the GSEs satisfy their obligations under the PSPAs—namely, by trading the GSEs' annual fixed dividend and periodic commitment fee obligations for the payment of a variable dividend based on net worth at the time. This decision, reflecting the business and operational judgments of the Conservator, fits squarely within the Conservator's plenary power under HERA. Section 4617(f) prohibits judicial second-guessing of the Conservator's execution of that authority and therefore bars Plaintiffs' APA claims.

The courts in *Perry Capital*, *Robinson v. FHFA*, No. 7:15-cv-109, 2016 WL 4726555 (E.D. Ky. Sept. 9, 2016), and *Continental Western Insurance Co. v. FHFA*, 83 F. Supp. 3d 828 (S.D. Iowa 2015), recognized that the Conservator acted within its statutory powers and functions in executing the Third Amendment. In *Perry Capital*, the court held that FHFA acted "within its broad statutory authority as a conservator" under HERA, which "grants the agency expansive discretion to act as it sees fit," and "wide latitude to flexibly operate the GSEs over time." 70 F. Supp. 3d at 227-28 & n.20; *see also id*. at 225 (describing HERA as "a statute of exceptional scope that gave immense discretion to FHFA as a conservator"). The court found that, by executing the Third Amendment, the Conservator exercised its "uncontested authority to determine how to conserve the viability of the GSEs" and how to "carry on the business of the institution[s]." *Id.* at 222-23, 228; *see also Robinson*, 2016 WL 4726555, at *7 (concluding that FHFA acted within its powers and noting that "the suggestion that Congress envisioned only a limited delegation of authority to FHFA is belied by the powers HERA actually grants FHFA."); *Cont'l W.*, 83 F. Supp. 3d at 840 n.6 (observing that FHFA "did not act outside the power granted to [it] by HERA."). Moreover, all three courts rightly reached their conclusions by reviewing the Conservator's actions "on their face," *id.*, considering "*what* the Third Amendment entails, rather than *why* FHFA executed [it]," *Perry Capital*, 70 F. Supp. 3d at 225, *Robinson*, 2016 WL 4726555, at *6, because "it is not the role of this Court to wade into the merits or motives of FHFA['s] actions," *Cont'l W.*, 83 F. Supp. 3d at 840 n.6.

Further, to the extent Plaintiffs characterize the Third Amendment as a "transfer" of GSE assets, *see, e.g.*, Compl. ¶¶ 26, 104, 110, 139, 181, they concede any issue of Conservator authority. HERA authorizes the Conservator to "transfer or sell any asset" of the GSEs "without any approval, assignment, or consent," 12 U.S.C. § 4617(b)(2)(G), in the manner "[FHFA] determines is in the best interests of the [GSEs] or [FHFA]," *id.*

§ 4617(b)(2)(J)(ii). This transfer provision "does not provide any limitation"; indeed, "[i]t is hard to imagine more sweeping language." *Gosnell v. FDIC*, No. 90-1266L, 1991 WL 533637, at *6 (W.D.N.Y. Feb. 4, 1991) (interpreting materially identical 12 U.S.C. § 1821(d)(2)(G)(i)), *aff'd*, 938 F.2d 372 (2d Cir. 1991)). In light of this broad statutory authority, courts consistently hold that suits challenging a conservator's or receiver's transfer of assets are barred. For example, in *Courtney v. Halleran*, the Seventh Circuit held that Sections 1821(d)(2)(G)(i) and 1821(j) protected the receiver's agreement to transfer assets, even though the transfer was allegedly in violation of the receivership distribution priority scheme.[9] 485 F.3d at 948-49.[10]

[9] *See also Waterview Mgmt. Co. v. FDIC*, 105 F.3d 696, 700-02 (D.C. Cir. 1997) (holding that § 1821(j) barred declaratory relief and specific performance against a receiver for breach of contract because the action constituting the breach fell within the receiver's power to transfer assets under § 1821(d)(2)(G)(i)); *Volges v. RTC*, 32 F.3d 50, 53 (2d Cir. 1994) (holding receiver's transfer of assets, allegedly in breach of a contract, was authorized by § 1821(d)(2)(G)(i) and thus § 1821(j) barred the court from enjoining the transfer, "regardless of [plaintiff's] ultimate chance of success on his contract claim"); *United Liberty Life Ins. Co. v. Ryan*, 985 F.2d 1320, 1323, 1328-29 (6th Cir. 1993) (holding § 1821(j) barred rescission of a transaction in which the receiver "transferred substantially all" of the institution's assets).

[10] Congress's enactment of the Consolidated Appropriations Act, 2016 (the "Act") on December 18, 2015, *see* Pub. L. No. 114-113, § 702, Tit. VII, Div. O, 129 Stat. 2242, further confirms that the Conservator and Treasury had the statutory authority to execute the Third Amendment. The Act bars Treasury from selling or otherwise disposing of its preferred shares in the GSEs before January 1, 2018, but it otherwise leaves in place Treasury's rights under the PSPAs (including the Third Amendment, which is expressly referenced in the "Definitions" section, Pub. L. No. 114-113, § 702(a)). Congress's decision to circumscribe Treasury's authority in one area but to leave intact other provisions of the PSPAs demonstrates that Congress believes that the Conservator and Treasury had the statutory authority to enter the Third Amendment. *See N. Haven Bd. of Educ. v. Bell*, 456 U.S. 512, 535 (1982) ("[w]here an agency's statutory construction has been fully brought to the attention of the public and the Congress, and the latter has not sought to alter that interpretation although it has amended the statute in other respects, then presumably the legislative intent has been correctly discerned." (internal quotation marks and citation omitted)).

B. Section 4617(f) Bars Plaintiffs' Attempts to Second Guess the Merits and Motives of the Conservator's Decision to Agree to the Third Amendment

Seeking to avoid Section 4617(f), Plaintiffs challenge the merits of FHFA's decision to enter into the Third Amendment, alleging that it was unnecessary, harmful to the GSEs and their shareholders, "inimical" to the Conservator's purported duty to rehabilitate the GSEs, and motivated to benefit the federal government. *See, e.g.*, Compl. ¶¶ 14-29, 157-61. Further, Plaintiffs assert that the Conservator should have utilized alternatives to the Third Amendment—such as accruing the PSPA dividends at a 12% penalty rate rather than paying them in cash at 10%—that supposedly would have been more favorable to the GSEs and Plaintiffs. *See, e.g.*, *id.* ¶ 136 (alleging that the "problem" the Third Amendment tried to solve, "a cash dividend too high to be serviced by earnings, could be addressed by other means"); *see also id.* ¶¶ 70-76.

These allegations constitute pure second-guessing of the *means* by which the Conservator exercised its discretion in operating the GSEs, as well as the *merits* of the Conservator's decisions. Plaintiffs cannot avoid Section 4617(f) by alleging that the Conservator did a bad job or took action based on an improper motive. When applying Section 4617(f), courts must recognize the "difference between the exercise of a function or power that is clearly outside the statutory authority of the [conservator or receiver] on the one hand, and improperly or even unlawfully exercising a function or power that is clearly authorized by statute on the other." *Ward*, 996 F.2d at 103 (applying § 1821(j)). So long as Conservator action is not "clearly outside" its statutory powers and functions, *id.*, Section 4617(f) "immuniz[es]" the Conservator from all "outside second-guessing," *Nat'l Tr. for Historic Pres. in U.S. v. FDIC*, 995 F.2d 238, 240-41 (D.C. Cir. 1993). Put simply, the application of Section 4617(f) "does not hinge on [the court's] view of the proper exercise of otherwise-legitimate powers." *Gross v. Bell Savs. Bank PA SA*, 974 F.2d 403, 408 (3d Cir. 1992) (applying § 1821(j)).[11]

The courts in *Perry Capital*, *Robinson*, and *Continental Western* rightly rejected claims that plaintiffs could circumvent Section 4617(f) by alleging that FHFA had performed its job poorly or that purportedly superior alternatives to the Third Amendment were available. In *Perry Capital*, the court explained that "[i]t is not [the Court's] place to substitute [its] judgment for FHFA's . . . let alone in the face of HERA's sweeping ouster of courts' power to grant equitable remedies[.]" 70 F. Supp. 3d at 226 (internal citations omitted). The court thus "[r]ecogniz[ed] its role in the constitutional system," declining "to evaluate the merits of whether the Third Amendment is sound financial—or even moral—policy." *Id.* at 246; *see also Cty. of Sonoma*, 710 F.3d at 993 (applying Section 4617(f) and observing "it is not our place to substitute our judgment for FHFA's"); *Leon Cty.*, 700 F.3d at 1279 (same, despite plaintiff's "disagreement with [the Conservator's] business assessment regarding the level of an investment risk"). Likewise, the courts in *Robinson* and *Continental Western* recognized that it was not the

[11] *See also Bank of Am.*, 604 F.3d at 1244 (allegations concerning a receiver's "improper performance of its legitimate receivership functions" are "immaterial"); *Volges*, 32 F.3d at 52 (holding "the fact that the [conservator or receiver's] actions might violate some other provision of law does not render the anti-injunction provision inapplicable"); *Hindes v. FDIC*, No. CIV. A. 94-2355, 1995 WL 82684, at *1 (E.D. Pa. Feb. 28, 1995) (holding that allegations of "misconduct and derelictions of duty" by conservator or receiver "do not give the Court jurisdiction to issue the injunction plaintiffs seek here"), *aff'd*, 137 F.3d 148 (3d Cir. 1998).

role of the court to second-guess the merits of the Conservator's judgment. *See Robinson*, 2016 WL 4726555, at *6-7; *Cont'l W.*, 83 F. Supp. 3d at 840 n.6.

Similarly, Plaintiffs allege that various communications show that the Conservator had a variety of improper *motives* behind the Third Amendment, including to "operate [the GSEs] for the sole benefit of the federal government" and taxpayers, to "transform the housing finance market and to eliminate Fannie and Freddie," and/or to keep the GSEs in a holding pattern "[w]hile waiting for Congress to take action." *See, e.g.*, Compl. ¶¶ 133, 141, 159. Plaintiffs also allege that the Third Amendment was *not* prompted by a motivation to preserve Treasury's funding commitment. *Id.* ¶¶ 70-75. These allegations of improper motives are insufficient as a matter of law to overcome Section 4617(f). Indeed, the plaintiffs in *Perry Capital* made virtually the same allegations, which the court held to be insufficient to avoid dismissal:

> FHFA's underlying motives or opinions—*i.e.*, whether the net worth sweep would arrest a downward spiral of dividend payments, increase payments to Treasury, or keep the GSEs in a holding pattern—do not matter for the purposes of § 4617(f).

Perry Capital, 70 F. Supp. 3d at 226. The courts in *Robinson* and *Continental Western* agreed. *Robinson*, 2016 WL 4726555, at *6; *Cont'l W.*, 83 F. Supp. 3d at 840 n.6. As yet another court reasoned, "Congress surely knew, when it enacted § 4617(f), that challenges to agency action sometimes assert an improper motive. But Congress barred judicial review of the conservator's actions without making an exception for actions said to be taken from an improper motive." *Leon Cty. v. FHFA*, 816 F. Supp. 2d 1205, 1208 (N.D. Fla. 2011), *aff'd*, 700 F.3d 1273 (11th Cir. 2012).

Finally, Plaintiffs allege that Section 4617(f) does not protect the Conservator's decision-making with regard to the Third Amendment because the Conservator allegedly intended to "wind up" or "wind down" the affairs of the GSEs, which Plaintiffs claim can be done only in receivership. Compl. ¶¶ 4, 134, 135, 181. This allegation of bad motive fails for the same reasons stated above. In addition, HERA expressly authorizes the Conservator to "wind[] up the affairs" of the GSEs if the Conservator elects to do so. 12 U.S.C. § 4617(a)(2). "[E]ven if FHFA's actions could be construed as evidencing an intent to 'wind down' the GSEs, '[t]here surely can be a fluid progression from conservatorship to receivership without violating HERA, and that progression could very well involve a conservator that acknowledges an ultimate goal of liquidation.'" *Robinson*, 2016 WL 4726555, at *8 (quoting *Perry Capital*, 70 F. Supp. 3d at 246). In all events, though, the GSEs have not been wound up; they remain in operation and are not in receivership or liquidation. Indeed, this lawsuit is predicated on the *increased* revenues the GSEs have earned while operating in conservatorship. *See Perry Capital*, 70 F. Supp. 3d at 228 & n.21 (holding that the GSEs are not in *de facto* liquidation because they "maintain an operational mortgage finance business and are, once again, profitable," which created the "fundamental justification" for the lawsuits).

* * *

By executing the Third Amendment, the Conservator acted squarely within its statutory powers and functions. Accordingly, Section 4617(f) bars Plaintiffs' APA claims seeking equitable and declaratory relief—that is, Counts I, II, and III—

notwithstanding Plaintiffs' allegations concerning the efficacy, wisdom, and intent of the Third Amendment.[12]

II. HERA BARS SHAREHOLDER APA CLAIMS DURING CONSERVATORSHIP

Plaintiffs' APA claims fail for an additional, independently dispositive reason: HERA bars prosecution of shareholder claims during conservatorship. Congress provided that when FHFA is appointed Conservator, it "immediately succeeds to . . . *all rights*, titles, powers, and privileges of the [GSEs], and *of any stockholder*" of the GSEs. 12 U.S.C. § 4617(b)(2)(A)(i) (emphases added). Here, Plaintiffs purport to assert "rights . . . of [a] stockholder" by asserting APA claims. *See* Compl. ¶¶ 155-82; *see also* Compl. ¶ 1 (alleging that "the federal government took for itself the entire value of the *rights* held by Plaintiffs and Fannie's and Freddie's other private shareholders" and that "Plaintiffs bring this action to put a stop to the federal government's . . . expropriation of private

[12] In addition, the APA expressly does not apply to challenges to agency actions (1) "to the extent that . . . statutes preclude judicial review," 5 U.S.C. § 701(a)(1), or (2) when the agency actions are "committed to agency discretion by law," *id.* § 701(a)(2). *See Heckler v. Chaney*, 470 U.S. 821, 828 (1985) ("[B]efore any review at all may be had, a party must first clear the hurdle of § 701(a)."). Plaintiffs' APA claims fail for both reasons. First, HERA explicitly precludes judicial review of Conservator action. *See* 12 U.S.C. § 4617(f). Second, HERA commits the operation of the GSEs to the Conservator's discretion. *See, e.g.*, 12 U.S.C. § 4617(b)(2)(J)(ii). APA "review is not to be had if the statute is drawn so that a court would have no meaningful standard against which to judge the agency's exercise of discretion." *Webster v. Doe*, 486 U.S. 592, 600 (1988) (quoting *Heckler*, 470 U.S. at 830). In *State of North Dakota v. Yeutter*, the Eighth Circuit examined a statute with provisions that apply if "the Secretary determines" that certain conditions are present, and it held that this language was not actionable under the APA because it "gives the Secretary extremely broad discretion and supplies no objective criteria" that could be used to evaluate the Secretary's action. 914 F.2d 1031, 1035 (8th Cir. 1990); *see also Varicon Int'l v. Office of Pers. Mgmt.*, 934 F. Supp. 440, 443-44 (D.D.C. 1996) (similar). Similarly, HERA grants the Conservator extremely broad discretion, without any objective criteria for evaluating its actions, by allowing the Conservator to take action that it "*determines* is in the best interests of the regulated entity or the Agency." 12 U.S.C. § 4617(b)(2)(J)(ii) (emphasis added).

property *rights*." (emphases added)), ¶ 114 (alleging that the effect of the Net Worth Sweep is "to immediately nullify the rights of private shareholders . . . .") But the Conservator now holds "all" such rights exclusively, leaving Plaintiffs with no shareholder rights or interests to assert.

A. The Conservator Succeeds to All Shareholder Rights

Congress could not have been more clear: upon its appointment, the Conservator "immediately succeed[ed] to . . . ***all rights, titles, powers, and privileges*** of the [GSEs], and ***of any stockholder***, officer, or director ***of [the GSEs]*** with respect to the [GSEs] and the assets of the [GSEs]." 12 U.S.C. § 4617(b)(2)(A) (emphases added). This broad, unequivocal language evidences Congress's intent to ensure "that nothing was missed" and to "transfer[] everything it could to the [Conservator]." *Kellmer v. Raines*, 674 F.3d 848, 851 (D.C. Cir. 2012) (quoting *Pareto v. FDIC*, 139 F.3d 696, 700 (9th Cir. 1998)); *see also Hennepin Cty. v. Fed. Nat'l Mortg. Ass'n*, 742 F.3d 818, 822 (8th Cir. 2014) (applying the "interpretive rule[]" of "all means all" to HERA's exemption of FHFA from "all taxation") (internal citation omitted). Accordingly, "[t]he shareholders' rights are now the FHFA's." *Esther Sadowsky Testamentary Tr. v. Syron*, 639 F. Supp. 2d 347, 351 (S.D.N.Y. 2009).

Courts uniformly have held that the provision of HERA transferring shareholder rights to the Conservator bars GSE shareholders from asserting claims during the conservatorships. For example, in *Kellmer*, the D.C. Circuit affirmed the district court's substitution of the Conservator in place of the plaintiffs—shareholders of Fannie Mae—who had asserted a variety of shareholder derivative claims. The Court held:

> [T]o resolve this issue, we need only heed Professor Frankfurter's timeless advice: "'(1) Read the statute; (2) read the statute; (3) read the statute!'" *See* Henry J. Friendly, *Mr. Justice Frankfurter and the Reading of Statutes, in* Benchmarks 196, 202 (1967). HERA provides that FHFA "shall, as conservator or receiver, and by operation of law, immediately succeed to . . . all rights, titles, powers, and privileges . . . of any stockholder." 12 U.S.C. § 4617(b)(2)(A). ***This language plainly transfers shareholders' ability to bring derivative suits—a "right[ ], title[ ], power[ ], [or] privilege[ ]"—to FHFA***.

674 F.3d at 850 (emphasis added). Likewise, *Perry Capital* held unequivocally that "HERA's plain language bars shareholder derivative suits, without exception." *Perry Capital*, 70 F. Supp. 3d at 232; *see also Cont'l W.*, 83 F. Supp. 3d at 840 n.6 ("HERA grants all shareholder rights, including the right to bring a derivative suit, to FHFA.").

The transfer of all rights to the Conservator also works to effectuate other key provisions of HERA, including that the Conservator exclusively "determines [what] is in the best interests" of the GSEs, 12 U.S.C. § 4617(b)(2)(J)(ii), and that no court may "restrain" or "affect" the Conservator's exercise of its statutory power, *id.* § 4617(f). Together, these provisions vest all control over the GSEs exclusively in the Conservator, not the shareholders.[13]

[13] Indeed, numerous courts have held that Section 4617(f) *itself* displaces shareholder plaintiffs' attempts to pursue derivative claims. *See Gail C. Sweeney Estate Marital Tr. v. U.S. Treasury Dep't.*, 68 F. Supp. 3d 116, 126 (2014) (concluding shareholder "plaintiff's lawsuit would 'affect' and 'interfere' with the Conservator's exercise of its powers"); *In re Federal Home Loan Mortg. Corp. Litig.*, 643 F. Supp. 2d 790, 799 (2009) ("find[ing] that allowing the [shareholder] plaintiffs to remain in this action would violate § 4617(f)"); *In re Fed. Nat'l Mortg. Ass'n Sec., Derivative, ERISA Litig.*, 629 F. Supp. 2d 1, 4 n.4 (D.D.C. 2009) ("allowing [shareholder] plaintiffs to continue to pursue derivative claims independent of FHFA would require this Court to take action that would 'restrain

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Moreover, whether Plaintiffs' APA claims are characterized as derivative or direct is irrelevant because the Conservator succeeded to "*all*" shareholder rights, whether derivative or direct. When interpreting HERA, "all means all." *Hennepin Cty.*, 742 F.3d at 822. There is no basis to read a "direct claims" exception into the statute.

To be sure, in *Levin v. Miller*, the Seventh Circuit briefly discussed whether the analogous succession language in § 1821(d)(2)(A)(i) extends to direct claims. 763 F.3d 667, 672 (7th Cir. 2014). However, at oral argument, the FDIC chose not to argue this language applies to direct claims, and the court adopted the FDIC's interpretation. *Id.* Nevertheless, in his concurring opinion, Judge Hamilton observed: "[i]t is not obvious to me that the language must be interpreted so narrowly, nor did the cases cited at page 2 of the opinion confront this issue or require that result." *Id.* at 673 (Hamilton, J., concurring). Judge Hamilton found the statutory language "could be interpreted, for sound policy reasons, more broadly to include a stockholder's *direct* claims that are based on harms resulting from dealings with the assets of the failed institution." *Id.* Judge Hamilton also noted the FDIC "could choose to modify its interpretation of the ambiguous § 1821(d)(2)(A)," and expressed his "hope" that the FDIC would "consider this issue." *Id*. at 674. Because the Conservator already can pursue derivative claims on behalf of the GSEs, the statutory phrase "rights . . . of any stockholder" has meaning only if it encompasses direct claims arising from shareholders' interests. Accordingly, "[t]he

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or affect' FHFA's discretion, which HERA explicitly prohibits"), *aff'd sub nom. Kellmer*,

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doctrine that statutes should not be construed to render language mere surplusage . . . weighs in favor of a broader reach that could include direct claims." *Id.* at 673. The Court should follow the concurrence's approach, which is consistent with the text and structure of the statute.

In all events, Plaintiffs' APA claims are derivative (*see* Treasury Br. at Argument § III), so the Court need not resolve the question of succession to shareholders' direct claims. *See Perry Capital*, 70 F. Supp. 3d at 229 & n.24, 233-39 (declining to address whether the Conservator succeeds to direct claims, having dismissed all purportedly direct claims on other grounds).

B. There is No "Conflict of Interest" Exception to the Clear Statutory Language

In an unsuccessful effort to evade the clear statutory language transferring "all" shareholder rights to the Conservator, other shareholders have argued that courts should create a "conflict of interest" exception to HERA that would allow shareholders to assert claims during conservatorship. *Perry Capital* and *Continental Western* flatly rejected this argument. *See Perry Capital*, 70 F. Supp. at 231-32 (holding that no "conflict of interest" exception applies); *Cont'l W.*, 83 F. Supp. 3d at 840 n.6 (agreeing with *Perry Capital*'s analysis).

Only two courts have applied a conflict-of-interest exception under FIRREA for FDIC receiverships, and both cases have been limited to their specific facts. *First*

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674 F.3d 848.

Hartford Corp. Pension Plan & Tr. v. United States, 194 F.3d 1279, 1295-96 (Fed. Cir. 1999); *Delta Savs. Bank v. United States*, 265 F.3d 1017, 1021-24 (9th Cir. 2001). This Court should not apply either decision here. As *Perry Capital* recognized, neither *First Hartford* nor *Delta Savings* provides a persuasive reason to create a judicial exception to the plain language of FIRREA (and HERA) that transfers "all" shareholder rights to the Conservator. 70 F. Supp. 3d at 230-32. *Perry Capital* explained that these cases were wrongly decided because they improperly relied on the historic rationale for shareholder derivative actions while disregarding the statutory language of FIRREA (and HERA) that bars such actions in these circumstances. *Id.* at 231. Moreover, even assuming *arguendo* that *First Hartford* and *Delta Savings* were not wrongly decided, their limited holdings should not be expanded to conservatorships. As *Perry Capital* explained, *First Hartford* and *Delta Savings* involved receiverships, and their flawed rationale "makes still less sense in the conservatorship context." *Id.* at 231 n.30.[14] Even the courts that have

[14] Indeed, it would be odd if "a statute like HERA, through which Congress grants immense discretionary power to the conservator, § 4617(b)(2)(A), and prohibits courts from interfering with the exercise of such power, § 4617(f), would still house an implicit end-run around FHFA's conservatorship authority by means of the shareholder derivative suits that the statute explicitly bars." *Perry Capital*, 70 F. Supp. 3d at 230-31. The very point of a derivative action is to permit shareholders to assert the interests of the corporation where managers or directors have a conflict of interest that prevent them from doing so. "[T]he existence of a rule against shareholder derivative suits, § 4617(b)(2)(A)(i), indicates that courts cannot use the *rationale* for why derivative suits are available to shareholders as a legal tool – including the conflict of interest rationale – to carve out an *exception* to that prohibition. . . . Such an exception would swallow the rule." *Id.* (emphasis in original). When it enacted HERA, Congress anticipated that FHFA would turn to Treasury for essential capital, and authorized Treasury to invest in the GSEs. If Congress intended FHFA's dealings with Treasury to be subject to challenge by shareholders, it would have expressly granted shareholders that right. Instead, it transferred "*all* rights, titles, powers, and privileges" of the GSEs' shareholders to FHFA. *Id.* § 4617(b)(2)(A)(i) (emphasis added).

adopted the conflict-of-interest exception have emphasized that it applies in a narrow range of circumstances. *See First Hartford*, 194 F.3d at 1295 (emphasizing that the exception will apply "only . . . in a very narrow range of circumstances"); *Delta Savs.*, 265 F.3d at 1023 ("We do not suggest that the FDIC-as-receiver is faced with a disqualifying conflict every time a bank-in-receivership is asked to sue another federal agency.").

III. SECTION 4623(D) BARS PLAINTIFFS' APA CLAIMS

Section 4623(d) of HERA provides another independent ground for dismissing Plaintiffs' APA claims. This statutory provision protects supervisory actions taken by FHFA in its capacity as Regulator of the GSEs. Separate from FHFA's powers and functions as Conservator, FHFA is empowered by statute to classify the capital levels of the GSEs on a quarterly basis, as part of its ongoing monitoring of the GSEs' safety and soundness. *See* 12 U.S.C. §§ 4611-4624. FHFA is also empowered to take a variety of supervisory actions concerning the GSEs' capital, which can culminate in the appointment of a conservator or receiver. *Id*. Section 4623(d), in turn, protects FHFA's exercise of powers in this regard, barring any judicial action that would affect either a capital classification decision by FHFA, or any supervisory action taken by FHFA with regard to the capital of the GSEs. In particular, Section 4623(d) provides that "no court shall have jurisdiction to affect, by injunction or otherwise, the issuance or effectiveness of any classification or action of the Director under this subchapter (other than appointment of a conservator under section 4616 or 4617 of this title . . .) or to review, modify, suspend, terminate, or set aside such classification or action." *Id.* § 4623(d).

Here, although Plaintiffs challenge only actions taken by FHFA as Conservator, the relief they seek, and the judicial findings on which such relief would necessarily be based, would unlawfully "affect . . . the effectiveness" of actions taken by FHFA wholly in its regulatory capacity. 12 U.S.C. § 4623(d). Specifically, Plaintiffs' claims and requested relief would override FHFA's *regulatory* action, taken in October 2008, to suspend and replace the capital classification system and regulatory capital requirements with a new capital paradigm (the "October 2008 Action").

The October 2008 Action was taken one month into the conservatorships, when FHFA's then-Director James B. Lockhart III announced that he had "determined that it is prudent and in the best interests of the market to suspend capital classifications of Fannie Mae and Freddie Mac during the conservatorship, in light of the United States Treasury's Senior Preferred Stock Purchase Agreement." FHFA News Release: FHFA Announces Suspension of Capital Classifications During Conservatorship (Oct. 9, 2008), *available at* http://goo.gl/MzpAUH (attached as Ex. E). In announcing this action, taken pursuant to its supervisory powers over the GSEs, FHFA announced that, although FHFA "will continue to closely monitor capital levels" of the GSEs, "*the existing statutory and FHFA-directed regulatory capital requirements will not be binding during the conservatorship*." *Id.* (emphasis added).

The October 2008 Action was a supervisory action that established a new capital regime for the GSEs, one where balance sheet capital no longer served as the controlling measure of safety and soundness. The new capital paradigm relies on the PSPAs and Treasury's financial commitment thereunder as capital-equivalents. This new capital regime gives the Conservator the flexibility to operate the GSEs without the constraints of balance sheet capital requirements or standards. Further, the FHFA Examination Manual--which governs supervision of the GSEs and implementation of FHFA regulatory policy through the examination process--implements the October 2008 Action by directing the FHFA's Examination and Supervisory staff to treat the GSEs as having been "capitalized via the [PSPAs]." FHFA Examination Manual at "Capital," p. 1, http://goo.gl/BXpdSU (attached as Ex. F); *see also id.* at 16 (stating that supervisory examinations should be conducted with the understanding that "[a]ny capital needs [of the GSEs]. . . are fulfilled by Treasury under the [PSPAs]").[15]

Plaintiffs' APA claims directly implicate FHFA's regulatory action suspending capital classifications for the GSEs in conservatorship and permitting them to be "capitalized" by the Treasury commitment. In particular, Plaintiffs argue that the Conservator acted outside of its statutory powers and functions in agreeing to the Third Amendment because it allegedly does not put the GSEs in a "sound and solvent" condition. *See, e.g.*, Compl. ¶¶ 4, 28, 104, 113-17, 129. Indeed, Plaintiffs specifically argue that the Third Amendment "[f]orc[es] the Companies to operate in an inherently unsafe and unsound condition" by rendering them unable to comply with traditional capital standards. *Id.* ¶ 117; *see also id.* ¶¶ 113-14.

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[15] *See also* 12 C.F.R. § 1234.8(a)(1) (joint financial regulator rule acknowledging that the GSEs in conservatorship are operating "with capital support from the United States").

Plaintiffs' argument, and their demand that the Third Amendment be rescinded on this basis, is directly contrary to and would plainly "affect . . . the effectiveness" of the regulatory action taken by FHFA to suspend the existing capital classifications and regulatory capital requirements, and to regulate and supervise the GSEs in conservatorship as having been "capitalized via the [PSPAs]." FHFA Examination Manual at "Capital," p. 1. Further, Plaintiffs' allegations confirm that none of the Third Amendment-related actions challenged in this litigation would have or could have been taken by the Conservator had FHFA not previously taken the regulatory action necessary to suspend the existing classification system and to adopt the capital regime that has governed GSE operations since October 2008. A ruling in Plaintiffs' favor would thus "affect . . . the effectiveness of" the Director's October 2008 *regulatory* action.

More generally, were the Court to grant the relief Plaintiffs seek, this would effectively nullify the purpose and intended effect of the October 2008 Action, to vest the Conservator with maximum flexibility to operate the GSEs free of the restraints of the capital classification system and "in the best interests of the [GSEs] or the Agency," 12 U.S.C. § 4617(b)(2)(J). Rescinding the Third Amendment on the ground that it fails to promote safety and soundness would doubtless "affect . . . the effectiveness" of the Director's October 2008 action (and also "affect," "review," "modify," "terminate," and/or "set aside" the Action). Section 4623(d) thus bars Plaintiffs' claims that challenge the Third Amendment as inconsistent with sound and solvent operations or the purported statutory obligations of FHFA as Conservator or regulator.

In sum, although Plaintiffs' APA claims target only the Conservator, their necessary consequence would be to limit "the effectiveness" of covered actions taken by FHFA wholly in its regulatory capacity. A ruling in favor of Plaintiffs would tie the hands of FHFA as both Regulator and Conservator, usurp its ability to determine, if, how and when to accumulate balance sheet capital or pay dividends, and force the Conservator to operate the GSEs--and the Regulator to supervise the GSEs--under an old capital and supervisory regime where balance sheet capital is the critical measure of safety and soundness.

IV. PLAINTIFFS' SEPARATION-OF-POWERS CLAIM IS BOTH WHOLLY WITHOUT MERIT AND IRRELEVANT TO THE VALIDITY OF THE THIRD AMENDMENT

Plaintiffs allege in Count IV that the Third Amendment should be vacated for the additional reason that it supposedly "was adopted by FHFA when it was headed by a single person who was not removable by the President by will." Compl. ¶ 189. Plaintiffs contend that "[b]y making FHFA's head a single Director rather than a multi-member Board and eliminating the President's power to remove the Director at will, HERA violates the Constitution's separation of powers." *Id.* ¶ 185. This appears to be an effort to capitalize on a recent decision of a split panel of the D.C. Circuit, *PHH Corp. v. Consumer Fin. Prot. Bureau*, 839 F.3d 1 (D.C. Cir. 2016) (petition for en banc rehearing pending), holding that it violated Article II of the Constitution for the single director of the Consumer Financial Protection Bureau ("CFPB") to be protected from removal by the President except for specified reasons. That effort fails both as a matter of law and as a matter of fact.

Plaintiffs' claim is contrary to longstanding Supreme Court precedent upholding the constitutionality of independent agencies whose heads are removable only for cause. Nothing in the Constitution or the Court's separation-of-powers jurisprudence suggests that Congress is limited to the structure of multi-member boards when it creates independent agencies. Indeed, the very first independent agency Congress ever created—the Office of the Comptroller of the Currency, an agency that, like FHFA, supervises and regulates financial institutions—has a single head. FHFA is also materially different from the CFPB.

But the theoretical arguments espoused in Count IV are not only baseless, they are also irrelevant to the validity of the Third Amendment for three separate reasons, making it unnecessary for this Court to reach their merits. *First*, under Supreme Court precedent, a finding that restrictions on the President's power to remove an agency official are unconstitutional does not result in invalidation of the agency's past actions, the sole relief Plaintiffs seek here. *Second*, FHFA's adoption of the Third Amendment in its capacity as Conservator was not an executive function that constitutionally must be subject to some degree of Presidential control. *Third*, when FHFA adopted the Third Amendment in August 2012, FHFA was headed by an *Acting* Director who does not enjoy the statutory protection from removal that applies to a permanent, Senate-confirmed Director. For each of these reasons, even if Plaintiffs' novel theory had merit (which it does not), it would provide no basis for invalidating the Third Amendment.

A. Plaintiffs' Attack on FHFA's Structure is Contrary to Long Settled Supreme Court Precedent

Over eighty years ago, the Supreme Court held in *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), that Congress may "create independent agencies run by principal officers appointed by the President, whom the President may not remove at will but only for good cause." *Free Enter. Fund v. Pub. Co. Acct'g Oversight Bd.*, 561 U.S. 477, 483 (2010). In *Humphrey's Executor*, the Court "found it 'plain' that the Constitution did not give the President 'illimitable power of removal' over the officers of independent agencies." *Morrison v. Olson*, 487 U.S. 654, 687 (1988) (quoting *Humphrey's Ex'r*, 295 U.S. at 629). The Court has repeatedly reaffirmed this central principle in the decades since, including most recently in 2010. *See Wiener v. United States*, 357 U.S. 349, 352 (1958); *Morrison*, 487 U.S. at 686-87; *Free Enter. Fund*, 561 U.S. at 483, 509. And Congress has created dozens of independent agencies, performing a vast array of important functions, based on this judicially approved model.

FHFA fits squarely and easily within this framework. Congress created FHFA to regulate and supervise, among select other entities, Fannie Mae and Freddie Mac, financial institutions that play a vital role in housing finance. It has long been recognized that "[i]ndependence from presidential control is arguably important if agencies charged with regulating financial institutions . . . are to successfully fulfill their responsibilities; people will likely have greater confidence in financial institutions if they believe that the regulation of these institutions is immune from political influence." *Swan v. Clinton*, 100 F.3d 973, 983-84 (D.C. Cir. 1996). Congress's decision that FHFA should be led by a

Director appointed by the President, with the advice and consent of the Senate, for a term of five years, and removable by the President for cause serves those important interests and was well within the constitutional latitude provided to Congress by *Humphrey's Executor* and its progeny.

Contrary to Plaintiffs' position that an agency cannot constitutionally be headed by a "single person who [is] not removable by the President by will," Compl. ¶ 189, FHFA's structure carries forward an independent agency model Congress first employed for supervision of financial institutions even long before *Humphrey's Executor*. In 1864, Congress passed the National Bank Act, which among other things created the Office of the Comptroller of the Currency to charter, examine, and supervise national banks. Congress structured that office to be headed by a single individual, the Comptroller of the Currency, who would "hold his office for the term of five years unless sooner removed by the President, *upon reasons to be communicated by him to the Senate*." Ex. G, Act of June 3, 1864, § 1, 13 Stat. 99, 100 (emphasis added). That provision endures to the present day. *See* 12 U.S.C. § 2.

Plaintiffs are likely to rely on the general principle that in order to discharge his constitutional duty under Article II to ensure that the laws are faithfully executed, the President "must have some 'power of removing those [subordinate officials] for whom he cannot continue to be responsible.'" *Free Enter. Fund*, 561 U.S. at 493 (quoting *Myers v. United States*, 272 U.S. 52, 117 (1926)). But under *Humphrey's Executor* and its progeny, that power is not unlimited and does not require that the President always have the power to remove subordinate officials at will. And nothing in the reasoning of

Humphrey's Executor or any other Supreme Court precedent suggests that tenure protection is only constitutionally permissible for members of boards, and not for individual agency heads. While *Humphrey's Executor* happened to involve a multi-member commission (the FTC), that particular feature was not even a relevant, let alone dispositive, consideration for the Court in its constitutional analysis. In *Morrison*, the Supreme Court approved a "good cause" restriction on removal of an independent counsel who was the single head of her office. *Morrison*, 487 U.S. at 685-93. If anything, the President's ability to hold someone accountable for an agency's actions would seem to be *greater* when an agency has a single person, rather than five or even more, at its helm. *See Free Enter. Fund*, 561 U.S. at 497 ("The diffusion of power carries with it a diffusion of accountability.").

Thus, Plaintiffs' novel claim lacks any basis in the Supreme Court's separation-of-powers jurisprudence. Plaintiffs, however, are likely to rely on an outlier decision relating to the CFPB, issued by a divided panel of the D.C. Circuit just nine days before Plaintiffs filed their Complaint in this case. *PHH*, 839 F.3d 1. The split panel held that the CFPB was unconstitutionally structured because it was headed by a single individual removable only for cause. However, the split panel's decision has no precedential value even within the D.C. Circuit, let alone in this Court. The D.C. Circuit stayed its own mandate while a petition for rehearing en banc by the CFPB, which is supported by a brief from the United States that was submitted at the Court's suggestion to the Solicitor General, is under review. If the panel decision is not overturned by the full D.C. Circuit, the CFPB will have the opportunity to file a *certiorari* petition with the Supreme Court.

Notably, two other courts have rejected similar constitutional challenges to the CFPB's structure. *CFPB v. ITT Educ. Servs., Inc.*, 2015 WL 1013508, at *7-*14 & n.10 (S.D. Ind. Mar. 6, 2015); *CFPB v. Morgan Drexen, Inc.*, 60 F. Supp. 2d 1082, 1086-89 (C.D. Cal. 2014).

The split panel decision, moreover, is wrong. The panel fashioned out of a whole cloth a rule that independent agencies exercising law enforcement powers like the CFPB does must be headed by a multi-member board if their leadership is to have protection from removal by the President. But such a rule has no basis in constitutional text, judicial precedent, or the principles underlying Article II. The panel acknowledged that as between an agency with a single head and with a multi-member board, "there is no meaningful difference in responsiveness and accountability to the President," and said it did not matter whether a single-director structure causes "any *additional* diminishment of Presidential power beyond the significant diminishment already caused by *Humphrey's Executor* itself." *PHH*, 839 F.3d at 32, 34. But the central inquiry under the Supreme Court's separation-of-powers jurisprudence is whether a particular agency structure or feature impairs the President's "ability to execute the laws" by "holding his subordinates accountable for their conduct." *Free Enterprise Fund*, 561 U.S. at 496.

Citing a series of law review articles, the panel relied heavily on the subjective notion that groups arguably make higher quality decisions than individuals, *see* 839 F.3d at 26-28, but those considerations lack any grounding in separation-of-powers jurisprudence. And while the panel observed that Congress has created many more independent agencies headed by multi-member boards than by individual directors, calling the latter "anomalies," 839 F.3d at 17-18, that analysis confuses infrequency with unconstitutionality. *See Mistretta v. United States*, 488 U.S. 361, 385 (1989) ("Our constitutional principles of separated powers are not violated . . . by mere anomaly or innovation."). The panel dismissed *Morrison* on the ground that there is now "nearly universal consensus" that the underlying statute in that case "had been a mistake" and the dissenting opinion in *Morrison* was correct, 839 F.3d at 20, but that is no basis for disregarding Supreme Court precedent that has never been overruled. And the panel mistook the Comptroller of the Currency (as noted above, the inaugural example of an independent agency) as removable "at will," *PHH*, 839 F.3d at 20 n.6, despite the statute allowing removal only for "reasons" reportable to the Senate. 12 U.S.C. § 2.

In any event, FHFA is different from the CFPB, making the *PHH* panel decision inapplicable to FHFA even if it were not outright wrong. Indeed, the *PHH* plaintiffs who procured the panel decision have urged the D.C. Circuit that "[t]he CFPB is not remotely comparable" to FHFA, which they describe as an agency "with sharply limited responsibilities and carefully confined powers." Resp. to Pet. for Reh'g En Banc (filed Dec. 22, 2016), *PHH Corp. v. CFPB*, No. 15-1177 (D.C. Cir.).

The CFPB has sweeping law enforcement authority over "any entity that engages in offering or providing a consumer financial product or service." 12 U.S.C. § 5481(6). That definition is exceptionally broad and includes tens of thousands of covered persons against whom the CFPB can "exercise the core Article II executive power of bringing law enforcement actions or imposing fines and penalties against private citizens for violation of statutes or agency rules." *PHH*, 839 F.3d at 18. For example, in a recent rulemaking regarding arbitration clauses, the CFPB estimated that over 50,000 businesses spanning twelve distinct industries would be subject to the proscriptions of its new rule. CFPB, Arbitration Agreements, 81 Fed. Reg. 32830, 32907, 32909 (May 24, 2016). The *PHH* panel placed the CFPB in a category all its own, emphasizing not once but twice that "other than the President, the Director of the CFPB is *the single most powerful official* in the entire United States Government, at least when measured in terms of unilateral power. That is not an overstatement." *PHH*, 839 F.3d at 16 (emphasis added); *see id.* at 17 (repeating statement and adding that the CFPB Director "can be considered even more powerful than the President").

FHFA, in contrast, is a safety and soundness regulator for a finite set of named institutions: Fannie Mae, Freddie Mac, and the eleven Federal Home Loan Banks. 12 U.S.C. § 4502(20). While FHFA has broad statutory authorities within its domain, the cohort of regulated persons against whom it can impose fines, penalties, and the like is several orders of magnitude smaller than CFPB's. Moreover, in contrast to the *PHH* panel's portrayal of a "single, unaccountable, unchecked Director," 839 F.3d at 8, the FHFA Director benefits from the guidance and advice of the Federal Housing Finance Oversight Board, a four-person body that includes the Secretary of the Treasury, Secretary of Housing and Urban Development, and Chairman of the Securities and Exchange Commission and meets at least quarterly. 12 U.S.C. § 4513a. These distinctions render the *PHH* panel's reasoning about CFPB wholly inapplicable to FHFA.

B. Plaintiffs' Novel Constitutional Theory Provides No Basis for Invalidating the Third Amendment, Even If It Had Any Possible Merit

While FHFA's structure is plainly constitutional, the constitutional challenge Plaintiffs have brought to FHFA's structure is not even relevant to the validity of the Third Amendment, the sole agency action that they allege causes them harm. The Court could dismiss Count IV on any of the following three grounds without the need to reach the constitutional issues.

1. Past Agency Actions Are Not Subject to Post Hoc Invalidation on the Ground That the Agency Officials Who Made Them Were Protected From Removal

Regardless of whether it had any possible merit, the theory behind Count IV would not justify invalidating FHFA's past actions years after the fact. In *Free Enterprise Fund*, even as it held that a set of restrictions on the President's ability to remove members of the Public Company Accounting Oversight Board were unconstitutional, the Supreme Court emphatically "reject[ed]" the notion that such restrictions rendered "all power and authority exercised by [the Board] in violation of the Constitution." 561 U.S. at 508. In this situation, the Court explained, it is not "the existence of the Board" that "violate[s] the separation of powers," but the particular removal restrictions in the statute. *Id.* at 508-09. The appropriate remedy for such a claim is simply to strike down the problematic provisions so that they do not constrain the President's powers going forward. *See id.* at 508 ("Generally speaking, when confronting a constitutional flaw in a statute, we try to limit the solution to the problem.") (internal quotation marks omitted). Even the *PHH* panel conformed to this approach, emphasizing that while as a result of its decision "[t]he President of the United States now has the power to supervise and director the Director of the CFPB, and may remove the Director at will at any time," the panel's "constitutional ruling will not halt the CFPB's ongoing operations or the CFPB's ability to uphold the $109 million order against PHH." *PHH*, 839 F.3d at 39.

Thus, the most relief Plaintiffs could possibly obtain from Count IV is an order striking the "for cause" restriction from § 4512(b)(2) so that the President would have greater power to remove FHFA Directors in the future. That, however, would have no effect on the sole, historic FHFA action about which Plaintiffs complain: entry into the Third Amendment over four years ago. *See* Compl. ¶ 189 (sole relief sought for Count IV is vacatur of Third Amendment because supposedly "adopted by FHFA when it was headed by a single person who was not removable by the President at will"). Unlike the plaintiffs in *Free Enterprise Fund* and *PHH*, Plaintiffs do not allege that they are regulated by FHFA or at ongoing or future risk of investigations and enforcement proceedings by it.

2. FHFA's Approval of the Third Amendment In Its Capacity as Conservator Was Not An Executive Function

Plaintiffs' separation-of-powers argument is also beside the point for another reason. The theory underlying the claim is the notion that, in certain circumstances, removal restrictions might "impede the President's ability to perform his constitutional duty" under Article II to ensure that the laws are faithfully executed. *Morrison*, 487 U.S. at 691. But Plaintiffs sue FHFA solely for approving the Third Amendment in its capacity as Conservator, an action that is not the type of executive law enforcement function over which Article II requires that the President retain some control. Indeed, such actions are not even governmental for purposes of the Constitution.

In a variety of contexts, courts have held that when government agencies serve as conservators or receivers for financial institutions, they step into the shoes of those institutions and are not acting as the Government. For example, in *United States v. Beszborn*, 21 F.3d 62 (5th Cir. 1994), the Fifth Circuit held that "[i]n its capacity as receiver," the Resolution Trust Corporation stood "as a private, non-governmental entity, and is not the Government for purposes of the Double Jeopardy Clause." *Id.* at 68. Likewise, "when the FDIC is acting as a receiver, it is performing a function normally accomplished by a private entity rather than a federal agency. As a result, the FDIC does not act on behalf of the United States government, and its does not perform any function unique to the federal government." *Schock v. FDIC*, 118 F. Supp. 2d 165, 169-70 (D.R.I. 2000); *accord Ameristar Fin. Serv'g Co. LLC v. United States*, 75 Fed. Cl. 807, 812 (2007) (holding that FDIC as conservator "was not acting as the United States"). Similarly, "when FHFA took over as conservator of Fannie Mae, it stepped into Fannie Mae's private role," and therefore "FHFA as conservator of Fannie Mae is not a government actor" for purposes of constitutional claims. *Herron v. Fannie Mae*, 857 F. Supp. 2d 87, 96 (D.D.C. 2012), *appeal pending* (D.C. Cir. No. 16-5070).

If FHFA's entry into the Third Amendment as Conservator was not even governmental, *a fortiori* it was not the type of executive law enforcement function that Article II requires to be subject to some degree of Presidential supervision. In this case, Plaintiffs sue FHFA in its capacity as Conservator solely for entering into the Third Amendment as Conservator. For this reason as well, even if Plaintiffs' theory that FHFA's structure as a regulatory agency is unconstitutional had any arguable merit (which it does not), that would not entitle Plaintiffs to any relief with respect to actions, such as the Third Amendment, that FHFA did not take as regulator.

3. The Third Amendment Was Approved By An FHFA Acting Director, Who Was Not Protected From Removal By the President

Finally, the premise of Count IV is that at the time of the Third Amendment, FHFA was "headed by a single person who was not removable by the President by will." Compl. ¶ 189. But that premise is wrong, indeed belied by multiple allegations elsewhere in Plaintiffs' Complaint.

In August 2012, FHFA was headed by an *Acting* Director, Edward J. DeMarco. Compl. ¶¶ 2, 96, 111, 140. It was Acting Director DeMarco who approved and signed the Third Amendment. *See* Ex. D, at 8. Although the statute limits the President's ability to remove a permanent, Senate-confirmed FHFA Director except "for cause," 12 U.S.C. § 4512(b)(2), that limitation does not apply to the President's power to remove an Acting Director like Mr. DeMarco. A separate provision of the statute governs Acting Directors: "In the event of the death, resignation, sickness, or absence of the Director, the President shall designate [the Deputy Director of one of three divisions] to serve as acting Director until the return of the Director, or the appointment of a successor pursuant to subsection (b)." 12 U.S.C. § 4512(f). The protection from removal except "for cause" does not apply to an Acting Director serving under § 4512(f).

Because Acting Director DeMarco was *not*, in fact, statutorily protected from Presidential removal, plaintiffs' theory that such protection violates the separation of powers has no application to him. As discussed above, such a theory is not a basis for retrospectively invalidating past agency actions at all; but even putting that aside, it could not conceivably provide a basis for invalidating past actions taken by agency officials to whom it does not apply.

CONCLUSION

For the foregoing reasons and the reasons in Treasury's motion to dismiss, FHFA respectfully requests the Court dismiss with prejudice all claims asserted against it.

Dated: January 9, 2017

Respectfully submitted,

/s/ Thad T. Dameris
Thad T. Dameris
S.D. Texas Bar No. 7667
Texas Bar No. 05345700
Thad.Dameris@apks.com
ARNOLD & PORTER KAYE SCHOLER LLP
700 Louisiana Street, Suite 1600
Houston, TX 77002-2755
Telephone: (713) 576-2402
Facsimile: (713) 576-2499

Howard N. Cayne
D.C. Bar No. 331306, *admitted pro hac vice*
Howard.Cayne@apks.com
Asim Varma
D.C. Bar No. 426364, *admitted pro hac vice*
Asim.Varma@apks.com
Robert J. Katerberg
D.C. Bar No. 466325, *admitted pro hac vice*
Robert.Katerberg@apks.com
ARNOLD & PORTER KAYE SCHOLER LLP
601 Massachusetts Avenue NW
Washington, D.C. 20001
Telephone: (202) 942-5000
Facsimile: (202) 942-5999

Attorney for Defendants Federal Housing Finance Agency and Director Melvin L. Watt

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon the parties to this action by serving a copy upon each party listed below on January 9, 2017, by the Electronic Filing System.

Chad Flores Owen J. McGovern Parth S. Gejji BECK REDDEN LLP 1221 McKinney St., Suite 4500 Houston, TX 77010 *Attorneys for Plaintiffs*	

/s/ Thad T. Dameris
Thad T. Dameris

Exhibit A

EXECUTION VERSION

AMENDED AND RESTATED SENIOR PREFERRED STOCK PURCHASE AGREEMENT

AMENDED AND RESTATED SENIOR PREFERRED STOCK PURCHASE AGREEMENT (this "Agreement") dated as of September 26, 2008, between the UNITED STATES DEPARTMENT OF THE TREASURY ("Purchaser") and FEDERAL NATIONAL MORTGAGE ASSOCIATION ("Seller"), acting through the Federal Housing Finance Agency (the "Agency") as its duly appointed conservator (the Agency in such capacity, "Conservator"). Reference is made to Article 1 below for the meaning of capitalized terms used herein without definition.

Background

A. The Agency has been duly appointed as Conservator for Seller pursuant to Section 1367(a) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (as amended, the "FHE Act"). Conservator has determined that entry into this Agreement is (i) necessary to put Seller in a sound and solvent condition; (ii) appropriate to carry on the business of Seller and preserve and conserve the assets and property of Seller; and (iii) otherwise consistent with its powers, authorities and responsibilities.

B. Purchaser is authorized to purchase obligations and other securities issued by Seller pursuant to Section 304(g) of the Federal National Mortgage Association Charter Act, as amended (the "Charter Act"). The Secretary of the Treasury has determined, after taking into consideration the matters set forth in Section 304(g)(1)(C) of the Charter Act, that the purchases contemplated herein are necessary to (i) provide stability to the financial markets; (ii) prevent disruptions in the availability of mortgage finance; and (iii) protect the taxpayer.

C. Purchaser and Seller executed and delivered the Senior Preferred Stock Purchase Agreement dated as of September 7, 2008 (the "Original Agreement"), and the parties thereto desire to amend and restate the Original Agreement in its entirety as set forth herein.

THEREFORE, the parties hereto agree as follows:

Terms and Conditions

1. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth below:

"*Affiliate*" means, when used with respect to a specified Person (i) any direct or indirect holder or group (as defined in Sections 13(d) and 14(d) of the Exchange Act) of holders of 10.0% or more of any class of capital stock of such Person and (ii) any current or former director or officer of such Person, or any other current or former employee of such Person that currently exercises or formerly exercised a material degree of Control over such Person, including without limitation each current or former Named Executive Officer of such Person.

"*Available Amount*" means, as of any date of determination, the lesser of (a) the Deficiency Amount as of such date and (b) the Maximum Amount as of such date.

"*Business Day*" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under United States federal law and the law of the State of New York.

"*Capital Lease Obligations*" of any Person shall mean the obligations of such Person to pay rent or other amounts under any lease of (or other similar arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP and, for purposes hereof, the amount of such obligations at any time shall be the capitalized amount thereof at such time determined in accordance with GAAP.

"*Control*" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"*Deficiency Amount*" means, as of any date of determination, the amount, if any, by which (a) the total liabilities of Seller exceed (b) the total assets of Seller (such assets excluding the Commitment and any unfunded amounts thereof), in each case as reflected on the balance sheet of Seller as of the applicable date set forth in this Agreement, prepared in accordance with GAAP; provided, however, that:

(i) for the avoidance of doubt, in measuring the Deficiency Amount liabilities shall exclude any obligation in respect of any capital stock of Seller, including the Senior Preferred Stock contemplated herein;

(ii) in the event that Seller becomes subject to receivership or other liquidation process or proceeding, "Deficiency Amount" shall mean, as of any date of determination, the amount, if any, by which (a) the total allowed claims against the receivership or other applicable estate (excluding any liabilities of or transferred to any LLRE (as defined in Section 5.4(a)) created by a receiver) exceed (b) the total assets of such receivership or other estate (excluding the Commitment, any unfunded amounts thereof and any assets of or transferred to any LLRE, but including the value of the receiver's interest in any LLRE);

(iii) to the extent Conservator or a receiver of Seller, or any statute, rule, regulation or court of competent jurisdiction, specifies or determines that a liability of Seller (including without limitation a claim against Seller arising from rescission of a purchase or sale of a security issued by Seller (or guaranteed by Seller or with respect to which Seller is otherwise liable) or for damages arising from the purchase, sale or retention of such a security) shall be subordinated (other than pursuant to a contract providing for such subordination) to all other liabilities of Seller or shall be treated on par with any class of equity of Seller, then such liability shall be excluded in the calculation of Deficiency Amount; and

(iv) the Deficiency Amount may be increased above the otherwise applicable amount by the mutual written agreement of Purchaser and Seller, each acting in its sole discretion.

"*Designated Representative*" means Conservator or (a) if Conservator has been superseded by a receiver pursuant to Section 1367(a) of the FHE Act, such receiver, or (b) if Seller is not in conservatorship or receivership pursuant to Section 1367(a) of the FHE Act, Seller's chief financial officer.

"*Director*" shall mean the Director of the Agency.

"*Effective Date*" means the date on which this Agreement shall have been executed and delivered by both of the parties hereto.

"*Equity Interests*" of any Person shall mean any and all shares, interests, rights to purchase or otherwise acquire, warrants, options, participations or other equivalents of or interests in (however designated) equity, ownership or profits of such Person, including any preferred stock, any limited or general partnership interest and any limited liability company membership interest, and any securities or other rights or interests convertible into or exchangeable for any of the foregoing.

"*Exchange Act*" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

"*GAAP*" means generally accepted accounting principles in effect in the United States as set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board from time to time.

"*Indebtedness*" of any Person means, for purposes of Section 5.5 only, without duplication, (a) all obligations of such Person for money borrowed by such Person, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property or assets purchased by such Person, (d) all obligations of such Person issued or assumed as the deferred purchase price of property or services, other than trade accounts payable, (e) all Capital Lease Obligations of such Person, (f) obligations, whether contingent or liquidated, in respect of letters of credit (including standby and commercial), bankers' acceptances and similar instruments and (g) any obligation of such Person, contingent or otherwise, guaranteeing or having the economic effect of guaranteeing any Indebtedness of the types set forth in clauses (a) through (f) payable by another Person other than Mortgage Guarantee Obligations.

"*Liquidation End Date*" means the date of completion of the liquidation of Seller's assets.

"*Maximum Amount*" means, as of any date of determination, $100,000,000,000 (one hundred billion dollars), less the aggregate amount of funding under the Commitment prior to such date.

"*Mortgage Assets*" of any Person means assets of such Person consisting of mortgages, mortgage loans, mortgage-related securities, participation certificates, mortgage-backed commercial paper, obligations of real estate mortgage investment conduits and similar assets, in each case to the extent such assets would appear on the balance sheet of such Person in accordance with GAAP as in effect as of the date hereof (and, for the avoidance of doubt, without giving effect to any change that may be made hereafter in respect of Statement of Financial Accounting Standards No. 140 or any similar accounting standard).

"*Mortgage Guarantee Obligations*" means guarantees, standby commitments, credit enhancements and other similar obligations of Seller, in each case in respect of Mortgage Assets.

"*Named Executive Officer*" has the meaning given to such term in Item 402(a)(3) of Regulation S-K under the Exchange Act, as in effect on the date hereof.

"*Person*" shall mean any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, estate, unincorporated organization or government or any agency or political subdivision thereof, or any other entity whatsoever.

"*SEC*" means the Securities and Exchange Commission.

"*Senior Preferred Stock*" means the Variable Liquidation Preference Senior Preferred Stock of Seller, substantially in the form of Exhibit A hereto.

"*Warrant*" means a warrant for the purchase of common stock of Seller representing 79.9% of the common stock of Seller on a fully-diluted basis, substantially in the form of Exhibit B hereto.

2. COMMITMENT

2.1. *Commitment.* Purchaser hereby commits to provide to Seller, on the terms and conditions set forth herein, immediately available funds in an amount up to but not in excess of the Available Amount, as determined from time to time (the "<u>Commitment</u>"); <u>provided</u>, that in no event shall the aggregate amount funded under the Commitment exceed $100,000,000,000 (one hundred billion dollars). The liquidation preference of the Senior Preferred Stock shall increase in connection with draws on the Commitment, as set forth in Section 3.3 below.

2.2. *Quarterly Draws on Commitment*. Within fifteen (15) Business Days following the determination of the Deficiency Amount, if any, as of the end of each fiscal quarter of Seller which ends on or before the Liquidation End Date, the Designated Representative may, on behalf of Seller, request that Purchaser provide immediately available funds to Seller in an amount up to but not in excess of the Available Amount as of the end of such quarter. Any such request shall be valid only if it is in writing, is timely made, specifies the account of Seller to which such funds are to be transferred, and contains a certification of the Designated Representative that the requested amount does not exceed the Available Amount as of the end of the applicable quarter. Purchaser shall provide such funds within sixty (60) days of its receipt of such request or, following any determination by the Director that the Director will be mandated by law to appoint a receiver for Seller if such funds are not received sooner, such shorter period as may be necessary to avoid such mandatory appointment of a receiver if reasonably practicable taking into consideration Purchaser's access to funds.

2.3. *Accelerated Draws on Commitment.* Immediately following any determination by the Director that the Director will be mandated by law to appoint a receiver for Seller prior to the Liquidation End Date unless Seller's capital is increased by an amount (the "Special Amount") up to but not in excess of the then current Available Amount (computed based on a balance sheet of Seller prepared in accordance with GAAP that differs from the most recent balance sheet of Seller delivered in accordance with Section 5.9(a) or (b)) on a date that is prior to the date that funds will be available to Seller pursuant to Section 2.2, Conservator may, on behalf of Seller, request that Purchaser provide to Seller the Special Amount in immediately available funds. Any such request shall be valid only if it is in writing, is timely made, specifies the account of Seller to which such funds are to be transferred, and contains certifications of Conservator that (i) the requested amount does not exceed the Available Amount (including computations in reasonable detail and satisfactory to Purchaser of the then existing Deficiency Amount) and (ii) the requested amount is required to avoid the imminent mandatory appointment of a receiver for Seller. Purchaser shall provide such funds within thirty (30) days of its receipt of such request or, if reasonably practicable taking into consideration Purchaser's access to funds, any shorter period as may be necessary to avoid mandatory appointment of a receiver.

2.4. *Final Draw on Commitment*. Within fifteen (15) Business Days following the determination of the Deficiency Amount, if any, as of the Liquidation End Date (computed based on a balance sheet of Seller as of the Liquidation End Date prepared in accordance with GAAP), the Designated Representative may, on behalf of Seller, request that Purchaser provide immediately available funds to Seller in an amount up to but not in excess of the Available Amount as of the Liquidation End Date. Any such request shall be valid only if it is in writing, is timely made, specifies the account of Seller to which such funds are to be transferred, and contains a certification of the Designated Representative that the requested amount does not exceed the Available Amount (including computations in reasonable detail and satisfactory to Purchaser of the Deficiency Amount as of the Liquidation End Date). Purchaser shall provide such funds within sixty (60) days of its receipt of such request.

2.5. *Termination of Purchaser's Obligations*. Subject to earlier termination pursuant to Section 6.7, all of Purchaser's obligations under and in respect of the Commitment shall terminate upon the earliest of: (a) if the Liquidation End Date shall have occurred, (i) the payment in full of Purchaser's obligations with respect to any valid request for funds pursuant to Section 2.4 or (ii) if there is no Deficiency Amount on the Liquidation End Date or if no such request pursuant to Section 2.4 has been made, the close of business on the 15th Business Day following the determination of the Deficiency Amount, if any, as of the Liquidation End Date; (b) the payment in full of, defeasance of or other reasonable provision for all liabilities of Seller, whether or not contingent, including payment of any amounts that may become payable on, or expiry of or other provision for, all Mortgage Guarantee Obligations and provision for unmatured debts; and (c) the funding by Purchaser under the Commitment of an aggregate of $100,000,000,000 (one hundred billion dollars). For the avoidance of doubt, the Commitment shall *not* be terminable by Purchaser solely by reason of (i) the conservatorship, receivership or other insolvency proceeding of Seller or (ii) the Seller's financial condition or any adverse change in Seller's financial condition.

3. PURCHASE OF SENIOR PREFERRED STOCK AND WARRANT; FEES

3.1. *Initial Commitment Fee*. In consideration of the Commitment, and for no additional consideration, on the Effective Date (or as soon thereafter as is practicable) Seller shall sell and issue to Purchaser, and Purchaser shall purchase from Seller, (a) one million (1,000,000) shares of Senior Preferred Stock, with an initial liquidation preference equal to $1,000 per share ($1,000,000,000 (one billion dollars) liquidation preference in the aggregate), and (b) the Warrant.

3.2. *Periodic Commitment Fee*. (a) Commencing March 31, 2010, Seller shall pay to Purchaser quarterly, on the last day of March, June, September and December of each calendar year (each a "Periodic Fee Date"), a periodic commitment fee (the "Periodic Commitment Fee"). The Periodic Commitment Fee shall accrue from January 1, 2010.

(b) The Periodic Commitment Fee is intended to fully compensate Purchaser for the support provided by the ongoing Commitment following December 31, 2009. The amount of the Periodic Commitment Fee shall be set not later than December 31, 2009 with respect to the ensuing five-year period, shall be reset every five years thereafter and shall be determined with reference to the market value of the Commitment as then in effect. The amount of the Periodic Commitment Fee shall be mutually agreed by Purchaser and Seller, subject to their reasonable discretion and in consultation with the Chairman of the Federal Reserve; provided, that Purchaser may waive the Periodic Commitment Fee for up to one year at a time, in its sole discretion, based on adverse conditions in the United States mortgage market.

(c) At the election of Seller, the Periodic Commitment Fee may be paid in cash or by adding the amount thereof ratably to the liquidation preference of each outstanding share of Senior Preferred Stock so that the aggregate liquidation preference of all such outstanding shares of Senior Preferred Stock is increased by an amount equal to the Periodic Commitment Fee. Seller shall deliver notice of such election not later than three (3) Business Days prior to each Periodic Fee Date. If the Periodic Commitment Fee is not paid in cash by 12:00 pm (New York time) on the applicable Periodic Fee Date (irrespective of Seller's election pursuant to this subsection), Seller shall be deemed to have elected to pay the Periodic Commitment Fee by adding the amount thereof to the liquidation preference of the Senior Preferred Stock, and the aggregate liquidation preference of the outstanding shares of Senior Preferred Stock shall thereupon be automatically increased, in the manner contemplated by the first sentence of this section, by an aggregate amount equal to the Periodic Commitment Fee then due.

3.3. *Increases of Senior Preferred Stock Liquidation Preference as a Result of Funding under the Commitment.* The aggregate liquidation preference of the outstanding shares of Senior Preferred Stock shall be automatically increased by an amount equal to the amount of each draw on the Commitment pursuant to Article 2 that is funded by Purchaser to Seller, such increase to occur simultaneously with such funding and ratably with respect to each share of Senior Preferred Stock.

3.4. *Notation of Increase in Liquidation Preference*. Seller shall duly mark its records to reflect each increase in the liquidation preference of the Senior Preferred Stock contemplated herein (but, for the avoidance of doubt, such increase shall be effective regardless of whether Seller has properly marked its records).

4. REPRESENTATIONS

Seller represents and warrants as of the Effective Date, and shall be deemed to have represented and warranted as of the date of each request for and funding of an advance under the Commitment pursuant to Article 2, as follows:

4.1. *Organization and Good Standing*. Seller is a corporation, chartered by the Congress of the United States, duly organized, validly existing and in good standing under the laws of the United States and has all corporate power and authority to carry on its business as now conducted and as proposed to be conducted.

4.2. *Organizational Documents*. Seller has made available to Purchaser a complete and correct copy of its charter and bylaws, each as amended to date (the "<u>Organizational Documents</u>"). The Organizational Documents are in full force and effect. Seller is not in violation of any provision of its Organizational Documents.

4.3. *Authorization and Enforceability*. All corporate or other action on the part of Seller or Conservator necessary for the authorization, execution, delivery and performance of this Agreement by Seller and for the authorization, issuance and delivery of the Senior Preferred Stock and the Warrant being purchased under this Agreement, has been taken. This Agreement has been duly and validly executed and delivered by Seller and (assuming due authorization, execution and delivery by the Purchaser) shall constitute the valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms, except to the extent the enforceability thereof may be limited by bankruptcy laws, insolvency laws, reorganization laws, moratorium laws or other laws of general applicability affecting creditors' rights generally or by general equitable principles (regardless of whether enforcement is sought in a proceeding in equity or at law). The Agency is acting as conservator for Seller under Section 1367 of the FHE Act. The Board of Directors of Seller, by valid action at a duly called meeting of the Board of Directors on September 6, 2008, consented to the appointment of the Agency as conservator for purposes of Section 1367(a)(3)(I) of the FHE Act, and the Director of the Agency has appointed the Agency as Conservator for Seller pursuant to Section 1367(a)(1) of the FHE Act, and each such action has not been rescinded, revoked or modified in any respect.

4.4. *Valid Issuance*. When issued in accordance with the terms of this Agreement, the Senior Preferred Stock and the Warrant will be duly authorized, validly issued, fully paid and nonassessable, free and clear of all liens and preemptive rights. The shares of common stock to which the holder of the Warrant is entitled have been duly and validly reserved for issuance. When issued and delivered in accordance with the terms of this Agreement and the Warrant, such shares will be duly authorized, validly issued, fully paid and nonassessable, free and clear of all liens and preemptive rights.

4.5. *Non-Contravention*.

(a) The execution, delivery or performance by Seller of this Agreement and the consummation by Seller of the transactions contemplated hereby do not and will not (i) conflict with or violate any provision of the Organizational Documents of Seller; (ii) conflict with or violate any law, decree or regulation applicable to Seller or by which any property or asset of Seller is bound or affected, or (iii) result in any breach of, or constitute a default (with or without notice or lapse of time, or both) under, or give to others any right of termination, amendment, acceleration or cancellation of, or result in the creation of a lien upon any of the properties or assets of Seller, pursuant to any note, bond, mortgage, indenture or credit agreement, or any other contract, agreement, lease, license, permit, franchise or other instrument or obligation to which Seller is a party or by which Seller is bound or affected, other than, in the case of clause (iii), any such breach, default, termination, amendment, acceleration, cancellation or lien that would not have and would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the business, property, operations or condition of the Seller, the authority of the Conservator or the validity or enforceability of this Agreement (a "Material Adverse Effect").

(b) The execution and delivery of this Agreement by Seller does not, and the consummation by Seller of the transactions contemplated by this Agreement will not, require any consent, approval, authorization, waiver or permit of, or filing with or notification to, any governmental authority or any other person, except for such as have already been obtained.

5. COVENANTS

From the Effective Date until such time as the Senior Preferred Stock shall have been repaid or redeemed in full in accordance with its terms:

5.1. *Restricted Payments*. Seller shall not, and shall not permit any of its subsidiaries to, in each case without the prior written consent of Purchaser, declare or pay any dividend (preferred or otherwise) or make any other distribution (by reduction of capital or otherwise), whether in cash, property, securities or a combination thereof, with respect to any of Seller's Equity Interests (other than with respect to the Senior Preferred Stock or the Warrant) or directly or indirectly redeem, purchase, retire or otherwise acquire for value any of Seller's Equity Interests (other than the Senior Preferred Stock or the Warrant), or set aside any amount for any such purpose.

5.2. *Issuance of Capital Stock*. Seller shall not, and shall not permit any of its subsidiaries to, in each case without the prior written consent of Purchaser, sell or issue Equity Interests of Seller or any of its subsidiaries of any kind or nature, in any amount, other than the sale and issuance of the Senior Preferred Stock and Warrant on the Effective Date and the common stock subject to the Warrant upon exercise thereof, and other than as required by (and pursuant to) the terms of any binding agreement as in effect on the date hereof.

5.3. *Conservatorship*. Seller shall not (and Conservator, by its signature below, agrees that it shall not), without the prior written consent of Purchaser, terminate, seek termination of or permit to be terminated the conservatorship of Seller pursuant to Section 1367 of the FHE Act, other than in connection with a receivership pursuant to Section 1367 of the FHE Act.

5.4. *Transfer of Assets*. Seller shall not, and shall not permit any of its subsidiaries to, in each case without the prior written consent of Purchaser, sell, transfer, lease or otherwise dispose of (in one transaction or a series of related transactions) all or any portion of its assets (including Equity Interests in other persons, including subsidiaries), whether now owned or hereafter acquired (any such sale, transfer, lease or disposition, a "Disposition"), other than Dispositions for fair market value:

(a) to a limited life regulated entity ("LLRE") pursuant to Section 1367(i) of the FHE Act;

(b) of assets and properties in the ordinary course of business, consistent with past practice;

(c) in connection with a liquidation of Seller by a receiver appointed pursuant to Section 1367(a) of the FHE Act;

(d) of cash or cash equivalents for cash or cash equivalents; or

(e) to the extent necessary to comply with the covenant set forth in Section 5.7 below.

5.5. *Indebtedness*. Seller shall not, and shall not permit any of its subsidiaries to, in each case without the prior written consent of Purchaser, incur, assume or otherwise become liable for (a) any Indebtedness if, after giving effect to the incurrence thereof, the aggregate Indebtedness of Seller and its subsidiaries on a consolidated basis would exceed 110.0% of the aggregate Indebtedness of Seller and its subsidiaries on a consolidated basis as of June 30, 2008 or (b) any Indebtedness if such Indebtedness is subordinated by its terms to any other Indebtedness of Seller or the applicable subsidiary. For purposes of this covenant the acquisition of a subsidiary with Indebtedness will be deemed to be the incurrence of such Indebtedness at the time of such acquisition.

5.6. *Fundamental Changes*. Seller shall not, and shall not permit any of its subsidiaries to, in each case without the prior written consent of Purchaser, (i) merge into or consolidate or amalgamate with any other Person, or permit any other Person to merge into or consolidate or amalgamate with it, (ii) effect a reorganization or recapitalization involving the common stock of Seller, a reclassification of the common stock of Seller or similar corporate transaction or event or (iii) purchase, lease or otherwise acquire (in one transaction or a series of transactions) all or substantially all of the assets of any other Person or any division, unit or business of any Person.

5.7. *Mortgage Assets*. Seller shall not own, as of any applicable date, Mortgage Assets in excess of (i) on December 31, 2009, $850 billion, or (ii) on December 31 of each year thereafter, 90.0% of the aggregate amount of Mortgage Assets of Seller as of December 31 of the immediately preceding calendar year; provided, that in no event shall Seller be required under this Section 5.7 to own less than $250 billion in Mortgage Assets.

5.8. *Transactions with Affiliates.* Seller shall not, and shall not permit any of its subsidiaries to, without the prior written consent of Purchaser, engage in any transaction of any kind or nature with an Affiliate of Seller unless such transaction is (i) pursuant to this Agreement, the Senior Preferred Stock or the Warrant, (ii) upon terms no less favorable to Seller than would be obtained in a comparable arm's-length transaction with a Person that is not an Affiliate of Seller or (iii) a transaction undertaken in the ordinary course or pursuant to a contractual obligation or customary employment arrangement in existence as of the date hereof.

5.9. *Reporting*. Seller shall provide to Purchaser:

(a) not later than the time period specified in the SEC's rules and regulations with respect to issuers as to which Section 13 and 15(d) of the Exchange Act apply, annual reports on Form 10-K (or any successor or comparable form) containing the information required to be contained therein (or required in such successor or comparable form);

(b) not later than the time period specified in the SEC's rules and regulations with respect to issuers as to which Section 13 and 15(d) of the Exchange Act apply, reports on Form 10-Q (or any successor or comparable form) containing the information required to be contained therein (or required in such successor or comparable form);

(c) promptly from time to time after the occurrence of an event required to be therein reported (and in any event within the time period specified in the SEC's rules and regulations), such other reports on Form 8-K (or any successor or comparable form);

(d) concurrently with any delivery of financial statements under paragraphs (a) or (b) above, a certificate of the Designated Representative, (i) certifying that Seller is (and since the last such certificate has at all times been) in compliance with each of the covenants contained herein and that no representation made by Seller herein or in any document delivered pursuant hereto or in connection herewith was false or misleading in any material respect when made, or, if the foregoing is not true, specifying the nature and extent of the breach of covenant and/or representation and any corrective action taken or proposed to be taken with respect thereto, and (ii) setting forth computations in reasonable detail and satisfactory to the Purchaser of the Deficiency Amount, if any;

(e) promptly, from time to time, such other information regarding the operations, business affairs, plans, projections and financial condition of Seller, or compliance with the terms of this Agreement, as Purchaser may reasonably request; and

(f) as promptly as reasonably practicable, written notice of the following:

(i) the occurrence of the Liquidation End Date;

(ii) the filing or commencement of, or any written threat or notice of intention of any Person to file or commence, any action, suit or proceeding, whether at law or in equity or by or before any governmental authority or in arbitration, against Conservator, Seller or any other Person which, if adversely determined, would reasonably be expected to have a Material Adverse Effect;

(iii) any other development that is not a matter of general public knowledge and that has had, or would reasonably be expected to have, a Material Adverse Effect.

5.10. *Executive Compensation*. Seller shall not, without the consent of the Director, in consultation with the Secretary of the Treasury, enter into any new compensation arrangements with, or increase amounts or benefits payable under existing compensation arrangements of, any Named Executive Officer of Seller.

6. MISCELLANEOUS

6.1. *No Third-Party Beneficiaries*. Until the termination of the Commitment, at any time during the existence and continuance of a payment default with respect to debt securities issued by Seller and/or a default by Seller with respect to any Mortgage Guarantee Obligations, any holder of such defaulted debt securities or beneficiary of such Mortgage Guarantee Obligations (collectively, the "Holders") may (a) deliver notice to the Seller and the Designated Representative requesting exercise of all rights available to them under this Agreement to draw on the Commitment up to the lesser of the amount necessary to cure the outstanding payment defaults and the Available Amount as of the last day of the immediately preceding fiscal quarter (the "Demand Amount"), (b) if Seller and the Designated Representative fail to act as requested within thirty (30) days of such notice, seek judicial relief for failure of the Seller to draw on the Commitment, and (c) if Purchaser shall fail to perform its obligations in respect of any draw on the Commitment, and Seller and/or the Designated Representative shall not be diligently pursuing remedies in respect of such failure, file a claim in the United States Court of Federal Claims for relief requiring Purchaser to pay Seller the Demand Amount in the form of liquidated damages. Any payment of liquidated damages to Seller under the previous sentence shall be treated for all purposes, including the provisions of the Senior Preferred Stock and Section 3.3 of this Agreement, as a draw and funding of the Commitment pursuant to Article 2. The Holders shall have no other rights under or in respect of this Agreement, and the Commitment shall not otherwise be enforceable by any creditor of Seller or by any other Person other than the parties hereto, and no such creditor or other Person is intended to be, or shall be, a third party beneficiary of any provision of this Agreement.

6.2. *Non-Transferable; Successors*. The Commitment is solely for the benefit of Seller and shall not inure to the benefit of any other Person (other than the Holders to the extent set forth in Section 6.1), including any entity to which the charter of Seller may be transferred, to any LLRE or to any other successor to the assets, liabilities or operations of Seller. The Commitment may not be assigned or otherwise transferred, in whole or in part, to any Person (including, for the avoidance of doubt, any LLRE to which a receiver has assigned all or a portion of Seller's assets) without the prior written consent of Purchaser (which may be withheld in its sole discretion). In no event shall any successor to Seller (including such an LLRE) be entitled to the benefit of the Commitment without the prior written consent of Purchaser. Seller and Conservator, for themselves and on behalf of their permitted successors, covenant and agree not to transfer or purport to transfer the Commitment in contravention of the terms hereof, and any such attempted transfer shall be null and void *ab initio*. It is the expectation of the parties that, in the event Seller were placed into receivership and an LLRE formed to purchase certain of its assets and assume certain of its liabilities, the Commitment would remain with Seller for the benefit of the holders of the debt of Seller not assumed by the LLRE.

6.3. *Amendments; Waivers.* This Agreement may be waived or amended solely by a writing executed by both of the parties hereto, and, with respect to amendments to or waivers of the provisions of Sections 5.3, 6.2 and 6.11, the Conservator; provided, however, that no such waiver or amendment shall decrease the aggregate Commitment or add conditions to funding the amounts required to be funded by Purchaser under the Commitment if such waiver or amendment would, in the reasonable opinion of Seller, adversely affect in any material respect the holders of debt securities of Seller and/or the beneficiaries of Mortgage Guarantee Obligations, in each case in their capacities as such, after taking into account any alternative arrangements that may be implemented concurrently with such waiver or amendment. In no event shall any rights granted hereunder prevent the parties hereto from waiving or amending in any manner whatsoever the covenants of Seller hereunder.

6.4. *Governing Law; Jurisdiction; Venue*. This Agreement and the Warrant shall be governed by, and construed in accordance with, the federal law of the United States of America if and to the extent such federal law is applicable, and otherwise in accordance with the laws of the State of New York. The Senior Preferred Stock shall be governed as set forth in the terms thereof. Except as provided in section 6.1 and as otherwise required by law, the United States District Court for the District of Columbia shall have exclusive jurisdiction over all civil actions arising out of this Agreement, the Commitment, the Senior Preferred Stock and the Warrant, and venue for any such civil action shall lie exclusively in the United States District Court for the District of Columbia.

6.5. *Notices*. Any notices delivered pursuant to or in connection with this Agreement shall be delivered to the applicable parties at the addresses set forth below:

If to Seller:

Federal National Mortgage Association
c/o Federal Housing Finance Authority
1700 G Street, NW
4th Floor
Washington, DC 20552
Attention: General Counsel

If to Purchaser:

United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington DC 20220
Attention: Under Secretary for Domestic Finance

with a copy to:

United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington DC 20220
Attention: General Counsel

If to Conservator:

Federal Housing Finance Authority
1700 G Street, NW
4th Floor
Washington, DC 20552
Attention: General Counsel

All notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail. All notices hereunder shall be effective upon receipt.

6.6. *Disclaimer of Guarantee*. This Agreement and the Commitment are not intended to and shall not be deemed to constitute a guarantee by Purchaser or any other agency or instrumentality of the United States of the payment or performance of any debt security or any other obligation, indebtedness or liability of Seller of any kind or character whatsoever.

6.7. *Effect of Order; Injunction; Decree*. If any order, injunction or decree is issued by any court of competent jurisdiction that vacates, modifies, amends, conditions, enjoins, stays or otherwise affects the appointment of Conservator as conservator of Seller or otherwise curtails Conservator's powers as such conservator (except in each case any order converting the conservatorship to a receivership under Section 1367(a) of the FHE Act), Purchaser may by written notice to Conservator and Seller declare this Agreement null and void, whereupon all transfers hereunder (including the issuance of the Senior Preferred Stock and the Warrant and any funding of the Commitment) shall be rescinded and unwound and all obligations of the parties (other than to effectuate such rescission and unwind) shall immediately and automatically terminate.

6.8. *Business Day*. To the extent that any deadline or date of performance of any right or obligation set forth herein shall fall on a day other than a Business Day, then such deadline or date of performance shall automatically be extended to the next succeeding Business Day.

6.9. *Entire Agreement*. This Agreement, together with the Senior Preferred Stock and Warrant, contains the entire agreement between the parties hereto with respect to the transactions contemplated hereby and supersedes and cancels all prior agreements, including, but not limited to, all proposals, term sheets, statements, letters of intent or representations, written or oral, with respect thereto.

6.10. *Remedies.* In the event of a breach by Seller of any covenant or representation of Seller set forth herein, Purchaser shall be entitled to specific performance (in the case of a breach of covenant), damages and such other remedies as may be available at law or in equity; provided, that Purchaser shall not have the right to terminate the Commitment solely as a result of any such breach, and compliance with the covenants and the accuracy of the representations set forth in this Agreement shall not be conditions to funding the Commitment.

6.11. *Tax Reporting*. Neither Seller nor Conservator shall take, or shall permit any of their respective successors or assigns to take, a position for any tax, accounting or other purpose that is inconsistent with Internal Revenue Service Notice 2008-76 (or the regulations to be issued pursuant to such Notice) regarding the application of Section 382 of the Internal Revenue Code of 1986, as amended, a copy of which Notice has been provided to Seller in connection with the execution of this Agreement.

6.12. *Non-Severability*. Each of the provisions of this Agreement is integrated with and integral to the whole and shall not be severable from the remainder of the Agreement. In the event that any provision of this Agreement, the Senior Preferred Stock or the Warrant is determined to be illegal or unenforceable, then Purchaser may, in its sole discretion, by written notice to Conservator and Seller, declare this Agreement null and void, whereupon all transfers hereunder (including the issuance of the Senior Preferred Stock and the Warrant and any funding of the Commitment) shall be rescinded and unwound and all obligations of the parties (other than to effectuate such rescission and unwind) shall immediately and automatically terminate.

[Signature Page Follows]

AMENDED AND RESTATED SENIOR PREFERRED STOCK PURCHASE AGREEMENT

AMENDED AND RESTATED SENIOR PREFERRED STOCK PURCHASE AGREEMENT (this "Agreement") dated as of September 26, 2008, between the UNITED STATES DEPARTMENT OF THE TREASURY ("Purchaser") and FEDERAL HOME LOAN MORTGAGE CORPORATION ("Seller"), acting through the Federal Housing Finance Agency (the "Agency") as its duly appointed conservator (the Agency in such capacity, "Conservator"). Reference is made to Article 1 below for the meaning of capitalized terms used herein without definition.

Background

A. The Agency has been duly appointed as Conservator for Seller pursuant to Section 1367(a) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (as amended, the "FHE Act"). Conservator has determined that entry into this Agreement is (i) necessary to put Seller in a sound and solvent condition; (ii) appropriate to carry on the business of Seller and preserve and conserve the assets and property of Seller; and (iii) otherwise consistent with its powers, authorities and responsibilities.

B. Purchaser is authorized to purchase obligations and other securities issued by Seller pursuant to Section 306(l) of the Federal Home Loan Mortgage Corporation Act, as amended (the "Charter Act"). The Secretary of the Treasury has determined, after taking into consideration the matters set forth in Section 306(l)(1)(C) of the Charter Act, that the purchases contemplated herein are necessary to (i) provide stability to the financial markets; (ii) prevent disruptions in the availability of mortgage finance; and (iii) protect the taxpayer.

C. Purchaser and Seller executed and delivered the Senior Preferred Stock Purchase Agreement dated as of September 7, 2008 (the "Original Agreement"), and the parties thereto desire to amend and restate the Original Agreement in its entirety as set forth herein.

THEREFORE, the parties hereto agree as follows:

Terms and Conditions

1. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth below:

"*Affiliate*" means, when used with respect to a specified Person (i) any direct or indirect holder or group (as defined in Sections 13(d) and 14(d) of the Exchange Act) of holders of 10.0% or more of any class of capital stock of such Person and (ii) any current or former director or officer of such Person, or any other current or former employee of such Person that currently exercises or formerly exercised a material degree of Control over such Person, including without limitation each current or former Named Executive Officer of such Person.

"*Available Amount*" means, as of any date of determination, the lesser of (a) the Deficiency Amount as of such date and (b) the Maximum Amount as of such date.

"*Business Day*" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under United States federal law and the law of the State of New York.

"*Capital Lease Obligations*" of any Person shall mean the obligations of such Person to pay rent or other amounts under any lease of (or other similar arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP and, for purposes hereof, the amount of such obligations at any time shall be the capitalized amount thereof at such time determined in accordance with GAAP.

"*Control*" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"*Deficiency Amount*" means, as of any date of determination, the amount, if any, by which (a) the total liabilities of Seller exceed (b) the total assets of Seller (such assets excluding the Commitment and any unfunded amounts thereof), in each case as reflected on the balance sheet of Seller as of the applicable date set forth in this Agreement, prepared in accordance with GAAP; provided, however, that:

(i) for the avoidance of doubt, in measuring the Deficiency Amount liabilities shall exclude any obligation in respect of any capital stock of Seller, including the Senior Preferred Stock contemplated herein;

(ii) in the event that Seller becomes subject to receivership or other liquidation process or proceeding, "Deficiency Amount" shall mean, as of any date of determination, the amount, if any, by which (a) the total allowed claims against the receivership or other applicable estate (excluding any liabilities of or transferred to any LLRE (as defined in Section 5.4(a)) created by a receiver) exceed (b) the total assets of such receivership or other estate (excluding the Commitment, any unfunded amounts thereof and any assets of or transferred to any LLRE, but including the value of the receiver's interest in any LLRE);

(iii) to the extent Conservator or a receiver of Seller, or any statute, rule, regulation or court of competent jurisdiction, specifies or determines that a liability of Seller (including without limitation a claim against Seller arising from rescission of a purchase or sale of a security issued by Seller (or guaranteed by Seller or with respect to which Seller is otherwise liable) or for damages arising from the purchase, sale or retention of such a security) shall be subordinated (other than pursuant to a contract providing for such subordination) to all other liabilities of Seller or shall be treated on par with any class of equity of Seller, then such liability shall be excluded in the calculation of Deficiency Amount; and

(iv) the Deficiency Amount may be increased above the otherwise applicable amount by the mutual written agreement of Purchaser and Seller, each acting in its sole discretion.

"*Designated Representative*" means Conservator or (a) if Conservator has been superseded by a receiver pursuant to Section 1367(a) of the FHE Act, such receiver, or (b) if Seller is not in conservatorship or receivership pursuant to Section 1367(a) of the FHE Act, Seller's chief financial officer.

"*Director*" shall mean the Director of the Agency.

"*Effective Date*" means the date on which this Agreement shall have been executed and delivered by both of the parties hereto.

"*Equity Interests*" of any Person shall mean any and all shares, interests, rights to purchase or otherwise acquire, warrants, options, participations or other equivalents of or interests in (however designated) equity, ownership or profits of such Person, including any preferred stock, any limited or general partnership interest and any limited liability company membership interest, and any securities or other rights or interests convertible into or exchangeable for any of the foregoing.

"*Exchange Act*" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

"*GAAP*" means generally accepted accounting principles in effect in the United States as set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board from time to time.

"*Indebtedness*" of any Person means, for purposes of Section 5.5 only, without duplication, (a) all obligations of such Person for money borrowed by such Person, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property or assets purchased by such Person, (d) all obligations of such Person issued or assumed as the deferred purchase price of property or services, other than trade accounts payable, (e) all Capital Lease Obligations of such Person, (f) obligations, whether contingent or liquidated, in respect of letters of credit (including standby and commercial), bankers' acceptances and similar instruments and (g) any obligation of such Person, contingent or otherwise, guaranteeing or having the economic effect of guaranteeing any Indebtedness of the types set forth in clauses (a) through (f) payable by another Person other than Mortgage Guarantee Obligations.

"*Liquidation End Date*" means the date of completion of the liquidation of Seller's assets.

"*Maximum Amount*" means, as of any date of determination, $100,000,000,000 (one hundred billion dollars), less the aggregate amount of funding under the Commitment prior to such date.

"*Mortgage Assets*" of any Person means assets of such Person consisting of mortgages, mortgage loans, mortgage-related securities, participation certificates, mortgage-backed commercial paper, obligations of real estate mortgage investment conduits and similar assets, in each case to the extent such assets would appear on the balance sheet of such Person in accordance with GAAP as in effect as of the date hereof (and, for the avoidance of doubt, without giving effect to any change that may be made hereafter in respect of Statement of Financial Accounting Standards No. 140 or any similar accounting standard).

"*Mortgage Guarantee Obligations*" means guarantees, standby commitments, credit enhancements and other similar obligations of Seller, in each case in respect of Mortgage Assets.

"*Named Executive Officer*" has the meaning given to such term in Item 402(a)(3) of Regulation S-K under the Exchange Act, as in effect on the date hereof.

"*Person*" shall mean any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, estate, unincorporated organization or government or any agency or political subdivision thereof, or any other entity whatsoever.

"*SEC*" means the Securities and Exchange Commission.

"*Senior Preferred Stock*" means the Variable Liquidation Preference Senior Preferred Stock of Seller, substantially in the form of Exhibit A hereto.

"*Warrant*" means a warrant for the purchase of common stock of Seller representing 79.9% of the common stock of Seller on a fully-diluted basis, substantially in the form of Exhibit B hereto.

2. COMMITMENT

2.1. *Commitment.* Purchaser hereby commits to provide to Seller, on the terms and conditions set forth herein, immediately available funds in an amount up to but not in excess of the Available Amount, as determined from time to time (the "<u>Commitment</u>"); <u>provided</u>, that in no event shall the aggregate amount funded under the Commitment exceed $100,000,000,000 (one hundred billion dollars). The liquidation preference of the Senior Preferred Stock shall increase in connection with draws on the Commitment, as set forth in Section 3.3 below.

2.2. *Quarterly Draws on Commitment*. Within fifteen (15) Business Days following the determination of the Deficiency Amount, if any, as of the end of each fiscal quarter of Seller which ends on or before the Liquidation End Date, the Designated Representative may, on behalf of Seller, request that Purchaser provide immediately available funds to Seller in an amount up to but not in excess of the Available Amount as of the end of such quarter. Any such request shall be valid only if it is in writing, is timely made, specifies the account of Seller to which such funds are to be transferred, and contains a certification of the Designated Representative that the requested amount does not exceed the Available Amount as of the end of the applicable quarter. Purchaser shall provide such funds within sixty (60) days of its receipt of such request or, following any determination by the Director that the Director will be mandated by law to appoint a receiver for Seller if such funds are not received sooner, such shorter period as may be necessary to avoid such mandatory appointment of a receiver if reasonably practicable taking into consideration Purchaser's access to funds.

2.3. *Accelerated Draws on Commitment.* Immediately following any determination by the Director that the Director will be mandated by law to appoint a receiver for Seller prior to the Liquidation End Date unless Seller's capital is increased by an amount (the "Special Amount") up to but not in excess of the then current Available Amount (computed based on a balance sheet of Seller prepared in accordance with GAAP that differs from the most recent balance sheet of Seller delivered in accordance with Section 5.9(a) or (b)) on a date that is prior to the date that funds will be available to Seller pursuant to Section 2.2, Conservator may, on behalf of Seller, request that Purchaser provide to Seller the Special Amount in immediately available funds. Any such request shall be valid only if it is in writing, is timely made, specifies the account of Seller to which such funds are to be transferred, and contains certifications of Conservator that (i) the requested amount does not exceed the Available Amount (including computations in reasonable detail and satisfactory to Purchaser of the then existing Deficiency Amount) and (ii) the requested amount is required to avoid the imminent mandatory appointment of a receiver for Seller. Purchaser shall provide such funds within thirty (30) days of its receipt of such request or, if reasonably practicable taking into consideration Purchaser's access to funds, any shorter period as may be necessary to avoid mandatory appointment of a receiver.

2.4. *Final Draw on Commitment*. Within fifteen (15) Business Days following the determination of the Deficiency Amount, if any, as of the Liquidation End Date (computed based on a balance sheet of Seller as of the Liquidation End Date prepared in accordance with GAAP), the Designated Representative may, on behalf of Seller, request that Purchaser provide immediately available funds to Seller in an amount up to but not in excess of the Available Amount as of the Liquidation End Date. Any such request shall be valid only if it is in writing, is timely made, specifies the account of Seller to which such funds are to be transferred, and contains a certification of the Designated Representative that the requested amount does not exceed the Available Amount (including computations in reasonable detail and satisfactory to Purchaser of the Deficiency Amount as of the Liquidation End Date). Purchaser shall provide such funds within sixty (60) days of its receipt of such request.

2.5. *Termination of Purchaser's Obligations*. Subject to earlier termination pursuant to Section 6.7, all of Purchaser's obligations under and in respect of the Commitment shall terminate upon the earliest of: (a) if the Liquidation End Date shall have occurred, (i) the payment in full of Purchaser's obligations with respect to any valid request for funds pursuant to Section 2.4 or (ii) if there is no Deficiency Amount on the Liquidation End Date or if no such request pursuant to Section 2.4 has been made, the close of business on the 15th Business Day following the determination of the Deficiency Amount, if any, as of the Liquidation End Date; (b) the payment in full of, defeasance of or other reasonable provision for all liabilities of Seller, whether or not contingent, including payment of any amounts that may become payable on, or expiry of or other provision for, all Mortgage Guarantee Obligations and provision for unmatured debts; and (c) the funding by Purchaser under the Commitment of an aggregate of $100,000,000,000 (one hundred billion dollars). For the avoidance of doubt, the Commitment shall *not* be terminable by Purchaser solely by reason of (i) the conservatorship, receivership or other insolvency proceeding of Seller or (ii) the Seller's financial condition or any adverse change in Seller's financial condition.

3. PURCHASE OF SENIOR PREFERRED STOCK AND WARRANT; FEES

3.1. *Initial Commitment Fee*. In consideration of the Commitment, and for no additional consideration, on the Effective Date (or as soon thereafter as is practicable) Seller shall sell and issue to Purchaser, and Purchaser shall purchase from Seller, (a) one million (1,000,000) shares of Senior Preferred Stock, with an initial liquidation preference equal to $1,000 per share ($1,000,000,000 (one billion dollars) liquidation preference in the aggregate), and (b) the Warrant.

3.2. *Periodic Commitment Fee*. (a) Commencing March 31, 2010, Seller shall pay to Purchaser quarterly, on the last day of March, June, September and December of each calendar year (each a "Periodic Fee Date"), a periodic commitment fee (the "Periodic Commitment Fee"). The Periodic Commitment Fee shall accrue from January 1, 2010.

(b) The Periodic Commitment Fee is intended to fully compensate Purchaser for the support provided by the ongoing Commitment following December 31, 2009. The amount of the Periodic Commitment Fee shall be set not later than December 31, 2009 with respect to the ensuing five-year period, shall be reset every five years thereafter and shall be determined with reference to the market value of the Commitment as then in effect. The amount of the Periodic Commitment Fee shall be mutually agreed by Purchaser and Seller, subject to their reasonable discretion and in consultation with the Chairman of the Federal Reserve; provided, that Purchaser may waive the Periodic Commitment Fee for up to one year at a time, in its sole discretion, based on adverse conditions in the United States mortgage market.

(c) At the election of Seller, the Periodic Commitment Fee may be paid in cash or by adding the amount thereof ratably to the liquidation preference of each outstanding share of Senior Preferred Stock so that the aggregate liquidation preference of all such outstanding shares of Senior Preferred Stock is increased by an amount equal to the Periodic Commitment Fee. Seller shall deliver notice of such election not later than three (3) Business Days prior to each Periodic Fee Date. If the Periodic Commitment Fee is not paid in cash by 12:00 pm (New York time) on the applicable Periodic Fee Date (irrespective of Seller's election pursuant to this subsection), Seller shall be deemed to have elected to pay the Periodic Commitment Fee by adding the amount thereof to the liquidation preference of the Senior Preferred Stock, and the aggregate liquidation preference of the outstanding shares of Senior Preferred Stock shall thereupon be automatically increased, in the manner contemplated by the first sentence of this section, by an aggregate amount equal to the Periodic Commitment Fee then due.

3.3. *Increases of Senior Preferred Stock Liquidation Preference as a Result of Funding under the Commitment.* The aggregate liquidation preference of the outstanding shares of Senior Preferred Stock shall be automatically increased by an amount equal to the amount of each draw on the Commitment pursuant to Article 2 that is funded by Purchaser to Seller, such increase to occur simultaneously with such funding and ratably with respect to each share of Senior Preferred Stock.

3.4. *Notation of Increase in Liquidation Preference*. Seller shall duly mark its records to reflect each increase in the liquidation preference of the Senior Preferred Stock contemplated herein (but, for the avoidance of doubt, such increase shall be effective regardless of whether Seller has properly marked its records).

4. REPRESENTATIONS

Seller represents and warrants as of the Effective Date, and shall be deemed to have represented and warranted as of the date of each request for and funding of an advance under the Commitment pursuant to Article 2, as follows:

4.1. *Organization and Good Standing*. Seller is a corporation, chartered by the Congress of the United States, duly organized, validly existing and in good standing under the laws of the United States and has all corporate power and authority to carry on its business as now conducted and as proposed to be conducted.

4.2. *Organizational Documents*. Seller has made available to Purchaser a complete and correct copy of its charter and bylaws, each as amended to date (the "Organizational Documents"). The Organizational Documents are in full force and effect. Seller is not in violation of any provision of its Organizational Documents.

4.3. *Authorization and Enforceability*. All corporate or other action on the part of Seller or Conservator necessary for the authorization, execution, delivery and performance of this Agreement by Seller and for the authorization, issuance and delivery of the Senior Preferred Stock and the Warrant being purchased under this Agreement, has been taken. This Agreement has been duly and validly executed and delivered by Seller and (assuming due authorization, execution and delivery by the Purchaser) shall constitute the valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms, except to the extent the enforceability thereof may be limited by bankruptcy laws, insolvency laws, reorganization laws, moratorium laws or other laws of general applicability affecting creditors' rights generally or by general equitable principles (regardless of whether enforcement is sought in a proceeding in equity or at law). The Agency is acting as conservator for Seller under Section 1367 of the FHE Act. The Board of Directors of Seller, by valid action at a duly called meeting of the Board of Directors on September 6, 2008, consented to the appointment of the Agency as conservator for purposes of Section 1367(a)(3)(I) of the FHE Act, and the Director of the Agency has appointed the Agency as Conservator for Seller pursuant to Section 1367(a)(1) of the FHE Act, and each such action has not been rescinded, revoked or modified in any respect.

4.4. *Valid Issuance*. When issued in accordance with the terms of this Agreement, the Senior Preferred Stock and the Warrant will be duly authorized, validly issued, fully paid and nonassessable, free and clear of all liens and preemptive rights. The shares of common stock to which the holder of the Warrant is entitled have been duly and validly reserved for issuance. When issued and delivered in accordance with the terms of this Agreement and the Warrant, such shares will be duly authorized, validly issued, fully paid and nonassessable, free and clear of all liens and preemptive rights.

4.5. *Non-Contravention*.

(a) The execution, delivery or performance by Seller of this Agreement and the consummation by Seller of the transactions contemplated hereby do not and will not (i) conflict with or violate any provision of the Organizational Documents of Seller; (ii) conflict with or violate any law, decree or regulation applicable to Seller or by which any property or asset of Seller is bound or affected, or (iii) result in any breach of, or constitute a default (with or without notice or lapse of time, or both) under, or give to others any right of termination, amendment, acceleration or cancellation of, or result in the creation of a lien upon any of the properties or assets of Seller, pursuant to any note, bond, mortgage, indenture or credit agreement, or any other contract, agreement, lease, license, permit, franchise or other instrument or obligation to which Seller is a party or by which Seller is bound or affected, other than, in the case of clause (iii), any such breach, default, termination, amendment, acceleration, cancellation or lien that would not have and would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the business, property, operations or condition of the Seller, the authority of the Conservator or the validity or enforceability of this Agreement (a "Material Adverse Effect").

(b) The execution and delivery of this Agreement by Seller does not, and the consummation by Seller of the transactions contemplated by this Agreement will not, require any consent, approval, authorization, waiver or permit of, or filing with or notification to, any governmental authority or any other person, except for such as have already been obtained.

5. COVENANTS

From the Effective Date until such time as the Senior Preferred Stock shall have been repaid or redeemed in full in accordance with its terms:

5.1. *Restricted Payments*. Seller shall not, and shall not permit any of its subsidiaries to, in each case without the prior written consent of Purchaser, declare or pay any dividend (preferred or otherwise) or make any other distribution (by reduction of capital or otherwise), whether in cash, property, securities or a combination thereof, with respect to any of Seller's Equity Interests (other than with respect to the Senior Preferred Stock or the Warrant) or directly or indirectly redeem, purchase, retire or otherwise acquire for value any of Seller's Equity Interests (other than the Senior Preferred Stock or the Warrant), or set aside any amount for any such purpose.

5.2. *Issuance of Capital Stock*. Seller shall not, and shall not permit any of its subsidiaries to, in each case without the prior written consent of Purchaser, sell or issue Equity Interests of Seller or any of its subsidiaries of any kind or nature, in any amount, other than the sale and issuance of the Senior Preferred Stock and Warrant on the Effective Date and the common stock subject to the Warrant upon exercise thereof, and other than as required by (and pursuant to) the terms of any binding agreement as in effect on the date hereof.

5.3. *Conservatorship*. Seller shall not (and Conservator, by its signature below, agrees that it shall not), without the prior written consent of Purchaser, terminate, seek termination of or permit to be terminated the conservatorship of Seller pursuant to Section 1367 of the FHE Act, other than in connection with a receivership pursuant to Section 1367 of the FHE Act.

5.4. *Transfer of Assets*. Seller shall not, and shall not permit any of its subsidiaries to, in each case without the prior written consent of Purchaser, sell, transfer, lease or otherwise dispose of (in one transaction or a series of related transactions) all or any portion of its assets (including Equity Interests in other persons, including subsidiaries), whether now owned or hereafter acquired (any such sale, transfer, lease or disposition, a "Disposition"), other than Dispositions for fair market value:

(a) to a limited life regulated entity ("LLRE") pursuant to Section 1367(i) of the FHE Act;

(b) of assets and properties in the ordinary course of business, consistent with past practice;

(c) in connection with a liquidation of Seller by a receiver appointed pursuant to Section 1367(a) of the FHE Act;

(d) of cash or cash equivalents for cash or cash equivalents; or

(e) to the extent necessary to comply with the covenant set forth in Section 5.7 below.

5.5. *Indebtedness*. Seller shall not, and shall not permit any of its subsidiaries to, in each case without the prior written consent of Purchaser, incur, assume or otherwise become liable for (a) any Indebtedness if, after giving effect to the incurrence thereof, the aggregate Indebtedness of Seller and its subsidiaries on a consolidated basis would exceed 110.0% of the aggregate Indebtedness of Seller and its subsidiaries on a consolidated basis as of June 30, 2008 or (b) any Indebtedness if such Indebtedness is subordinated by its terms to any other Indebtedness of Seller or the applicable subsidiary. For purposes of this covenant the acquisition of a subsidiary with Indebtedness will be deemed to be the incurrence of such Indebtedness at the time of such acquisition.

5.6. *Fundamental Changes*. Seller shall not, and shall not permit any of its subsidiaries to, in each case without the prior written consent of Purchaser, (i) merge into or consolidate or amalgamate with any other Person, or permit any other Person to merge into or consolidate or amalgamate with it, (ii) effect a reorganization or recapitalization involving the common stock of Seller, a reclassification of the common stock of Seller or similar corporate transaction or event or (iii) purchase, lease or otherwise acquire (in one transaction or a series of transactions) all or substantially all of the assets of any other Person or any division, unit or business of any Person.

5.7. *Mortgage Assets*. Seller shall not own, as of any applicable date, Mortgage Assets in excess of (i) on December 31, 2009, $850 billion, or (ii) on December 31 of each year thereafter, 90.0% of the aggregate amount of Mortgage Assets of Seller as of December 31 of the immediately preceding calendar year; provided, that in no event shall Seller be required under this Section 5.7 to own less than $250 billion in Mortgage Assets.

5.8. *Transactions with Affiliates.* Seller shall not, and shall not permit any of its subsidiaries to, without the prior written consent of Purchaser, engage in any transaction of any kind or nature with an Affiliate of Seller unless such transaction is (i) pursuant to this Agreement, the Senior Preferred Stock or the Warrant, (ii) upon terms no less favorable to Seller than would be obtained in a comparable arm's-length transaction with a Person that is not an Affiliate of Seller or (iii) a transaction undertaken in the ordinary course or pursuant to a contractual obligation or customary employment arrangement in existence as of the date hereof.

5.9. *Reporting*. Seller shall provide to Purchaser:

(a) not later than the time period specified in the SEC's rules and regulations with respect to issuers as to which Section 13 and 15(d) of the Exchange Act apply, annual reports on Form 10-K (or any successor or comparable form) containing the information required to be contained therein (or required in such successor or comparable form);

(b) not later than the time period specified in the SEC's rules and regulations with respect to issuers as to which Section 13 and 15(d) of the Exchange Act apply, reports on Form 10-Q (or any successor or comparable form) containing the information required to be contained therein (or required in such successor or comparable form);

(c) promptly from time to time after the occurrence of an event required to be therein reported (and in any event within the time period specified in the SEC's rules and regulations), such other reports on Form 8-K (or any successor or comparable form);

(d) concurrently with any delivery of financial statements under paragraphs (a) or (b) above, a certificate of the Designated Representative, (i) certifying that Seller is (and since the last such certificate has at all times been) in compliance with each of the covenants contained herein and that no representation made by Seller herein or in any document delivered pursuant hereto or in connection herewith was false or misleading in any material respect when made, or, if the foregoing is not true, specifying the nature and extent of the breach of covenant and/or representation and any corrective action taken or proposed to be taken with respect thereto, and (ii) setting forth computations in reasonable detail and satisfactory to the Purchaser of the Deficiency Amount, if any;

(e) promptly, from time to time, such other information regarding the operations, business affairs, plans, projections and financial condition of Seller, or compliance with the terms of this Agreement, as Purchaser may reasonably request; and

(f) as promptly as reasonably practicable, written notice of the following:

(i) the occurrence of the Liquidation End Date;

(ii) the filing or commencement of, or any written threat or notice of intention of any Person to file or commence, any action, suit or proceeding, whether at law or in equity or by or before any governmental authority or in arbitration, against Conservator, Seller or any other Person which, if adversely determined, would reasonably be expected to have a Material Adverse Effect;

(iii) any other development that is not a matter of general public knowledge and that has had, or would reasonably be expected to have, a Material Adverse Effect.

5.10. *Executive Compensation*. Seller shall not, without the consent of the Director, in consultation with the Secretary of the Treasury, enter into any new compensation arrangements with, or increase amounts or benefits payable under existing compensation arrangements of, any Named Executive Officer of Seller.

6. MISCELLANEOUS

6.1. *No Third-Party Beneficiaries*. Until the termination of the Commitment, at any time during the existence and continuance of a payment default with respect to debt securities issued by Seller and/or a default by Seller with respect to any Mortgage Guarantee Obligations, any holder of such defaulted debt securities or beneficiary of such Mortgage Guarantee Obligations (collectively, the "Holders") may (a) deliver notice to the Seller and the Designated Representative requesting exercise of all rights available to them under this Agreement to draw on the Commitment up to the lesser of the amount necessary to cure the outstanding payment defaults and the Available Amount as of the last day of the immediately preceding fiscal quarter (the "Demand Amount"), (b) if Seller and the Designated Representative fail to act as requested within thirty (30) days of such notice, seek judicial relief for failure of the Seller to draw on the Commitment, and (c) if Purchaser shall fail to perform its obligations in respect of any draw on the Commitment, and Seller and/or the Designated Representative shall not be diligently pursuing remedies in respect of such failure, file a claim in the United States Court of Federal Claims for relief requiring Purchaser to pay Seller the Demand Amount in the form of liquidated damages. Any payment of liquidated damages to Seller under the previous sentence shall be treated for all purposes, including the provisions of the Senior Preferred Stock and Section 3.3 of this Agreement, as a draw and funding of the Commitment pursuant to Article 2. The Holders shall have no other rights under or in respect of this Agreement, and the Commitment shall not otherwise be enforceable by any creditor of Seller or by any other Person other than the parties hereto, and no such creditor or other Person is intended to be, or shall be, a third party beneficiary of any provision of this Agreement.

6.2. *Non-Transferable; Successors*. The Commitment is solely for the benefit of Seller and shall not inure to the benefit of any other Person (other than the Holders to the extent set forth in Section 6.1), including any entity to which the charter of Seller may be transferred, to any LLRE or to any other successor to the assets, liabilities or operations of Seller. The Commitment may not be assigned or otherwise transferred, in whole or in part, to any Person (including, for the avoidance of doubt, any LLRE to which a receiver has assigned all or a portion of Seller's assets) without the prior written consent of Purchaser (which may be withheld in its sole discretion). In no event shall any successor to Seller (including such an LLRE) be entitled to the benefit of the Commitment without the prior written consent of Purchaser. Seller and Conservator, for themselves and on behalf of their permitted successors, covenant and agree not to transfer or purport to transfer the Commitment in contravention of the terms hereof, and any such attempted transfer shall be null and void *ab initio*. It is the expectation of the parties that, in the event Seller were placed into receivership and an LLRE formed to purchase certain of its assets and assume certain of its liabilities, the Commitment would remain with Seller for the benefit of the holders of the debt of Seller not assumed by the LLRE.

6.3. *Amendments; Waivers.* This Agreement may be waived or amended solely by a writing executed by both of the parties hereto, and, with respect to amendments to or waivers of the provisions of Sections 5.3, 6.2 and 6.11, the Conservator; provided, however, that no such waiver or amendment shall decrease the aggregate Commitment or add conditions to funding the amounts required to be funded by Purchaser under the Commitment if such waiver or amendment would, in the reasonable opinion of Seller, adversely affect in any material respect the holders of debt securities of Seller and/or the beneficiaries of Mortgage Guarantee Obligations, in each case in their capacities as such, after taking into account any alternative arrangements that may be implemented concurrently with such waiver or amendment. In no event shall any rights granted hereunder prevent the parties hereto from waiving or amending in any manner whatsoever the covenants of Seller hereunder.

6.4. *Governing Law; Jurisdiction; Venue*. This Agreement and the Warrant shall be governed by, and construed in accordance with, the federal law of the United States of America if and to the extent such federal law is applicable, and otherwise in accordance with the laws of the State of New York. The Senior Preferred Stock shall be governed as set forth in the terms thereof. Except as provided in section 6.1 and as otherwise required by law, the United States District Court for the District of Columbia shall have exclusive jurisdiction over all civil actions arising out of this Agreement, the Commitment, the Senior Preferred Stock and the Warrant, and venue for any such civil action shall lie exclusively in the United States District Court for the District of Columbia.

6.5. *Notices*. Any notices delivered pursuant to or in connection with this Agreement shall be delivered to the applicable parties at the addresses set forth below:

If to Seller:

Federal Home Loan Mortgage Corporation
c/o Federal Housing Finance Authority
1700 G Street, NW
4th Floor
Washington, DC 20552
Attention: General Counsel

If to Purchaser:

United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington DC 20220
Attention: Under Secretary for Domestic Finance

with a copy to:

United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington DC 20220
Attention: General Counsel

If to Conservator:

Federal Housing Finance Authority
1700 G Street, NW
4th Floor
Washington, DC 20552
Attention: General Counsel

All notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail. All notices hereunder shall be effective upon receipt.

6.6. *Disclaimer of Guarantee*. This Agreement and the Commitment are not intended to and shall not be deemed to constitute a guarantee by Purchaser or any other agency or instrumentality of the United States of the payment or performance of any debt security or any other obligation, indebtedness or liability of Seller of any kind or character whatsoever.

6.7. *Effect of Order; Injunction; Decree*. If any order, injunction or decree is issued by any court of competent jurisdiction that vacates, modifies, amends, conditions, enjoins, stays or otherwise affects the appointment of Conservator as conservator of Seller or otherwise curtails Conservator's powers as such conservator (except in each case any order converting the conservatorship to a receivership under Section 1367(a) of the FHE Act), Purchaser may by written notice to Conservator and Seller declare this Agreement null and void, whereupon all transfers hereunder (including the issuance of the Senior Preferred Stock and the Warrant and any funding of the Commitment) shall be rescinded and unwound and all obligations of the parties (other than to effectuate such rescission and unwind) shall immediately and automatically terminate.

6.8. *Business Day*. To the extent that any deadline or date of performance of any right or obligation set forth herein shall fall on a day other than a Business Day, then such deadline or date of performance shall automatically be extended to the next succeeding Business Day.

6.9. *Entire Agreement*. This Agreement, together with the Senior Preferred Stock and Warrant, contains the entire agreement between the parties hereto with respect to the transactions contemplated hereby and supersedes and cancels all prior agreements, including, but not limited to, all proposals, term sheets, statements, letters of intent or representations, written or oral, with respect thereto.

6.10. *Remedies.* In the event of a breach by Seller of any covenant or representation of Seller set forth herein, Purchaser shall be entitled to specific performance (in the case of a breach of covenant), damages and such other remedies as may be available at law or in equity; provided, that Purchaser shall not have the right to terminate the Commitment solely as a result of any such breach, and compliance with the covenants and the accuracy of the representations set forth in this Agreement shall not be conditions to funding the Commitment.

6.11. *Tax Reporting*. Neither Seller nor Conservator shall take, or shall permit any of their respective successors or assigns to take, a position for any tax, accounting or other purpose that is inconsistent with Internal Revenue Service Notice 2008-76 (or the regulations to be issued pursuant to such Notice) regarding the application of Section 382 of the Internal Revenue Code of 1986, as amended, a copy of which Notice has been provided to Seller in connection with the execution of this Agreement.

6.12. *Non-Severability*. Each of the provisions of this Agreement is integrated with and integral to the whole and shall not be severable from the remainder of the Agreement. In the event that any provision of this Agreement, the Senior Preferred Stock or the Warrant is determined to be illegal or unenforceable, then Purchaser may, in its sole discretion, by written notice to Conservator and Seller, declare this Agreement null and void, whereupon all transfers hereunder (including the issuance of the Senior Preferred Stock and the Warrant and any funding of the Commitment) shall be rescinded and unwound and all obligations of the parties (other than to effectuate such rescission and unwind) shall immediately and automatically terminate.

[Signature Page Follows]

Exhibit B

CERTIFICATE OF DESIGNATION OF TERMS OF VARIABLE LIQUIDATION PREFERENCE SENIOR PREFERRED STOCK, SERIES 2008-2

1. Designation, Par Value, Number of Shares and Priority

The designation of the series of preferred stock of the Federal National Mortgage Association (the "Company") created by this resolution shall be "Variable Liquidation Preference Senior Preferred Stock, Series 2008-2" (the "Senior Preferred Stock"), and the number of shares initially constituting the Senior Preferred Stock is 1,000,000. Shares of Senior Preferred Stock will have no par value and a stated value and initial liquidation preference per share equal to $1,000 per share, subject to adjustment as set forth herein. The Board of Directors of the Company, or a duly authorized committee thereof, in its sole discretion, may reduce the number of shares of Senior Preferred Stock, provided such reduction is not below the number of shares of Senior Preferred Stock then outstanding.

The Senior Preferred Stock shall rank prior to the common stock of the Company as provided in this Certificate and shall rank, as to both dividends and distributions upon dissolution, liquidation or winding up of the Company, prior to (a) the shares of preferred stock of the Company designated "5.25% Non-Cumulative Preferred Stock, Series D", "5.10% Non-Cumulative Preferred Stock, Series E", "Variable Rate Non-Cumulative Preferred Stock, Series F", "Variable Rate Non-Cumulative Preferred Stock, Series G", "5.81% Non-Cumulative Preferred Stock, Series H", "5.375% Non-Cumulative Preferred Stock, Series I", "5.125% Non-Cumulative Preferred Stock, Series L", "4.75% Non-Cumulative Preferred Stock, Series M", "5.50% Non-Cumulative Preferred Stock, Series N", "Non-Cumulative Preferred Stock, Series O", "Non-Cumulative Convertible Series 2004-1 Preferred Stock", "Variable Rate Non-Cumulative Preferred Stock, Series P", "6.75% Non-Cumulative Preferred Stock, Series Q", "7.625% Non-Cumulative Preferred Stock, Series R", "Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series S", and "8.75% Non-Cumulative Mandatory Convertible Preferred Stock", Series 2008-1", (b) any other capital stock of the Company outstanding on the date of the initial issuance of the Senior Preferred Stock and (c) any capital stock of the Company that may be issued after the date of initial issuance of the Senior Preferred Stock.

2. Dividends

(a) For each Dividend Period from the date of the initial issuance of the Senior Preferred Stock, holders of outstanding shares of Senior Preferred Stock shall be entitled to receive, ratably, when, as and if declared by the Board of Directors, in its sole discretion, out of funds legally available therefor, cumulative cash dividends at the annual rate per share equal to the then-current Dividend Rate on the then-current Liquidation Preference. Dividends on the Senior Preferred Stock shall accrue from but not including the date of the initial issuance of the Senior Preferred Stock and will be payable in arrears when, as and if declared by the Board of Directors quarterly on March 31, June 30, September 30 and December 31 of each year (each, a "Dividend Payment Date"), commencing on December 31, 2008. If a Dividend Payment Date is not a "Business Day," the related dividend will be paid not later than the next Business Day with the same force and effect as though paid on the Dividend Payment Date, without any increase to account for the period from such Dividend Payment Date through the date of actual payment. "Business Day" means a day other than (i) a Saturday or Sunday, (ii) a day on which New York City banks are closed, or (iii) a day on which the offices of the Company are closed.

If declared, the initial dividend will be for the period from but not including the date of the initial issuance of the Senior Preferred Stock through and including December 31, 2008. Except for the initial Dividend Payment Date, the "Dividend Period" relating to a Dividend Payment Date will be the period from but not including the preceding Dividend Payment Date through and including the related Dividend Payment Date. The amount of dividends payable on the initial Dividend Payment Date or for any Dividend Period that is not a full calendar quarter shall be computed on the basis of 30-day months, a 360-day year and the actual number of days elapsed in any period of less than one month. For the avoidance of doubt, in the event that the Liquidation Preference changes in the middle of a Dividend Period, the amount of dividends payable on the Dividend Payment Date at the end of such Dividend Period shall take into account such change in Liquidation Preference and shall be computed at the Dividend Rate on each Liquidation Preference based on the portion of the Dividend Period that each Liquidation Preference was in effect.

(b) To the extent not paid pursuant to Section 2(a) above, dividends on the Senior Preferred Stock shall accrue and shall be added to the Liquidation Preference pursuant to Section 8, whether or not there are funds legally available for the payment of such dividends and whether or not dividends are declared.

(c) "Dividend Rate" means 10.0%; provided, however, that if at any time the Company shall have for any reason failed to pay dividends in cash in a timely manner as required by this Certificate, then immediately following such failure and for all Dividend Periods thereafter until the Dividend Period following the date on which the Company shall have paid in cash full cumulative dividends (including any unpaid dividends added to the Liquidation Preference pursuant to Section 8), the "Dividend Rate" shall mean 12.0%.

(d) Each such dividend shall be paid to the holders of record of outstanding shares of the Senior Preferred Stock as they appear in the books and records of the Company on such record date as shall be fixed in advance by the Board of Directors, not to be earlier than 45 days nor later than 10 days preceding the applicable Dividend Payment Date. The Company may not, at any time, declare or pay dividends on, make distributions with respect to, or redeem, purchase or acquire, or make a liquidation payment with respect to, any common stock or other securities ranking junior to the Senior Preferred Stock unless (i) full cumulative dividends on the outstanding Senior Preferred Stock in respect of the then-current Dividend Period and all past Dividend Periods (including any unpaid dividends added to the Liquidation Preference pursuant to Section 8) have been declared and paid in cash (including through any pay down of Liquidation Preference pursuant to Section 3) and (ii) all amounts required to be paid pursuant to Section 4 (without giving effect to any prohibition on such payment under any applicable law) have been paid in cash.

(e) Notwithstanding any other provision of this Certificate, the Board of Directors, in its discretion, may choose to pay dividends on the Senior Preferred Stock without the payment of any dividends on the common stock, preferred stock or any other class or series of stock from time to time outstanding ranking junior to the Senior Preferred Stock with respect to the payment of dividends.

(f) If and whenever dividends, having been declared, shall not have been paid in full, as aforesaid, on shares of the Senior Preferred Stock, all such dividends that have been declared on shares of the Senior Preferred Stock shall be paid to the holders pro rata based on the aggregate Liquidation Preference of the shares of Senior Preferred Stock held by each holder, and any amounts due but not paid in cash shall be added to the Liquidation Preference pursuant to Section 8.

3. Optional Pay Down of Liquidation Preference

(a) Following termination of the Commitment (as defined in the Preferred Stock Purchase Agreement referred to in Section 8 below), and subject to any limitations which may be imposed by law and the provisions below, the Company may pay down the Liquidation Preference of all outstanding shares of the Senior Preferred Stock pro rata, at any time, in whole or in part, out of funds legally available therefor, with such payment first being used to reduce any accrued and unpaid dividends previously added to the Liquidation Preference pursuant to Section 8 below and, to the extent all such accrued and unpaid dividends have been paid, next being used to reduce any Periodic Commitment Fees (as defined in the Preferred Stock Purchase Agreement referred to in Section 8 below) previously added to the Liquidation Preference pursuant to Section 8 below. Prior to termination of the Commitment, and subject to any limitations which may be imposed by law and the provisions below, the Company may pay down the Liquidation Preference of all outstanding shares of the Senior Preferred Stock pro rata, at any time, out of funds legally available therefor, but only to the extent of (i) accrued and unpaid dividends previously added to the Liquidation Preference pursuant to Section 8 below and not repaid by any prior pay down of Liquidation Preference and (ii) Periodic Commitment Fees previously added to the Liquidation Preference pursuant to Section 8 below and not repaid by any prior pay down of Liquidation Preference. Any pay down of Liquidation Preference permitted by this Section 3 shall be paid by making a payment in cash to the holders of record of outstanding shares of the Senior Preferred Stock as they appear in the books and records of the Company on such record date as shall be fixed in advance by the Board of Directors, not to be earlier than 45 days nor later than 10 days preceding the date fixed for the payment.

(b) In the event the Company shall pay down of the Liquidation Preference of the Senior Preferred Stock as aforesaid, notice of such pay down shall be given by the Company by first class mail, postage prepaid, mailed neither less than 10 nor more than 45 days preceding the date fixed for the payment, to each holder of record of the shares of the Senior Preferred Stock, at such holder's address as the same appears in the books and records of the Company. Each such notice shall state the amount by which the Liquidation Preference of each share shall be reduced and the pay down date.

(c) If after termination of the Commitment the Company pays down the Liquidation Preference of each outstanding share of Senior Preferred Stock in full, such shares shall be deemed to have been redeemed as of the date of such payment, and the dividend that would otherwise be payable for the Dividend Period ending on the pay down date will be paid on such date. Following such deemed redemption, the shares of the Senior Preferred Stock shall no longer be deemed to be outstanding, and all rights of the holders thereof as holders of the Senior Preferred Stock shall cease, with respect to shares so redeemed, other than the right to receive the pay down amount (which shall include the final dividend for such shares). Any shares of the Senior Preferred Stock which shall have been so redeemed, after such redemption, shall no longer have the status of authorized, issued or outstanding shares.

4. Mandatory Pay Down of Liquidation Preference Upon Issuance of Capital Stock

(a) If the Company shall issue any shares of capital stock (including without limitation common stock or any series of preferred stock) in exchange for cash at any time while the Senior Preferred Stock is outstanding, then the Company shall, within 10 Business Days, use the proceeds of such issuance net of the direct costs relating to the issuance of such securities (including, without limitation, legal, accounting and investment banking fees) to pay down the Liquidation Preference of all outstanding shares of Senior Preferred Stock pro rata, out of funds legally available therefor, by making a payment in cash to the holders of record of outstanding shares of the Senior Preferred Stock as they appear in the books and records of the Company on such record date as shall be fixed in advance by the Board of Directors, not to be earlier than 45 days nor later than 10 days preceding the date fixed for the payment, with such payment first being used to reduce any accrued and unpaid dividends previously added to the Liquidation Preference pursuant to Section 8 below and, to the extent all such accrued and unpaid dividends have been paid, next being used to reduce any Periodic Commitment Fees (as defined in the Preferred Stock Purchase Agreement referred to in Section 8 below) previously added to the Liquidation Preference pursuant to Section 8 below; provided that, prior to the termination of the Commitment (as defined in the Preferred Stock Purchase Agreement referred to in Section 8 below), the Liquidation Preference of each share of Senior Preferred Stock shall not be paid down below $1,000 per share.

(b) If the Company shall not have sufficient assets legally available for the pay down of the Liquidation Preference of the shares of Senior Preferred Stock required under Section 4(a), the Company shall pay down the Liquidation Preference per share to the extent permitted by law, and shall pay down any Liquidation Preference not so paid down because of the unavailability of legally available assets or other prohibition as soon as practicable to the extent it is thereafter able to make such pay down legally. The inability of the Company to make such payment for any reason shall not relieve the Company from its obligation to effect any required pay down of the Liquidation Preference when, as and if permitted by law.

(c) If after the termination of the Commitment the Company pays down the Liquidation Preference of each outstanding share of Senior Preferred Stock in full, such shares shall be deemed to have been redeemed as of the date of such payment, and the dividend that would otherwise be payable for the Dividend Period ending on the pay down date will be paid on such date. Following such deemed redemption, the shares of the Senior Preferred Stock shall no longer be deemed to be outstanding, and all rights of the holders thereof as holders of the Senior Preferred Stock shall cease, with respect to shares so redeemed, other than the right to receive the pay down amount (which shall include the final dividend for such redeemed shares). Any shares of the Senior Preferred Stock which shall have been so redeemed, after such redemption, shall no longer have the status of authorized, issued or outstanding shares.

5. No Voting Rights

Except as set forth in this Certificate or otherwise required by law, the shares of the Senior Preferred Stock shall not have any voting powers, either general or special.

6. No Conversion or Exchange Rights

The holders of shares of the Senior Preferred Stock shall not have any right to convert such shares into or exchange such shares for any other class or series of stock or obligations of the Company.

7. No Preemptive Rights

No holder of the Senior Preferred Stock shall as such holder have any preemptive right to purchase or subscribe for any other shares, rights, options or other securities of any class of the Company which at any time may be sold or offered for sale by the Company.

8. Liquidation Rights and Preference

(a) Except as otherwise set forth herein, upon the voluntary or involuntary dissolution, liquidation or winding up of the Company, the holders of the outstanding shares of the Senior Preferred Stock shall be entitled to receive out of the assets of the Company available for distribution to stockholders, before any payment or distribution shall be made on the common stock or any other class or series of stock of the Company ranking junior to the Senior Preferred Stock upon liquidation, the amount per share equal to the Liquidation Preference plus an amount, determined in accordance with Section 2(a) above, equal to the dividend otherwise payable for the then-current Dividend Period accrued through and including the date of payment in respect of such dissolution, liquidation or winding up; provided, however, that if the assets of the Company available for distribution to stockholders shall be insufficient for the payment of the amount which the holders of the outstanding shares of the Senior Preferred Stock shall be entitled to receive upon such dissolution, liquidation or winding up of the Company as aforesaid, then, all of the assets of the Company available for distribution to stockholders shall be distributed to the holders of outstanding shares of the Senior Preferred Stock pro rata based on the aggregate Liquidation Preference of the shares of Senior Preferred Stock held by each holder.

(b) "Liquidation Preference" shall initially mean $1,000 per share and shall be:

(i) increased each time a Deficiency Amount (as defined in the Preferred Stock Purchase Agreement) is paid to the Company by an amount per share equal to the aggregate amount so paid to the Company divided by the number of shares of Senior Preferred Stock outstanding at the time of such payment;

(ii) increased each time the Company does not pay the full Periodic Commitment Fee (as defined in the Preferred Stock Purchase Agreement) in cash by an amount per share equal to the amount of the Periodic Commitment Fee that is not paid in cash divided by the number of shares of Senior Preferred Stock outstanding at the time such payment is due;

(iii) increased on the Dividend Payment Date if the Company fails to pay in full the dividend payable for the Dividend Period ending on such date by an amount per share equal to the aggregate amount of unpaid dividends divided by the number of shares of Senior Preferred Stock outstanding on such date; and

(iv) decreased each time the Company pays down the Liquidation Preference pursuant to Section 3 or Section 4 of this Certificate by an amount per share equal to the aggregate amount of the pay down divided by the number of shares of Senior Preferred Stock outstanding at the time of such pay down.

(c) "Preferred Stock Purchase Agreement" means the Preferred Stock Purchase Agreement, dated September 7, 2008, between the Company and the United States Department of the Treasury.

(d) Neither the sale of all or substantially all of the property or business of the Company, nor the merger, consolidation or combination of the Company into or with any other corporation or entity, shall be deemed to be a dissolution, liquidation or winding up for the purpose of this Section 8.

9. Additional Classes or Series of Stock

The Board of Directors shall have the right at any time in the future to authorize, create and issue, by resolution or resolutions, one or more additional classes or series of stock of the Company, and to determine and fix the distinguishing characteristics and the relative rights, preferences, privileges and other terms of the shares thereof; provided that, any such class or series of stock may not rank prior to or on parity with the Senior Preferred Stock without the prior written consent of the holders of at least two-thirds of all the shares of Senior Preferred Stock at the time outstanding.

10. Miscellaneous

(a) The Company and any agent of the Company may deem and treat the holder of a share or shares of Senior Preferred Stock, as shown in the Company's books and records, as the absolute owner of such share or shares of Senior Preferred Stock for the purpose of receiving payment of dividends in respect of such share or shares of Senior Preferred Stock and for all other purposes whatsoever, and neither the Company nor any agent of the Company shall be affected by any notice to the contrary. All payments made to or upon the order of any such person shall be valid and, to the extent of the sum or sums so paid, effectual to satisfy and discharge liabilities for moneys payable by the Company on or with respect to any such share or shares of Senior Preferred Stock.

(b) The shares of the Senior Preferred Stock, when duly issued, shall be fully paid and non-assessable.

(c) The Senior Preferred Stock may be issued, and shall be transferable on the books of the Company, only in whole shares.

(d) For purposes of this Certificate, the term "the Company" means the Federal National Mortgage Association and any successor thereto by operation of law or by reason of a merger, consolidation, combination or similar transaction.

(e) This Certificate and the respective rights and obligations of the Company and the holders of the Senior Preferred Stock with respect to such Senior Preferred Stock shall be construed in accordance with and governed by the laws of the United States, provided that the law of the State of Delaware shall serve as the federal rule of decision in all instances except where such law is inconsistent with the Company's enabling legislation, its public purposes or any provision of this Certificate.

(f) Any notice, demand or other communication which by any provision of this Certificate is required or permitted to be given or served to or upon the Company shall be given or served in writing addressed (unless and until another address shall be published by the Company) to Fannie Mae, 3900 Wisconsin Avenue NW, Washington, DC 20016, Attn: Executive Vice President and General Counsel. Such notice, demand or other communication to or upon the Company shall be deemed to have been sufficiently given or made only upon actual receipt of a writing by the Company. Any notice, demand or other communication which by any provision of this Certificate is required or permitted to be given or served by the Company hereunder may be given or served by being deposited first class, postage prepaid, in the United States mail addressed (i) to the holder as such holder's name and address may appear at such time in the books and records of the Company or (ii) if to a person or entity other than a holder of record of the Senior Preferred Stock, to such person or entity at such address as reasonably appears to the Company to be appropriate at such time. Such notice, demand or other communication shall be deemed to have been sufficiently given or made, for all purposes, upon mailing.

(g) The Company, by or under the authority of the Board of Directors, may amend, alter, supplement or repeal any provision of this Certificate pursuant to the following terms and conditions:

(i) Without the consent of the holders of the Senior Preferred Stock, the Company may amend, alter, supplement or repeal any provision of this Certificate to cure any ambiguity, to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Certificate, provided that such action shall not adversely affect the interests of the holders of the Senior Preferred Stock.

(ii) The consent of the holders of at least two-thirds of all of the shares of the Senior Preferred Stock at the time outstanding, given in person or by proxy, either in writing or by a vote at a meeting called for the purpose at which the holders of shares of the Senior Preferred Stock shall vote together as a class, shall be necessary for authorizing, effecting or validating the amendment, alteration, supplementation or repeal (whether by merger, consolidation or otherwise) of the provisions of this Certificate other than as set forth in subparagraph (i) of this paragraph (g). The creation and issuance of any other class or series of stock, or the issuance of additional shares of any existing class or series of stock, of the Company ranking junior to the Senior Preferred Stock shall not be deemed to constitute such an amendment, alteration, supplementation or repeal.

(iii) Holders of the Senior Preferred Stock shall be entitled to one vote per share on matters on which their consent is required pursuant to subparagraph (ii) of this paragraph (g). In connection with any meeting of such holders, the Board of Directors shall fix a record date, neither earlier than 60 days nor later than 10 days prior to the date of such meeting, and holders of record of shares of the Senior Preferred Stock on such record date shall be entitled to notice of and to vote at any such meeting and any adjournment. The Board of Directors, or such person or persons as it may designate, may establish reasonable rules and procedures as to the solicitation of the consent of holders of the Senior Preferred Stock at any such meeting or otherwise, which rules and procedures shall conform to the requirements of any national securities exchange on which the Senior Preferred Stock may be listed at such time.

(h) **RECEIPT AND ACCEPTANCE OF A SHARE OR SHARES OF THE SENIOR PREFERRED STOCK BY OR ON BEHALF OF A HOLDER SHALL CONSTITUTE THE UNCONDITIONAL ACCEPTANCE BY THE HOLDER (AND ALL OTHERS HAVING BENEFICIAL OWNERSHIP OF SUCH SHARE OR SHARES) OF ALL OF THE TERMS AND PROVISIONS OF THIS CERTIFICATE. NO SIGNATURE OR OTHER FURTHER MANIFESTATION OF ASSENT TO THE TERMS AND PROVISIONS OF THIS CERTIFICATE SHALL BE NECESSARY FOR ITS OPERATION OR EFFECT AS BETWEEN THE COMPANY AND THE HOLDER (AND ALL SUCH OTHERS).**

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Company this 7th day of September, 2008.

[Seal]

FEDERAL NATIONAL MORTGAGE ASSOCIATION,
by

The Federal Housing Finance Agency, its Conservator

____
James B. Lockhart III
Director

FREDDIE MAC

CERTIFICATE OF CREATION, DESIGNATION, POWERS, PREFERENCES, RIGHTS, PRIVILEGES, QUALIFICATIONS, LIMITATIONS, RESTRICTIONS, TERMS AND CONDITIONS OF VARIABLE LIQUIDATION PREFERENCE SENIOR PREFERRED STOCK (PAR VALUE $1.00 PER SHARE)

The Federal Housing Finance Agency, as Conservator of the Federal Home Loan Mortgage Corporation, a government-sponsored enterprise of the United States of America (the "Company"), does hereby certify that, pursuant to authority vested in the Board of Directors of the Company by Section 306(f) of the Federal Home Loan Mortgage Corporation Act, and pursuant to the authority vested in the Conservator of the Company by Section 1367(b) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. §4617), as amended, the Conservator adopted Resolution FHLMC 2008-___ on September 7, 2008, which resolution is now, and at all times since such date has been, in full force and effect, and that the Conservator approved the final terms of the issuance and sale of the preferred stock of the Company designated above.

The Senior Preferred Stock shall have the following designation, powers, preferences, rights, privileges, qualifications, limitations, restrictions, terms and conditions:

1. Designation, Par Value, Number of Shares and Seniority

The class of preferred stock of the Company created hereby (the "Senior Preferred Stock") shall be designated "Variable Liquidation Preference Senior Preferred Stock," shall have a par value of $1.00 per share and shall consist of 1,000,000 shares. The Senior Preferred Stock shall rank prior to the common stock of the Company as provided in this Certificate and shall rank, as to both dividends and distributions upon liquidation, prior to (a) the Fixed-to-Floating Rate Non-Cumulative Perpetual Preferred Stock issued on December 4, 2007, (b) the 6.55% Non-Cumulative Preferred Stock issued on September 28, 2007, (c) the 6.02% Non-Cumulative Preferred Stock issued on July 24, 2007, (d) the 5.66% Non-Cumulative Preferred Stock issued on April 16, 2007, (e) the 5.57% Non-Cumulative Preferred Stock issued on January 16, 2007, (f) the 5.9% Non-Cumulative Preferred Stock issued on October 16, 2006, (g) the 6.42% Non-Cumulative Preferred Stock issued on July 17, 2006, (h) the Variable Rate, Non-Cumulative Preferred Stock issued on July 17, 2006, (i) the 5.81% Non-Cumulative Preferred Stock issued on January 29, 2002, (j) the 5.7% Non-Cumulative Preferred Stock issued on October 30, 2001, (k) the 6% Non-Cumulative Preferred Stock issued on May 30, 2001, (l) the Variable Rate, Non-Cumulative Preferred Stock issued on May 30, 2001 and June 1, 2001, (m) the 5.81% Non-Cumulative Preferred Stock issued on March 23, 2001, (n) the Variable Rate, Non-Cumulative Preferred Stock issued on March 23, 2001, (o) the Variable Rate, Non-Cumulative Preferred Stock issued on January 26, 2001, (p) the Variable Rate, Non-Cumulative Preferred Stock issued on November 5, 1999, (q) the 5.79% Non-Cumulative Preferred Stock issued on July 21, 1999, (r) the 5.1% Non-Cumulative Preferred Stock issued on March 19, 1999, (s) the 5.3% Non-Cumulative Preferred Stock issued on October 28, 1998, (t) the

5.1% Non-Cumulative Preferred Stock issued on September 23, 1998, (u) the Variable Rate, Non-Cumulative Preferred Stock issued on September 23, 1998 and September 29, 1998, (v) the 5% Non-Cumulative Preferred Stock issued on March 23, 1998, (w) the 5.81% Non-Cumulative Preferred Stock issued on October 27, 1997, (x) the Variable Rate, Non-Cumulative Preferred Stock issued on April 26, 1996, (y) any other capital stock of the Company outstanding on the date of the initial issuance of the Senior Preferred Stock, and (z) any capital stock of the Company that may be issued after the date of initial issuance of the Senior Preferred Stock.

2. Dividends

(a) For each Dividend Period from the date of the initial issuance of the Senior Preferred Stock, holders of outstanding shares of Senior Preferred Stock shall be entitled to receive, ratably, when, as and if declared by the Board of Directors, in its sole discretion, out of funds legally available therefor, cumulative cash dividends at the annual rate per share equal to the then-current Dividend Rate on the then-current Liquidation Preference. Dividends on the Senior Preferred Stock shall accrue from but not including the date of the initial issuance of the Senior Preferred Stock and will be payable in arrears when, as and if declared by the Board of Directors quarterly on March 31, June 30, September 30 and December 31 of each year (each, a "Dividend Payment Date"), commencing on December 31, 2008. If a Dividend Payment Date is not a "Business Day," the related dividend will be paid not later than the next Business Day with the same force and effect as though paid on the Dividend Payment Date, without any increase to account for the period from such Dividend Payment Date through the date of actual payment. "Business Day" means a day other than (i) a Saturday or Sunday, (ii) a day on which New York City banks are closed, or (iii) a day on which the offices of the Company are closed.

If declared, the initial dividend will be for the period from but not including the date of the initial issuance of the Senior Preferred Stock through and including December 31, 2008. Except for the initial Dividend Payment Date, the "Dividend Period" relating to a Dividend Payment Date will be the period from but not including the preceding Dividend Payment Date through and including the related Dividend Payment Date. The amount of dividends payable on the initial Dividend Payment Date or for any Dividend Period that is not a full calendar quarter shall be computed on the basis of 30-day months, a 360-day year and the actual number of days elapsed in any period of less than one month. For the avoidance of doubt, in the event that the Liquidation Preference changes in the middle of a Dividend Period, the amount of dividends payable on the Dividend Payment Date at the end of such Dividend Period shall take into account such change in Liquidation Preference and shall be computed at the Dividend Rate on each Liquidation Preference based on the portion of the Dividend Period that each Liquidation Preference was in effect.

(b) To the extent not paid pursuant to Section 2(a) above, dividends on the Senior Preferred Stock shall accrue and shall be added to the Liquidation Preference pursuant to Section 8, whether or not there are funds legally available for the payment of such dividends and whether or not dividends are declared.

(c) "Dividend Rate" means 10.0%; provided, however, that if at any time the Company shall have for any reason failed to pay dividends in cash in a timely manner as required by this Certificate, then immediately following such failure and for all Dividend Periods thereafter until the Dividend Period following the date on which the Company shall have paid in cash full cumulative dividends (including any unpaid dividends added to the Liquidation Preference pursuant to Section 8), the "Dividend Rate" shall mean 12.0%.

(d) Each such dividend shall be paid to the holders of record of outstanding shares of the Senior Preferred Stock as they appear in the books and records of the Company on such record date as shall be fixed in advance by the Board of Directors, not to be earlier than 45 days nor later than 10 days preceding the applicable Dividend Payment Date. The Company may not, at any time, declare or pay dividends on, make distributions with respect to, or redeem, purchase or acquire, or make a liquidation payment with respect to, any common stock or other securities ranking junior to the Senior Preferred Stock unless (i) full cumulative dividends on the outstanding Senior Preferred Stock in respect of the then-current Dividend Period and all past Dividend Periods (including any unpaid dividends added to the Liquidation Preference pursuant to Section 8) have been declared and paid in cash (including through any pay down of Liquidation Preference pursuant to Section 3) and (ii) all amounts required to be paid pursuant to Section 4 (without giving effect to any prohibition on such payment under any applicable law) have been paid in cash.

(e) Notwithstanding any other provision of this Certificate, the Board of Directors, in its discretion, may choose to pay dividends on the Senior Preferred Stock without the payment of any dividends on the common stock, preferred stock or any other class or series of stock from time to time outstanding ranking junior to the Senior Preferred Stock with respect to the payment of dividends.

(f) If and whenever dividends, having been declared, shall not have been paid in full, as aforesaid, on shares of the Senior Preferred Stock, all such dividends that have been declared on shares of the Senior Preferred Stock shall be paid to the holders pro rata based on the aggregate Liquidation Preference of the shares of Senior Preferred Stock held by each holder, and any amounts due but not paid in cash shall be added to the Liquidation Preference pursuant to Section 8.

3. Optional Pay Down of Liquidation Preference

(a) Following termination of the Commitment (as defined in the Preferred Stock Purchase Agreement referred to in Section 8 below), and subject to any limitations which may be imposed by law and the provisions below, the Company may pay down the Liquidation Preference of all outstanding shares of the Senior Preferred Stock pro rata, at any time, in whole or in part, out of funds legally available therefor, with such payment first being used to reduce any accrued and unpaid dividends previously added to the Liquidation Preference pursuant to Section 8 below and, to the extent all such accrued and unpaid dividends have been paid, next being used to reduce any Periodic Commitment Fees (as defined in the Preferred Stock Purchase Agreement referred to in Section 8 below) previously added to the Liquidation Preference pursuant to Section 8 below. Prior to termination of the Commitment, and subject to any limitations which may be imposed by law and the provisions below, the Company may pay down the Liquidation Preference of all outstanding shares of the Senior Preferred Stock pro rata, at any time, out of funds legally available therefor, but only to the extent of (i) accrued and unpaid dividends previously added to the Liquidation Preference pursuant to Section 8 below and not repaid by any prior pay down of Liquidation Preference and (ii) Periodic Commitment Fees previously added to the Liquidation

Preference pursuant to Section 8 below and not repaid by any prior pay down of Liquidation Preference. Any pay down of Liquidation Preference permitted by this Section 3 shall be paid by making a payment in cash to the holders of record of outstanding shares of the Senior Preferred Stock as they appear in the books and records of the Company on such record date as shall be fixed in advance by the Board of Directors, not to be earlier than 45 days nor later than 10 days preceding the date fixed for the payment.

(b) In the event the Company shall pay down of the Liquidation Preference of the Senior Preferred Stock as aforesaid, notice of such pay down shall be given by the Company by first class mail, postage prepaid, mailed neither less than 10 nor more than 45 days preceding the date fixed for the payment, to each holder of record of the shares of the Senior Preferred Stock, at such holder's address as the same appears in the books and records of the Company. Each such notice shall state the amount by which the Liquidation Preference of each share shall be reduced and the pay down date.

(c) If after termination of the Commitment the Company pays down the Liquidation Preference of each outstanding share of Senior Preferred Stock in full, such shares shall be deemed to have been redeemed as of the date of such payment, and the dividend that would otherwise be payable for the Dividend Period ending on the pay down date will be paid on such date. Following such deemed redemption, the shares of the Senior Preferred Stock shall no longer be deemed to be outstanding, and all rights of the holders thereof as holders of the Senior Preferred Stock shall cease, with respect to shares so redeemed, other than the right to receive the pay down amount (which shall include the final dividend for such shares). Any shares of the Senior Preferred Stock which shall have been so redeemed, after such redemption, shall no longer have the status of authorized, issued or outstanding shares.

4. Mandatory Pay Down of Liquidation Preference Upon Issuance of Capital Stock

(a) If the Company shall issue any shares of capital stock (including without limitation common stock or any series of preferred stock) in exchange for cash at any time while the Senior Preferred Stock is outstanding, then the Company shall, within 10 Business Days, use the proceeds of such issuance net of the direct costs relating to the issuance of such securities (including, without limitation, legal, accounting and investment banking fees) to pay down the Liquidation Preference of all outstanding shares of Senior Preferred Stock pro rata, out of funds legally available therefor, by making a payment in cash to the holders of record of outstanding shares of the Senior Preferred Stock as they appear in the books and records of the Company on such record date as shall be fixed in advance by the Board of Directors, not to be earlier than 45 days nor later than 10 days preceding the date fixed for the payment, with such payment first being used to reduce any accrued and unpaid dividends previously added to the Liquidation Preference pursuant to Section 8 below and, to the extent all such accrued and unpaid dividends have been paid, next being used to reduce any Periodic Commitment Fees (as defined in the Preferred Stock Purchase Agreement referred to in Section 8 below) previously added to the Liquidation Preference pursuant to Section 8 below; provided that, prior to the termination of the Commitment (as defined in the Preferred Stock Purchase Agreement referred to in Section 8 below), the Liquidation Preference of each share of Senior Preferred Stock shall not be paid down below $1,000 per share.

(b) If the Company shall not have sufficient assets legally available for the pay down of the Liquidation Preference of the shares of Senior Preferred Stock required under Section 4(a), the Company shall pay down the Liquidation Preference per share to the extent permitted by law, and shall pay down any Liquidation Preference not so paid down because of the unavailability of legally available assets or other prohibition as soon as practicable to the extent it is thereafter able to make such pay down legally. The inability of the Company to make such payment for any reason shall not relieve the Company from its obligation to effect any required pay down of the Liquidation Preference when, as and if permitted by law.

(c) If after the termination of the Commitment the Company pays down the Liquidation Preference of each outstanding share of Senior Preferred Stock in full, such shares shall be deemed to have been redeemed as of the date of such payment, and the dividend that would otherwise be payable for the Dividend Period ending on the pay down date will be paid on such date. Following such deemed redemption, the shares of the Senior Preferred Stock shall no longer be deemed to be outstanding, and all rights of the holders thereof as holders of the Senior Preferred Stock shall cease, with respect to shares so redeemed, other than the right to receive the pay down amount (which shall include the final dividend for such redeemed shares). Any shares of the Senior Preferred Stock which shall have been so redeemed, after such redemption, shall no longer have the status of authorized, issued or outstanding shares.

5. No Voting Rights

Except as set forth in this Certificate or otherwise required by law, the shares of the Senior Preferred Stock shall not have any voting powers, either general or special.

6. No Conversion or Exchange Rights

The holders of shares of the Senior Preferred Stock shall not have any right to convert such shares into or exchange such shares for any other class or series of stock or obligations of the Company.

7. No Preemptive Rights

No holder of the Senior Preferred Stock shall as such holder have any preemptive right to purchase or subscribe for any other shares, rights, options or other securities of any class of the Company which at any time may be sold or offered for sale by the Company.

8. Liquidation Rights and Preference

(a) Except as otherwise set forth herein, upon the voluntary or involuntary dissolution, liquidation or winding up of the Company, the holders of the outstanding shares of the Senior Preferred Stock shall be entitled to receive out of the assets of the Company available for distribution to stockholders, before any payment or distribution shall be made on the common stock or any other class or series of stock of the Company ranking junior to the Senior Preferred Stock upon liquidation, the amount per share equal to the Liquidation Preference plus an amount, determined in accordance with Section 2(a) above, equal to the dividend otherwise payable for the then-current Dividend Period accrued through and including the date of payment in respect of such dissolution, liquidation or winding up; provided, however, that if the assets of the Company available for distribution to stockholders shall be insufficient for the payment of the amount which the holders of the outstanding shares of the Senior Preferred Stock shall be entitled to receive upon such dissolution, liquidation or winding up of the Company as aforesaid, then, all of the assets of the Company available for distribution to stockholders shall be distributed to the holders of outstanding shares of the Senior Preferred Stock pro rata based on the aggregate Liquidation Preference of the shares of Senior Preferred Stock held by each holder.

(b) "Liquidation Preference" shall initially mean $1,000 per share and shall be:

(i) increased each time a Deficiency Amount (as defined in the Preferred Stock Purchase Agreement) is paid to the Company by an amount per share equal to the aggregate amount so paid to the Company divided by the number of shares of Senior Preferred Stock outstanding at the time of such payment;

(ii) increased each time the Company does not pay the full Periodic Commitment Fee (as defined in the Preferred Stock Purchase Agreement) in cash by an amount per share equal to the amount of the Periodic Commitment Fee that is not paid in cash divided by the number of shares of Senior Preferred Stock outstanding at the time such payment is due;

(iii) increased on the Dividend Payment Date if the Company fails to pay in full the dividend payable for the Dividend Period ending on such date by an amount per share equal to the aggregate amount of unpaid dividends divided by the number of shares of Senior Preferred Stock outstanding on such date; and

(iv) decreased each time the Company pays down the Liquidation Preference pursuant to Section 3 or Section 4 of this Certificate by an amount per share equal to the aggregate amount of the pay down divided by the number of shares of Senior Preferred Stock outstanding at the time of such pay down.

(c) "Preferred Stock Purchase Agreement" means the Preferred Stock Purchase Agreement, dated September 7, 2008, between the Company and the United States Department of the Treasury.

(d) Neither the sale of all or substantially all of the property or business of the Company, nor the merger, consolidation or combination of the Company into or with any other corporation or entity, shall be deemed to be a dissolution, liquidation or winding up for the purpose of this Section 8.

9. Additional Classes or Series of Stock

The Board of Directors shall have the right at any time in the future to authorize, create and issue, by resolution or resolutions, one or more additional classes or series of stock of the Company, and to determine and fix the distinguishing characteristics and the relative rights, preferences, privileges and other terms of the shares thereof; provided that, any such class or series of stock may not rank prior to or on parity with the Senior Preferred Stock without the prior written consent of the holders of at least two-thirds of all the shares of Senior Preferred Stock at the time outstanding.

10. Miscellaneous

(a) The Company and any agent of the Company may deem and treat the holder of a share or shares of Senior Preferred Stock, as shown in the Company's books and records, as the absolute owner of such share or shares of Senior Preferred Stock for the purpose of receiving payment of dividends in respect of such share or shares of Senior Preferred Stock and for all other purposes whatsoever, and neither the Company nor any agent of the Company shall be affected by any notice to the contrary. All payments made to or upon the order of any such person shall be valid and, to the extent of the sum or sums so paid, effectual to satisfy and discharge liabilities for moneys payable by the Company on or with respect to any such share or shares of Senior Preferred Stock.

(b) The shares of the Senior Preferred Stock, when duly issued, shall be fully paid and non-assessable.

(c) The Senior Preferred Stock may be issued, and shall be transferable on the books of the Company, only in whole shares.

(d) For purposes of this Certificate, the term "the Company" means the Federal Home Loan Mortgage Corporation and any successor thereto by operation of law or by reason of a merger, consolidation, combination or similar transaction.

(e) This Certificate and the respective rights and obligations of the Company and the holders of the Senior Preferred Stock with respect to such Senior Preferred Stock shall be construed in accordance with and governed by the laws of the United States, provided that the law of the Commonwealth of Virginia shall serve as the federal rule of decision in all instances except where such law is inconsistent with the Company's enabling legislation, its public purposes or any provision of this Certificate.

(f) Any notice, demand or other communication which by any provision of this Certificate is required or permitted to be given or served to or upon the Company shall be given or served in writing addressed (unless and until another address shall be published by the Company) to Freddie Mac, 8200 Jones Branch Drive, McLean, Virginia 22102, Attn: Executive Vice President and General Counsel. Such notice, demand or other communication to or upon the Company shall be deemed to have been sufficiently given or made only upon actual receipt of a writing by the Company. Any notice, demand or other communication which by any provision of this Certificate is required or permitted to be given or served by the Company hereunder may be given or served by being deposited first class, postage prepaid, in the United States mail addressed (i) to the holder as such holder's name and address may appear at such time in the books and records of the Company or (ii) if to a person or entity other than a holder of record of the Senior Preferred Stock, to such person or entity at such address as reasonably appears to the Company to be appropriate at such time. Such notice, demand or other communication shall be deemed to have been sufficiently given or made, for all purposes, upon mailing.

(g) The Company, by or under the authority of the Board of Directors, may amend, alter, supplement or repeal any provision of this Certificate pursuant to the following terms and conditions:

(i) Without the consent of the holders of the Senior Preferred Stock, the Company may amend, alter, supplement or repeal any provision of this Certificate to cure any ambiguity, to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Certificate, provided that such action shall not adversely affect the interests of the holders of the Senior Preferred Stock.

(ii) The consent of the holders of at least two-thirds of all of the shares of the Senior Preferred Stock at the time outstanding, given in person or by proxy, either in writing or by a vote at a meeting called for the purpose at which the holders of shares of the Senior Preferred Stock shall vote together as a class, shall be necessary for authorizing, effecting or validating the amendment, alteration, supplementation or repeal (whether by merger, consolidation or otherwise) of the provisions of this Certificate other than as set forth in subparagraph (i) of this paragraph (g). The creation and issuance of any other class or series of stock, or the issuance of additional shares of any existing class or series of stock, of the Company ranking junior to the Senior Preferred Stock shall not be deemed to constitute such an amendment, alteration, supplementation or repeal.

(iii) Holders of the Senior Preferred Stock shall be entitled to one vote per share on matters on which their consent is required pursuant to subparagraph (ii) of this paragraph (g). In connection with any meeting of such holders, the Board of Directors shall fix a record date, neither earlier than 60 days nor later than 10 days prior to the date of such meeting, and holders of record of shares of the Senior Preferred Stock on such record date shall be entitled to notice of and to vote at any such meeting and any adjournment. The Board of Directors, or such person or persons as it may designate, may establish reasonable rules and procedures as to the solicitation of the consent of holders of the Senior Preferred Stock at any such meeting or otherwise, which rules and procedures shall conform to the requirements of any national securities exchange on which the Senior Preferred Stock may be listed at such time.

(h) **RECEIPT AND ACCEPTANCE OF A SHARE OR SHARES OF THE SENIOR PREFERRED STOCK BY OR ON BEHALF OF A HOLDER SHALL CONSTITUTE THE UNCONDITIONAL ACCEPTANCE BY THE HOLDER (AND ALL OTHERS HAVING BENEFICIAL OWNERSHIP OF SUCH SHARE OR SHARES) OF ALL OF THE TERMS AND PROVISIONS OF THIS CERTIFICATE. NO SIGNATURE OR OTHER FURTHER MANIFESTATION OF ASSENT TO THE TERMS AND PROVISIONS OF THIS CERTIFICATE SHALL BE NECESSARY FOR ITS OPERATION OR EFFECT AS BETWEEN THE COMPANY AND THE HOLDER (AND ALL SUCH OTHERS).**

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Company this 7th day of September, 2008.

[Seal]

FEDERAL HOME LOAN MORTGAGE CORPORATION,
by

The Federal Housing Finance Agency, its Conservator

____

James B. Lockhart III
Director

Exhibit C

SECOND AMENDMENT TO AMENDED AND RESTATED SENIOR PREFERRED STOCK PURCHASE AGREEMENT

SECOND AMENDMENT dated as of December 24, 2009, to the AMENDED AND RESTATED SENIOR PREFERRED STOCK PURCHASE AGREEMENT dated as of September 26, 2008, between the UNITED STATES DEPARTMENT OF THE TREASURY ("Purchaser"), and FEDERAL NATIONAL MORTGAGE ASSOCIATION ("Seller"), acting through the Federal Housing Finance Agency (the "Agency") as its duly appointed conservator (the Agency in such capacity, "Conservator").

Background

A. Purchaser and Seller have heretofore entered into the Amended and Restated Senior Preferred Stock Purchase Agreement dated as of September 26, 2008 (the "Amended and Restated Agreement").

B. In the Amended and Restated Agreement, Purchaser committed itself to provide to Seller, on the terms and conditions provided in the Amended and Restated Agreement, immediately available funds in an amount as determined from time to time as provided in the Amended and Restated Agreement, but in no event in an aggregate amount exceeding $100,000,000,000.

C. Purchaser and Seller have heretofore entered into the Amendment dated as of May 6, 2009, to the Amended and Restated Agreement (the "First Amendment").

D. In the First Amendment, Purchaser increased to $200,000,000,000 the maximum aggregate amount permitted to be provided to Seller under the Amended and Restated Agreement, and amended the terms of the Amended and Restated Agreement in certain other respects.

E. Purchaser and Seller are each authorized to enter into this Second Amendment to the Amended and Restated Agreement ("this Second Amendment") (i) modifying the Treasury's funding commitment to Seller to provide it with additional funding in amounts not to exceed the new formulaic maximum amount specified herein, and (ii) amending the terms of the Amended and Restated Agreement, as previously amended, in certain other respects.

THEREFORE, for and in consideration of the mutual agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Purchaser and Seller agree as follows:

Terms and Conditions

1. **Definitions.**

Capitalized terms used and not defined in this Amendment shall have the respective meanings given such terms in the Amended and Restated Agreement, as amended by the First Amendment (the Amended and Restated Agreement, as amended by the First Amendment, being the "Existing Agreement").

2. **Amendment to Section 1 (Relating to Definition of "Indebtedness").**

The definition of "Indebtedness" in Section 1 of the Existing Agreement is hereby amended to read as follows:

> *"Indebtedness"* of any Person means, for purposes of Section 5.5 only, without duplication, (a) all obligations of such Person for money borrowed by such Person, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property or assets purchased by such Person, (d) all obligations of such Person issued or assumed as the deferred purchase price of property or services, other than trade accounts payable, (e) all Capital Lease Obligations of such Person, (f) obligations, whether contingent or liquidated, in respect of letters of credit (including standby and commercial), bankers' and similar instruments, and (g) any obligation of such Person, contingent or otherwise, guaranteeing or having the economic effect of guaranteeing and Indebtedness of the types set forth in clauses (a) through (f) payable by another Person other than Mortgage Guarantee Obligations (and, for the avoidance of doubt, without giving effect to any change that may be made hereafter in respect of Statement of Financial Accounting Standards No. 140, 166, or 167, or any similar accounting standard). Indebtedness balances or amounts shall be measured at par value for purposes of Section 5.5 only.

3. **Amendment to Section 1 (Relating to Definition of "Maximum Amount").**

The definition of "Maximum Amount" in Section 1 of the Existing Agreement is hereby amended to read as follows:

> "*Maximum Amount*" means, as of any date of determination, the greater of (a) $200,000,000,000 (two hundred billion dollars), or (b) $200,000,000,000 plus the cumulative total of Deficiency Amounts determined for calendar quarters in calendar years 2010, 2011, and 2012, less any Surplus Amount determined as of December 31, 2012, and in the case of either (a) or (b), less the aggregate amount of funding under the Commitment prior to such date.

4. **Amendment to Section 1 (Relating to Definition of "Mortgage Assets").**

The definition of "Mortgage Assets" in Section 1 of the Existing Agreement is hereby amended to read as follows:

> "*Mortgage Assets*" of any Person means assets of such Person consisting of mortgages, mortgage loans, mortgage-related securities, participation

certificates, mortgage-backed commercial paper, obligations of real estate mortgage investment conduits and similar assets, in each case to the extent such assets would appear on the balance sheet of such Person in accordance with GAAP as in effect as of the date hereof (and, for the avoidance of doubt, without giving effect to any change that may be made hereafter in respect of Statement of Financial Accounting Standards No. 140, 166, or 167, or any similar accounting standard). Mortgage Asset balances or amounts shall be measured at unpaid principal balance for purposes of Section 5.7 only.

5. Amendment to Section 1 (Adding Definition for New Defined Term "Surplus Amount").

Section 1 of the Existing Agreement is hereby amended by inserting after the definition of the term "Senior Preferred Stock" the following:

"*Surplus Amount*" means, as of the date of determination, the amount if any by which (a) the total assets of Seller (such assets excluding the Commitment and any unfunded amounts thereof) exceed (b) the total liabilities of Seller, in each case as reflected on the balance sheet of Seller as of the applicable date set forth in the Agreement, prepared in accordance with GAAP.

6. Amendment to Section 2.1 (Relating to the Commitment).

Section 2.1 of the Existing Agreement is hereby amended to read as follows:

2.1 *Commitment*. Purchaser hereby commits to provide to Seller, on the terms and conditions set forth herein, immediately available funds in an amount up to but not in excess of the Available Amount, as determined from time to time (the "Commitment"); provided, that in no event shall the aggregate amount funded under the Commitment exceed the greater of (a) $200,000,000,000 (two hundred billion dollars), or (b) $200,000,000,000 plus the cumulative total of Deficiency Amounts determined for calendar quarters in calendar years 2010, 2011, and 2012, less any Surplus Amount determined as of December 31, 2012. The liquidation preference of Senior Preferred Stock shall increase in connection with draws on the Commitment, as set forth in Section 3.3 below.

7. Amendment to Section 2.5 (Relating to Termination of Purchaser's Obligations).

Section 2.5 of the Existing Agreement is hereby amended to read as follows:

2.5 *Termination of Purchaser's Obligations*. Subject to earlier termination pursuant to Section 6.7, all of Purchaser's obligations under and in respect of the Commitment shall terminate upon the earliest of: (a) if the Liquidation End Date shall have occurred, (i) the payment in full of Purchaser's obligations with respect to any valid request for funds pursuant to Section 2.4 or (ii) if there is no Deficiency Amount on the Liquidation End Date or if no such request pursuant to Section 2.4 has been made, the close of business on the 15th Business Day following the determination of the Deficiency Amount, if any, as of the Liquidation End Date; (b) the payment in full of, defeasance of or other reasonable provision for all liabilities of Seller, whether or not contingent, including payment of any amounts that may become payable on, or expiry of or other provision for, all Mortgage Guarantee Obligations and provision for unmatured debts; and (c) the funding by Purchaser under the Commitment of an aggregate equal to the greater of (a) $200,000,000,000 (two hundred billion dollars), or (b) $200,000,000,000 plus the cumulative total of Deficiency Amounts determined for calendar quarters in calendar years 2010, 2011, and 2012, less any Surplus Amount determined as of December 31, 2012. For avoidance of doubt, the Commitment shall *not* be terminable by Purchaser solely by reason of (i) the conservatorship, receivership or other insolvency proceeding of Seller or (ii) the Seller's financial condition or any adverse change in Seller's financial condition.

8. Amendment to Section 3.2 (Relating to Periodic Commitment Fee).

Section 3.2 of the Existing Agreement is hereby amended to read as follows:

3.2. *Periodic Commitment Fee.* (a) Commencing March 31, 2011, Seller shall pay to Purchaser quarterly, on the last day of March, June, September and December of each calendar year (each a "Periodic Fee Date"), a periodic commitment fee (the "Periodic Commitment Fee"). The Periodic Commitment Fee shall accrue from January 1, 2011.

(b) The Periodic Commitment Fee is intended to fully compensate Purchaser for the support provided by the ongoing Commitment following December 31, 2010. The amount of the Periodic Commitment Fee shall be set not later than December 31, 2010 with respect to the ensuing five-year period, shall be reset every five years thereafter and shall be determined with reference to the market value of the Commitment as then in effect. The amount of the Periodic Commitment Fee shall be mutually agreed by Purchaser and Seller, subject to their reasonable discretion and in consultation with the Chairman of the Federal Reserve; provided, that Purchaser may waive the Periodic Commitment Fee for up to one year at a time, in its sole discretion, based on adverse conditions in the United States mortgage market.

(c) At the election of Seller, the Periodic Commitment Fee may be paid in cash or by adding the amount thereof ratably to the liquidation preference of each outstanding share of Senior Preferred Stock so that the aggregate liquidation preference of all such outstanding shares of Senior Preferred Stock is increased by an amount equal to the Periodic Commitment Fee. Seller shall deliver notice of such election not later than three (3) Business Days prior to each Periodic Fee Date. If the Periodic Commitment Fee is not paid in cash by 12:00 pm (New York time) on the applicable Periodic Fee Date (irrespective of Seller's election pursuant to this subsection), Seller shall be deemed to have elected to pay the Periodic Commitment Fee by adding the amount thereof to the liquidation preference of the Senior Preferred Stock, and the aggregate liquidation preference of the outstanding shares of Senior Preferred Stock shall thereupon be automatically increased, in the manner contemplated by the first sentence of this section, by an aggregate amount equal to the Periodic Commitment Fee then due.

9. Amendment to Section 5.7 (Relating to Owned Mortgage Assets).

Section 5.7 of the Existing Agreement is hereby amended to read as follows:

5.7. *Mortgage Assets.* Seller shall not own, as of any applicable date, Mortgage Assets in excess of (i) on December 31, 2009, $900 billion, or (ii) on December 31 of each year thereafter, 90.0% of the aggregate amount of Mortgage Assets that Seller was permitted to own as of December 31 of the immediately preceding calendar year; provided, that in no event shall Seller be required under this Section 5.7 to own less than $250 billion in Mortgage Assets.

10. Existing Agreement to Continue, as Amended.

Except as expressly modified by this Second Amendment, the Existing Agreement shall continue in full force and effect.

11. Effective Date.

This Second Amendment shall not become effective until it has been executed by both of Purchaser and Seller. When this Second Amendment has been so executed, it shall become effective as of the date first above written.

FEDERAL NATIONAL MORTGAGE
ASSOCIATION, by

Federal Housing Finance Agency,
its Conservator

Edward J. DeMarco

Edward J. DeMarco
Acting Director

UNITED STATES DEPARTMENT
OF THE TREASURY

Timothy F. Geithner

Timothy F. Geithner
Secretary of the Treasury

SECOND AMENDMENT TO AMENDED AND RESTATED SENIOR PREFERRED STOCK PURCHASE AGREEMENT

SECOND AMENDMENT dated as of December 24, 2009, to the AMENDED AND RESTATED SENIOR PREFERRED STOCK PURCHASE AGREEMENT dated as of September 26, 2008, between the UNITED STATES DEPARTMENT OF THE TREASURY ("Purchaser"), and FEDERAL HOME LOAN MORTGAGE CORPORATION ("Seller"), acting through the Federal Housing Finance Agency (the "Agency") as its duly appointed conservator (the Agency in such capacity, "Conservator").

Background

A. Purchaser and Seller have heretofore entered into the Amended and Restated Senior Preferred Stock Purchase Agreement dated as of September 26, 2008 (the "Amended and Restated Agreement").

B. In the Amended and Restated Agreement, Purchaser committed itself to provide to Seller, on the terms and conditions provided in the Amended and Restated Agreement, immediately available funds in an amount as determined from time to time as provided in the Amended and Restated Agreement, but in no event in an aggregate amount exceeding $100,000,000,000.

C. Purchaser and Seller have heretofore entered into the Amendment dated as of May 6, 2009, to the Amended and Restated Agreement (the "First Amendment").

D. In the First Amendment, Purchaser increased to $200,000,000,000 the maximum aggregate amount permitted to be provided to Seller under the Amended and Restated Agreement, and amended the terms of the Amended and Restated Agreement in certain other respects.

E. Purchaser and Seller are each authorized to enter into this Second Amendment to the Amended and Restated Agreement ("this Second Amendment") (i) modifying the Treasury's funding commitment to Seller to provide it with additional funding in amounts not to exceed the new formulaic maximum amount specified herein, and (ii) amending the terms of the Amended and Restated Agreement, as previously amended, in certain other respects.

THEREFORE, for and in consideration of the mutual agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Purchaser and Seller agree as follows:

Terms and Conditions

1. Definitions.

Capitalized terms used and not defined in this Amendment shall have the respective meanings given such terms in the Amended and Restated Agreement, as amended by the First Amendment (the Amended and Restated Agreement, as amended by the First Amendment, being the "Existing Agreement").

2. Amendment to Section 1 (Relating to Definition of "Indebtedness").

The definition of "Indebtedness" in Section 1 of the Existing Agreement is hereby amended to read as follows:

> *"Indebtedness"* of any Person means, for purposes of Section 5.5 only, without duplication, (a) all obligations of such Person for money borrowed by such Person, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property or assets purchased by such Person, (d) all obligations of such Person issued or assumed as the deferred purchase price of property or services, other than trade accounts payable, (e) all Capital Lease Obligations of such Person, (f) obligations, whether contingent or liquidated, in respect of letters of credit (including standby and commercial), bankers' and similar instruments, and (g) any obligation of such Person, contingent or otherwise, guaranteeing or having the economic effect of guaranteeing and Indebtedness of the types set forth in clauses (a) through (f) payable by another Person other than Mortgage Guarantee Obligations (and, for the avoidance of doubt, without giving effect to any change that may be made hereafter in respect of Statement of Financial Accounting Standards No. 140, 166, or 167, or any similar accounting standard). Indebtedness balances or amounts shall be measured at par value for purposes of Section 5.5 only.

3. Amendment to Section 1 (Relating to Definition of "Maximum Amount").

The definition of "Maximum Amount" in Section 1 of the Existing Agreement is hereby amended to read as follows:

> "*Maximum Amount*" means, as of any date of determination, the greater of (a) $200,000,000,000 (two hundred billion dollars), or (b) $200,000,000,000 plus the cumulative total of Deficiency Amounts determined for calendar quarters in calendar years 2010, 2011, and 2012, less any Surplus Amount determined as of December 31, 2012, and in the case of either (a) or (b), less the aggregate amount of funding under the Commitment prior to such date.

4. Amendment to Section 1 (Relating to Definition of "Mortgage Assets").

The definition of "Mortgage Assets" in Section 1 of the Existing Agreement is hereby amended to read as follows:

> "*Mortgage Assets*" of any Person means assets of such Person consisting of mortgages, mortgage loans, mortgage-related securities, participation

certificates, mortgage-backed commercial paper, obligations of real estate mortgage investment conduits and similar assets, in each case to the extent such assets would appear on the balance sheet of such Person in accordance with GAAP as in effect as of the date hereof (and, for the avoidance of doubt, without giving effect to any change that may be made hereafter in respect of Statement of Financial Accounting Standards No. 140, 166, or 167, or any similar accounting standard). Mortgage Asset balances or amounts shall be measured at unpaid principal balance for purposes of Section 5.7 only.

5. **Amendment to Section 1 (Adding Definition for New Defined Term "Surplus Amount").**

Section 1 of the Existing Agreement is hereby amended by inserting after the definition of the term "Senior Preferred Stock" the following:

"*Surplus Amount*" means, as of the date of determination, the amount if any by which (a) the total assets of Seller (such assets excluding the Commitment and any unfunded amounts thereof) exceed (b) the total liabilities of Seller, in each case as reflected on the balance sheet of Seller as of the applicable date set forth in the Agreement, prepared in accordance with GAAP.

6. **Amendment to Section 2.1 (Relating to the Commitment).**

Section 2.1 of the Existing Agreement is hereby amended to read as follows:

2.1 *Commitment.* Purchaser hereby commits to provide to Seller, on the terms and conditions set forth herein, immediately available funds in an amount up to but not in excess of the Available Amount, as determined from time to time (the "Commitment"); provided, that in no event shall the aggregate amount funded under the Commitment exceed the greater of (a) $200,000,000,000 (two hundred billion dollars), or (b) $200,000,000,000 plus the cumulative total of Deficiency Amounts determined for calendar quarters in calendar years 2010, 2011, and 2012, less any Surplus Amount determined as of December 31, 2012. The liquidation preference of Senior Preferred Stock shall increase in connection with draws on the Commitment, as set forth in Section 3.3 below.

7. **Amendment to Section 2.5 (Relating to Termination of Purchaser's Obligations).**

Section 2.5 of the Existing Agreement is hereby amended to read as follows:

2.5 *Termination of Purchaser's Obligations.* Subject to earlier termination pursuant to Section 6.7, all of Purchaser's obligations under and in respect of the Commitment shall terminate upon the earliest of: (a) if the Liquidation End Date shall have occurred, (i) the payment in full of Purchaser's obligations with respect to any valid request for funds pursuant to Section 2.4 or (ii) if there is no Deficiency Amount on the Liquidation End Date or if no such request pursuant to Section 2.4 has been made, the close of business on the 15th Business Day following the determination of the Deficiency Amount, if any, as of the Liquidation End Date; (b) the payment in full of, defeasance of or other reasonable provision for all liabilities of Seller, whether or not contingent, including payment of any amounts that may become payable on, or expiry of or other provision for, all Mortgage Guarantee Obligations and provision for unmatured debts; and (c) the funding by Purchaser under the Commitment of an aggregate equal to the greater of (a) $200,000,000,000 (two hundred billion dollars), or (b) $200,000,000,000 plus the cumulative total of Deficiency Amounts determined for calendar quarters in calendar years 2010, 2011, and 2012, less any Surplus Amount determined as of December 31, 2012. For avoidance of doubt, the Commitment shall *not* be terminable by Purchaser solely by reason of (i) the conservatorship, receivership or other insolvency proceeding of Seller or (ii) the Seller's financial condition or any adverse change in Seller's financial condition.

8. Amendment to Section 3.2 (Relating to Periodic Commitment Fee).

Section 3.2 of the Existing Agreement is hereby amended to read as follows:

3.2. *Periodic Commitment Fee.* (a) Commencing March 31, 2011, Seller shall pay to Purchaser quarterly, on the last day of March, June, September and December of each calendar year (each a "Periodic Fee Date"), a periodic commitment fee (the "Periodic Commitment Fee"). The Periodic Commitment Fee shall accrue from January 1, 2011.

(b) The Periodic Commitment Fee is intended to fully compensate Purchaser for the support provided by the ongoing Commitment following December 31, 2010. The amount of the Periodic Commitment Fee shall be set not later than December 31, 2010 with respect to the ensuing five-year period, shall be reset every five years thereafter and shall be determined with reference to the market value of the Commitment as then in effect. The amount of the Periodic Commitment Fee shall be mutually agreed by Purchaser and Seller, subject to their reasonable discretion and in consultation with the Chairman of the Federal Reserve; provided, that Purchaser may waive the Periodic Commitment Fee for up to one year at a time, in its sole discretion, based on adverse conditions in the United States mortgage market.

(c) At the election of Seller, the Periodic Commitment Fee may be paid in cash or by adding the amount thereof ratably to the liquidation preference of each outstanding share of Senior Preferred Stock so that the aggregate liquidation preference of all such outstanding shares of Senior Preferred Stock is increased by an amount equal to the Periodic Commitment Fee. Seller shall deliver notice of such election not later than three (3) Business Days prior to each Periodic Fee Date. If the Periodic Commitment Fee is not paid in cash by 12:00 pm (New York time) on the applicable Periodic Fee Date (irrespective of Seller's election pursuant to this subsection), Seller shall be deemed to have elected to pay the Periodic Commitment Fee by adding the amount thereof to the liquidation preference of the Senior Preferred Stock, and the aggregate liquidation preference of the outstanding shares of Senior Preferred Stock shall thereupon be automatically increased, in the manner contemplated by the first sentence of this section, by an aggregate amount equal to the Periodic Commitment Fee then due.

9. Amendment to Section 5.7 (Relating to Owned Mortgage Assets).

Section 5.7 of the Existing Agreement is hereby amended to read as follows:

5.7. *Mortgage Assets.* Seller shall not own, as of any applicable date, Mortgage Assets in excess of (i) on December 31, 2009, $900 billion, or (ii) on December 31 of each year thereafter, 90.0% of the aggregate amount of Mortgage Assets that Seller was permitted to own as of December 31 of the immediately preceding calendar year; provided, that in no event shall Seller be required under this Section 5.7 to own less than $250 billion in Mortgage Assets.

10. Existing Agreement to Continue, as Amended.

Except as expressly modified by this Second Amendment, the Existing Agreement shall continue in full force and effect.

11. Effective Date.

This Second Amendment shall not become effective until it has been executed by both of Purchaser and Seller. When this Second Amendment has been so executed, it shall become effective as of the date first above written.

FEDERAL HOME LOAN MORTGAGE
CORPORATION, by

Federal Housing Finance Agency,
its Conservator

Edward J. DeMarco

Edward J. DeMarco
Acting Director

UNITED STATES DEPARTMENT
OF THE TREASURY

Timothy F. Geithner

Timothy F. Geithner
Secretary of the Treasury

Exhibit D

THIRD AMENDMENT TO AMENDED AND RESTATED SENIOR PREFERRED STOCK PURCHASE AGREEMENT

THIRD AMENDMENT dated as of August 17, 2012, to the AMENDED AND RESTATED SENIOR PREFERRED STOCK PURCHASE AGREEMENT dated as of September 26, 2008, between the UNITED STATES DEPARTMENT OF THE TREASURY ("Purchaser"), and FEDERAL NATIONAL MORTGAGE ASSOCIATION ("Seller"), acting through the Federal Housing Finance Agency (the "Agency") as its duly appointed conservator (the Agency in such capacity, "Conservator").

Background

A. Purchaser and Seller have heretofore entered into the Amended and Restated Senior Preferred Stock Purchase Agreement dated as of September 26, 2008 (the "Amended and Restated Agreement").

B. In the Amended and Restated Agreement, Purchaser committed itself to provide to Seller, on the terms and conditions provided in the Amended and Restated Agreement, immediately available funds in an amount as determined from time to time as provided in the Amended and Restated Agreement, but in no event in an aggregate amount exceeding $100,000,000,000.

C. In consideration for Purchaser's commitment, Seller agreed to sell, and did sell, to Purchaser 1,000,000 shares of senior preferred stock, in the form of the Variable Liquidation Preference Senior Preferred Stock of Seller attached as Exhibit A to the Amended and Restated Agreement, with an initial liquidation preference equal to $1,000 per share.

D. The Amended and Restated Agreement provides that the aggregate liquidation preference of the outstanding shares of senior preferred stock shall be automatically increased by an amount equal to the amount of each draw under Purchaser's funding commitment, and the senior preferred stock sold by Seller to Purchaser provides that the senior preferred stock shall accrue dividends at the annual rate per share equal to 10 percent on the then-current liquidation preference.

E. Purchaser and Seller have heretofore entered into the Amendment dated as of May 6, 2009, to the Amended and Restated Agreement (the "First Amendment").

F. In the First Amendment, Purchaser increased to $200,000,000,000 the maximum aggregate amount permitted to be provided to Seller under the Amended and Restated

Agreement, and amended the terms of the Amended and Restated Agreement in certain other respects.

G. Purchaser and Seller have heretofore entered into the Second Amendment dated as of December 24, 2009, to the Amended and Restated Agreement (the "Second Amendment").

H. In the Second Amendment, Purchaser modified the maximum aggregate amount permitted to be provided to Seller under the Amended and Restated Agreement, as previously amended, by replacing the fixed maximum aggregate amount with the new formulaic maximum amount specified therein, and amended the terms of the Amended and Restated Agreement, as previously amended, in certain other respects.

I. Purchaser and Seller are each authorized to enter into this Third Amendment to the Amended and Restated Agreement ("this Third Amendment") that (i) includes an agreement by Seller to modify the dividend rate provision of the senior preferred stock sold by Seller to Purchaser, and (ii) amends the terms of the Amended and Restated Agreement, as previously amended, in certain other respects.

THEREFORE, for and in consideration of the mutual agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Purchaser and Seller agree as follows:

Terms and Conditions

1. Definitions.

Capitalized terms used and not defined in this Third Amendment shall have the respective meanings given such terms in the Amended and Restated Agreement, as amended by the First Amendment and the Second Amendment (the Amended and Restated Agreement, as amended by the First Amendment and the Second Amendment, being the "Existing Agreement").

2. Amendment to Paragraph 2(a) of Senior Preferred Stock (Relating to Dividend Payment Dates and Dividend Periods).

With respect to the Certificate of Designation of Terms of Variable Liquidation Preference Senior Preferred Stock, Series 2008-2, dated September 7, 2008 (the "Senior Preferred Stock Certificate"), sold by Seller to Purchaser and purchased by Purchaser from Seller, Seller agrees either to amend the existing paragraph 2(a) of the Senior Preferred Stock Certificate, or to issue a replacement Senior Preferred Stock Certificate, in either case so that, by not later than September 30, 2012, paragraph 2(a) reads as follows:

(a) For each Dividend Period from the date of the initial issuance of the Senior Preferred Stock through and including December 31, 2012, holders of outstanding shares of Senior Preferred Stock shall be entitled to receive, ratably, when, as and if declared by the Board of Directors, in its sole discretion, out of funds legally available therefor, cumulative cash dividends at the annual rate per share equal to the then-current Dividend Rate on the then-current Liquidation Preference. For each Dividend Period from January 1, 2013, holders of outstanding shares of Senior Preferred Stock shall be entitled to receive, ratably, when, as and if declared by the Board of Directors, in its sole discretion, out of funds legally available therefor, cumulative cash dividends in an amount equal to the then-current Dividend Amount. Dividends on the Senior Preferred Stock shall accrue from but not including the date of the initial issuance of the Senior Preferred Stock and will be payable in arrears when, as and if declared by the Board of Directors quarterly on March 31, June 30, September 30 and December 31 of each year (each, a "Dividend Payment Date"), commencing on December 31, 2008. If a Dividend Payment Date is not a "Business Day," the related dividend will be paid not later than the next Business Day with the same force and effect as though paid on the Dividend Payment Date, without any increase to account for the period from such Dividend Payment Date through the date of actual payment. "Business Day" means a day other than (i) a Saturday or Sunday, (ii) a day on which New York City banks are closed, or (iii) a day on which the offices of the Company are closed.

If declared, the initial dividend will be for the period from but not including the date of the initial issuance of the Senior Preferred Stock through and including December 31, 2008. Except for the initial Dividend Payment Date, the "Dividend Period" relating to a Dividend Payment Date will be the period from but not including the preceding Dividend Payment Date through and including the related Dividend Payment Date. For each Dividend Period from the date of the initial issuance of the Senior Preferred Stock through and including December 31, 2012, the amount of dividends payable on the initial Dividend Payment Date or for any Dividend Period through and including December 31, 2012, that is not a full calendar quarter shall be computed on the basis of 30-day months, a 360-day year and the actual number of days elapsed in any period of less than one month. For the avoidance of doubt, for each Dividend Period from the date of the initial issuance of the Senior Preferred Stock through and including December 31, 2012, in the event that the Liquidation Preference changes in the middle of a Dividend Period, the amount of dividends payable on the Dividend Payment Date at the end of such Dividend Period shall take into account such change in Liquidation Preference and shall be computed at the Dividend Rate on each Liquidation Preference based on the portion of the Dividend Period that each Liquidation Preference was in effect.

3. **Amendment to Paragraph 2(c) of Senior Preferred Stock (Relating to Dividend Rate and Dividend Amount).**

With respect to the Senior Preferred Stock Certificate sold by Seller to Purchaser and purchased by Purchaser from Seller, Seller agrees either to amend the existing paragraph 2(c) of the Senior Preferred Stock Certificate, or to issue a replacement Senior Preferred Stock Certificate, in either case so that, effective September 30, 2012, paragraph 2(c) reads as follows:

> (c) For each Dividend Period from the date of the initial issuance of the Senior Preferred Stock through and including December 31, 2012, "Dividend Rate" means 10.0%; provided, however, that if at any time the Company shall have for any reason failed to pay dividends in cash in a timely manner as required by this Certificate, then immediately following such failure and for all Dividend Periods thereafter until the Dividend Period following the date on which the Company shall have paid in cash full cumulative dividends (including any unpaid dividends added to the Liquidation Preference pursuant to Section 8) the "Dividend Rate" shall mean 12.0%.
>
> For each Dividend Period from January 1, 2013, through and including December 31, 2017, the "Dividend Amount" for a Dividend Period means the amount, if any, by which the Net Worth Amount at the end of the immediately preceding fiscal quarter, less the Applicable Capital Reserve Amount, exceeds zero. For each Dividend Period from January 1, 2018, the "Dividend Amount" for a Dividend Period means the amount, if any, by which the Net Worth Amount at the end of the immediately preceding fiscal quarter exceeds zero. In each case, "Net Worth Amount" means (i) the total assets of the Company (such assets excluding the Commitment and any unfunded amounts thereof) as reflected on the balance sheet of the Company as of the applicable date set forth in this Certificate, prepared in accordance with GAAP, less (ii) the total liabilities of the Company (such liabilities excluding any obligation in respect of any capital stock of the Company, including this Certificate), as reflected on the balance sheet of the Company as of the applicable date set forth in this Certificate, prepared in accordance with GAAP. "Applicable Capital Reserve Amount" means, as of any date of determination, for each Dividend Period from January 1, 2013, through and including December 31, 2013, $3,000,000,000; and for each Dividend Period occurring within each 12-month period thereafter, $3,000,000,000 reduced by an equal amount for each such 12-month period through and including December 31, 2017, so that for each Dividend Period from January 1, 2018, the Applicable Capital Reserve Amount shall be zero. For the avoidance of doubt, if the calculation of the Dividend Amount for a Dividend Period does not exceed zero, then no Dividend Amount shall accrue or be payable for such Dividend Period.

4. Amendment to Section 3.2 (Relating to the Periodic Commitment Fee).

Section 3.2 of the Existing Agreement is hereby amended to read as follows:

3.2. *Periodic Commitment Fee*. (a) Commencing March 31, 2011, Seller shall pay to Purchaser quarterly, on the last day of March, June, September and December of each calendar year (each a "Periodic Fee Date"), a periodic commitment fee (the "Periodic Commitment Fee"). The Periodic Commitment Fee shall accrue from January 1, 2011.

(b) The Periodic Commitment Fee is intended to fully compensate Purchaser for the support provided by the ongoing Commitment following December 31, 2010. The amount of the Periodic Commitment Fee shall be set not later than December 31, 2010 with respect to the ensuing five-year period, shall be reset every five years thereafter and shall be determined with reference to the market value of the Commitment as then in effect. The amount of the Periodic Commitment Fee shall be mutually agreed by Purchaser and Seller, subject to their reasonable discretion and in consultation with the Chairman of the Federal Reserve; provided, that Purchaser may waive the Periodic Commitment Fee for up to one year at a time, in its sole discretion, based on adverse conditions in the United States mortgage market.

(c) At the election of Seller, the Periodic Commitment Fee may be paid in cash or by adding the amount thereof ratably to the liquidation preference of each outstanding share of Senior Preferred Stock so that the aggregate liquidation preference of all such outstanding shares of Senior Preferred Stock is increased by an amount equal to the Periodic Commitment Fee. Seller shall deliver notice of such election not later than three (3) Business Days prior to each Periodic Fee Date. If the Periodic Commitment Fee is not paid in cash by 12:00 pm (New York time) on the applicable Periodic Fee Date (irrespective of Seller's election pursuant to this subsection), Seller shall be deemed to have elected to pay the Periodic Commitment Fee by adding the amount thereof to the liquidation preference of the Senior Preferred Stock, and the aggregate liquidation preference of the outstanding shares of Senior Preferred Stock shall thereupon be automatically increased, in the manner contemplated by the first sentence of this section, by an aggregate amount equal to the Periodic Commitment Fee then due.

(d) Notwithstanding anything to the contrary in paragraphs (a), (b), or (c) above, and in consideration of the modification made to the Senior Preferred Stock effective September 30, 2012, for each quarter commencing January 1, 2013, and continuing for as long as paragraph 2 of the Senior Preferred Stock remains in form and content substantially the same as the form and content of the Senior Preferred Stock in effect on September 30, 2012, no Periodic Commitment Fee shall be set, accrue, or be payable.

5. Amendment to Section 5.4 (Relating to Transfer of Assets).

Section 5.4 of the Existing Agreement is hereby amended to read as follows:

5.4. *Transfer of Assets.* Seller shall not, and shall not permit any of its subsidiaries to, in each case without prior written consent of Purchaser, sell, transfer, lease or otherwise dispose of (in one transaction or a series of related transactions) all or any portion of its assets (including Equity Interests in other persons, including subsidiaries), whether now owned or hereafter acquired (any such sale, transfer, lease or disposition, a "Disposition"), other than Dispositions for fair market value:

(a) to a limited life regulated entity ("LLRE") pursuant to Section 1367(i) of the FHE Act;

(b) of assets and properties in the ordinary course of business, consistent with past practice;

(c) of assets and properties having fair market value individually or in aggregate less than $250,000,000 in one transaction or a series of related transactions;

(d) in connection with a liquidation of Seller by a receiver appointed pursuant to Section 1367(a) of the FHE Act;

(e) of cash or cash equivalents for cash or cash equivalents; or

(f) to the extent necessary to comply with the covenant set forth in Section 5.7 below.

6. Amendment to Section 5.7 (Relating to Owned Mortgage Assets).

Section 5.7 of the Existing Agreement is hereby amended to read as follows:

5.7. Mortgage Assets. Seller shall not own, as of any applicable date, Mortgage Assets in excess of (i) on December 31, 2012, $650 billion, or (ii) on December 31 of each year thereafter, 85.0% of the aggregate amount of Mortgage Assets that Seller was permitted to own as of December 31 of the immediately preceding calendar year; provided, that in no event shall Seller be required under this Section 5.7 to own less than $250 billion in Mortgage Assets.

7. Amendment to Section 5 (Adding New Section 5.11 Relating to "Annual Risk Management Plans").

Section 5 of the Existing Agreement is hereby amended by inserting after section 5.10 the following:

> 5.11. Annual Risk Management Plans. Not later than December 15, 2012, and not later than December 15 of each year thereafter while Seller remains in conservatorship pursuant to Section 1367 of the FHE Act, Seller shall, under the direction of Conservator, deliver a risk management plan to Purchaser. Each annual risk management plan shall set out Seller's strategy for reducing its enterprise-wide risk profile and shall describe, in reasonable detail, the actions Seller will take, to reduce both the financial and operational risk associated with each reportable business segment of Seller. Plans delivered subsequent to December 15, 2012 shall also include an assessment of Seller's performance relative to the planned actions described in the prior year's plan. The submission of annual risk management plans under this section shall not in any way limit or affect the Agency in any of its capacities to carry out its statutory responsibilities, including but not limited to providing direction to and oversight of Seller."

8. Existing Agreement to Continue, as Amended.

Except as expressly modified by this Third Amendment, the Existing Agreement shall continue in full force and effect.

9. Effective Date.

This Third Amendment shall not become effective until it has been executed by both of Purchaser and Seller. When this Third Amendment has been so executed, it shall become effective as of the date first above written.

FEDERAL NATIONAL MORTGAGE
ASSOCIATION, by

Federal Housing Finance Agency,
its Conservator

Edward J. DeMarco

Edward J. DeMarco
Acting Director

UNITED STATES DEPARTMENT
OF THE TREASURY

Timothy F. Geithner

Timothy F. Geithner
Secretary of the Treasury

THIRD AMENDMENT TO AMENDED AND RESTATED SENIOR PREFERRED STOCK PURCHASE AGREEMENT

THIRD AMENDMENT dated as of August 17, 2012, to the AMENDED AND RESTATED SENIOR PREFERRED STOCK PURCHASE AGREEMENT dated as of September 26, 2008, between the UNITED STATES DEPARTMENT OF THE TREASURY ("Purchaser"), and FEDERAL HOME LOAN MORTGAGE CORPORATION ("Seller"), acting through the Federal Housing Finance Agency (the "Agency") as its duly appointed conservator (the Agency in such capacity, "Conservator").

Background

A. Purchaser and Seller have heretofore entered into the Amended and Restated Senior Preferred Stock Purchase Agreement dated as of September 26, 2008 (the "Amended and Restated Agreement").

B. In the Amended and Restated Agreement, Purchaser committed itself to provide to Seller, on the terms and conditions provided in the Amended and Restated Agreement, immediately available funds in an amount as determined from time to time as provided in the Amended and Restated Agreement, but in no event in an aggregate amount exceeding $100,000,000,000.

C. In consideration for Purchaser's commitment, Seller agreed to sell, and did sell, to Purchaser 1,000,000 shares of senior preferred stock, in the form of the Variable Liquidation Preference Senior Preferred Stock of Seller attached as Exhibit A to the Amended and Restated Agreement, with an initial liquidation preference equal to $1,000 per share.

D. The Amended and Restated Agreement provides that the aggregate liquidation preference of the outstanding shares of senior preferred stock shall be automatically increased by an amount equal to the amount of each draw under Purchaser's funding commitment, and the senior preferred stock sold by Seller to Purchaser provides that the senior preferred stock shall accrue dividends at the annual rate per share equal to 10 percent on the then-current liquidation preference.

E. Purchaser and Seller have heretofore entered into the Amendment dated as of May 6, 2009, to the Amended and Restated Agreement (the "First Amendment").

F. In the First Amendment, Purchaser increased to $200,000,000,000 the maximum aggregate amount permitted to be provided to Seller under the Amended and Restated

Agreement, and amended the terms of the Amended and Restated Agreement in certain other respects.

G. Purchaser and Seller have heretofore entered into the Second Amendment dated as of December 24, 2009, to the Amended and Restated Agreement (the "Second Amendment").

H. In the Second Amendment, Purchaser modified the maximum aggregate amount permitted to be provided to Seller under the Amended and Restated Agreement, as previously amended, by replacing the fixed maximum aggregate amount with the new formulaic maximum amount specified therein, and amended the terms of the Amended and Restated Agreement, as previously amended, in certain other respects.

I. Purchaser and Seller are each authorized to enter into this Third Amendment to the Amended and Restated Agreement ("this Third Amendment") that (i) includes an agreement by Seller to modify the dividend rate provision of the senior preferred stock sold by Seller to Purchaser, and (ii) amends the terms of the Amended and Restated Agreement, as previously amended, in certain other respects.

THEREFORE, for and in consideration of the mutual agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Purchaser and Seller agree as follows:

Terms and Conditions

1. Definitions.

Capitalized terms used and not defined in this Third Amendment shall have the respective meanings given such terms in the Amended and Restated Agreement, as amended by the First Amendment and the Second Amendment (the Amended and Restated Agreement, as amended by the First Amendment and the Second Amendment, being the "Existing Agreement").

2. Amendment to Paragraph 2(a) of Senior Preferred Stock (Relating to Dividend Payment Dates and Dividend Periods).

With respect to the Certificate of Creation, Designation, Powers, Preferences, Rights, Privileges, Qualifications, Limitations, Restrictions, Terms and Conditions of Variable Liquidation Preference Senior Preferred Stock (Par Value $1.00 Per Share) dated September 7, 2008 (the "Senior Preferred Stock Certificate"), sold by Seller to Purchaser and purchased by Purchaser from Seller, Seller agrees either to amend the existing paragraph 2(a) of the Senior Preferred Stock Certificate, or to issue a replacement Senior Preferred Stock Certificate, in either case so that, by not later than September 30, 2012, paragraph 2(a) reads as follows:

(a) For each Dividend Period from the date of the initial issuance of the Senior Preferred Stock through and including December 31, 2012, holders of outstanding shares of Senior Preferred Stock shall be entitled to receive, ratably, when, as and if declared by the Board of Directors, in its sole discretion, out of funds legally available therefor, cumulative cash dividends at the annual rate per share equal to the then-current Dividend Rate on the then-current Liquidation Preference. For each Dividend Period from January 1, 2013, holders of outstanding shares of Senior Preferred Stock shall be entitled to receive, ratably, when, as and if declared by the Board of Directors, in its sole discretion, out of funds legally available therefor, cumulative cash dividends in an amount equal to the then-current Dividend Amount. Dividends on the Senior Preferred Stock shall accrue from but not including the date of the initial issuance of the Senior Preferred Stock and will be payable in arrears when, as and if declared by the Board of Directors quarterly on March 31, June 30, September 30 and December 31 of each year (each, a "Dividend Payment Date"), commencing on December 31, 2008. If a Dividend Payment Date is not a "Business Day," the related dividend will be paid not later than the next Business Day with the same force and effect as though paid on the Dividend Payment Date, without any increase to account for the period from such Dividend Payment Date through the date of actual payment. "Business Day" means a day other than (i) a Saturday or Sunday, (ii) a day on which New York City banks are closed, or (iii) a day on which the offices of the Company are closed.

If declared, the initial dividend will be for the period from but not including the date of the initial issuance of the Senior Preferred Stock through and including December 31, 2008. Except for the initial Dividend Payment Date, the "Dividend Period" relating to a Dividend Payment Date will be the period from but not including the preceding Dividend Payment Date through and including the related Dividend Payment Date. For each Dividend Period from the date of the initial issuance of the Senior Preferred Stock through and including December 31, 2012, the amount of dividends payable on the initial Dividend Payment Date or for any Dividend Period through and including December 31, 2012, that is not a full calendar quarter shall be computed on the basis of 30-day months, a 360-day year and the actual number of days elapsed in any period of less than one month. For the avoidance of doubt, for each Dividend Period from the date of the initial issuance of the Senior Preferred Stock through and including December 31, 2012, in the event that the Liquidation Preference changes in the middle of a Dividend Period, the amount of dividends payable on the Dividend Payment Date at the end of such Dividend Period shall take into account such change in Liquidation Preference and shall be computed at the Dividend Rate on each Liquidation Preference based on the portion of the Dividend Period that each Liquidation Preference was in effect.

3. **<u>Amendment to Paragraph 2(c) of Senior Preferred Stock (Relating to Dividend Rate and Dividend Amount)</u>.**

With respect to the Senior Preferred Stock Certificate sold by Seller to Purchaser and purchased by Purchaser from Seller, Seller agrees either to amend the existing paragraph 2(c) of the Senior Preferred Stock Certificate, or to issue a replacement Senior Preferred Stock Certificate, in either case so that, effective September 30, 2012, paragraph 2(c) reads as follows:

> (c) For each Dividend Period from the date of the initial issuance of the Senior Preferred Stock through and including December 31, 2012, "Dividend Rate" means 10.0%; provided, however, that if at any time the Company shall have for any reason failed to pay dividends in cash in a timely manner as required by this Certificate, then immediately following such failure and for all Dividend Periods thereafter until the Dividend Period following the date on which the Company shall have paid in cash full cumulative dividends (including any unpaid dividends added to the Liquidation Preference pursuant to Section 8) the "Dividend Rate" shall mean 12.0%.
>
> For each Dividend Period from January 1, 2013, through and including December 31, 2017, the "Dividend Amount" for a Dividend Period means the amount, if any, by which the Net Worth Amount at the end of the immediately preceding fiscal quarter, less the Applicable Capital Reserve Amount, exceeds zero. For each Dividend Period from January 1, 2018, the "Dividend Amount" for a Dividend Period means the amount, if any, by which the Net Worth Amount at the end of the immediately preceding fiscal quarter exceeds zero. In each case, "Net Worth Amount" means (i) the total assets of the Company (such assets excluding the Commitment and any unfunded amounts thereof) as reflected on the balance sheet of the Company as of the applicable date set forth in this Certificate, prepared in accordance with GAAP, less (ii) the total liabilities of the Company (such liabilities excluding any obligation in respect of any capital stock of the Company, including this Certificate), as reflected on the balance sheet of the Company as of the applicable date set forth in this Certificate, prepared in accordance with GAAP. "Applicable Capital Reserve Amount" means, as of any date of determination, for each Dividend Period from January 1, 2013, through and including December 31, 2013, $3,000,000,000; and for each Dividend Period occurring within each 12-month period thereafter, $3,000,000,000 reduced by an equal amount for each such 12-month period through and including December 31, 2017, so that for each Dividend Period from January 1, 2018, the Applicable Capital Reserve Amount shall be zero. For the avoidance of doubt, if the calculation of the Dividend Amount for a Dividend Period does not exceed zero, then no Dividend Amount shall accrue or be payable for such Dividend Period.

4. <u>Amendment to Section 3.2 (Relating to the Periodic Commitment Fee)</u>.

Section 3.2 of the Existing Agreement is hereby amended to read as follows:

3.2. *Periodic Commitment Fee.* (a) Commencing March 31, 2011, Seller shall pay to Purchaser quarterly, on the last day of March, June, September and December of each calendar year (each a "Periodic Fee Date"), a periodic commitment fee (the "Periodic Commitment Fee"). The Periodic Commitment Fee shall accrue from January 1, 2011.

(b) The Periodic Commitment Fee is intended to fully compensate Purchaser for the support provided by the ongoing Commitment following December 31, 2010. The amount of the Periodic Commitment Fee shall be set not later than December 31, 2010 with respect to the ensuing five-year period, shall be reset every five years thereafter and shall be determined with reference to the market value of the Commitment as then in effect. The amount of the Periodic Commitment Fee shall be mutually agreed by Purchaser and Seller, subject to their reasonable discretion and in consultation with the Chairman of the Federal Reserve; <u>provided</u>, that Purchaser may waive the Periodic Commitment Fee for up to one year at a time, in its sole discretion, based on adverse conditions in the United States mortgage market.

(c) At the election of Seller, the Periodic Commitment Fee may be paid in cash or by adding the amount thereof ratably to the liquidation preference of each outstanding share of Senior Preferred Stock so that the aggregate liquidation preference of all such outstanding shares of Senior Preferred Stock is increased by an amount equal to the Periodic Commitment Fee. Seller shall deliver notice of such election not later than three (3) Business Days prior to each Periodic Fee Date. If the Periodic Commitment Fee is not paid in cash by 12:00 pm (New York time) on the applicable Periodic Fee Date (irrespective of Seller's election pursuant to this subsection), Seller shall be deemed to have elected to pay the Periodic Commitment Fee by adding the amount thereof to the liquidation preference of the Senior Preferred Stock, and the aggregate liquidation preference of the outstanding shares of Senior Preferred Stock shall thereupon be automatically increased, in the manner contemplated by the first sentence of this section, by an aggregate amount equal to the Periodic Commitment Fee then due.

(d) Notwithstanding anything to the contrary in paragraphs (a), (b), or (c) above, and in consideration of the modification made to the Senior Preferred Stock effective September 30, 2012, for each quarter commencing January 1, 2013, and continuing for as long as paragraph 2 of the Senior Preferred Stock remains in form and content substantially the same as the form and content of the Senior Preferred Stock in effect on September 30, 2012, no Periodic Commitment Fee shall be set, accrue, or be payable.

5. <u>Amendment to Section 5.4 (Relating to Transfer of Assets)</u>.

Section 5.4 of the Existing Agreement is hereby amended to read as follows:

5.4. *Transfer of Assets.* Seller shall not, and shall not permit any of its subsidiaries to, in each case without prior written consent of Purchaser, sell, transfer, lease or otherwise dispose of (in one transaction or a series of related transactions) all or any portion of its assets (including Equity Interests in other persons, including subsidiaries), whether now owned or hereafter acquired (any such sale, transfer, lease or disposition, a "<u>Disposition</u>"), other than Dispositions for fair market value:

(a) to a limited life regulated entity ("<u>LLRE</u>") pursuant to Section 1367(i) of the FHE Act;

(b) of assets and properties in the ordinary course of business, consistent with past practice;

(c) of assets and properties having fair market value individually or in aggregate less than $250,000,000 in one transaction or a series of related transactions;

(d) in connection with a liquidation of Seller by a receiver appointed pursuant to Section 1367(a) of the FHE Act;

(e) of cash or cash equivalents for cash or cash equivalents; or

(f) to the extent necessary to comply with the covenant set forth in Section 5.7 below.

6. <u>Amendment to Section 5.7 (Relating to Owned Mortgage Assets)</u>.

Section 5.7 of the Existing Agreement is hereby amended to read as follows:

5.7. Mortgage Assets. Seller shall not own, as of any applicable date, Mortgage Assets in excess of (i) on December 31, 2012, $650 billion, or (ii) on December 31 of each year thereafter, 85.0% of the aggregate amount of Mortgage Assets that Seller was permitted to own as of December 31 of the immediately preceding calendar year; <u>provided</u>, that in no event shall Seller be required under this Section 5.7 to own less than $250 billion in Mortgage Assets.

7. <u>Amendment to Section 5 (Adding New Section 5.11 Relating to "Annual Risk Management Plans")</u>.

Section 5 of the Existing Agreement is hereby amended by inserting after section 5.10 the following:

> 5.11. Annual Risk Management Plans. Not later than December 15, 2012, and not later than December 15 of each year thereafter while Seller remains in conservatorship pursuant to Section 1367 of the FHE Act, Seller shall, under the direction of Conservator, deliver a risk management plan to Purchaser. Each annual risk management plan shall set out Seller's strategy for reducing its enterprise-wide risk profile and shall describe, in reasonable detail, the actions Seller will take, to reduce both the financial and operational risk associated with each reportable business segment of Seller. Plans delivered subsequent to December 15, 2012 shall also include an assessment of Seller's performance relative to the planned actions described in the prior year's plan. The submission of annual risk management plans under this section shall not in any way limit or affect the Agency in any of its capacities to carry out its statutory responsibilities, including but not limited to providing direction to and oversight of Seller."

8. <u>Existing Agreement to Continue, as Amended</u>.

Except as expressly modified by this Third Amendment, the Existing Agreement shall continue in full force and effect.

9. <u>Effective Date</u>.

This Third Amendment shall not become effective until it has been executed by both of Purchaser and Seller. When this Third Amendment has been so executed, it shall become effective as of the date first above written.

FEDERAL HOME LOAN MORTGAGE CORPORATION, by

Federal Housing Finance Agency, its Conservator

Edward J. DeMarco
Acting Director

UNITED STATES DEPARTMENT OF THE TREASURY

Timothy F. Geithner
Secretary of the Treasury

Exhibit E

News Release

FHFA Announces Suspension of Capital Classifications During Conservatorship

Discloses Minimum And Risk-Based Capital Classifications As Undercapitalized For The Second Quarter 2008 For Fannie Mae And Freddie Mac

FOR IMMEDIATE RELEASE

10/9/2008

Washington, D.C. – James B. Lockhart III, Director of the Federal Housing Finance Agency (FHFA), the safety and soundness regulator for Fannie Mae and Freddie Mac and the Federal Home Loan Banks, placed Fannie Mae and Freddie Mac into conservatorship on September 7, 2008. The capital requirements and classification process articulated in statute are established as part of a prompt corrective action framework that requires supervisory actions to be taken promptly and in a graduated manner that culminates, in the most serious cases, in the appointment of a conservator or receiver. While in conservatorship status, the Enterprises will not be subject to other prompt corrective action requirements. The Treasury Department, in conjunction with the conservatorship, provided two facilities to support the Enterprises. The GSE Credit Facility is available to provide liquidity through secured loans as needed. The Senior Preferred Stock Purchase Agreement ensures that for the very long-term that both entities will have positive net worth. The Director is, therefore, announcing several capital-related decisions impacting future reporting processes.

Suspension of Capital Classifications During Conservatorship

The Director has determined that it is prudent and in the best interests of the market to suspend capital classifications of Fannie Mae and Freddie Mac during the conservatorship, in light of the United States Treasury's Senior Preferred Stock Purchase Agreement. FHFA will continue to closely monitor capital levels, but the existing statutory and FHFA-directed regulatory capital requirements will not be binding during the conservatorship.

Management During Conservatorship

In accordance with the Senior Preferred Stock Agreement FHFA, as conservator, has directed the Enterprises to focus on managing to a positive stockholder's equity. Both Enterprises during conservatorship will work to ensure that they fulfill their mission of providing liquidity, stability and affordability to the mortgage market.

Disclosure of Capital Positions During Conservatorship

During the conservatorship, FHFA will not issue a quarterly capital classification. The Enterprises will continue to submit capital reports to FHFA during the conservatorship. Relevant capital figures (minimum capital requirement, core capital, and GAAP net worth) will be available in the Enterprises' quarterly 10-Q filings, as well as on FHFA's website to ensure market transparency. FHFA does not intend to publish critical capital, risk-based capital, or subordinated debt levels during the conservatorship. In light of its new authority under the Housing and Economic Recovery Act, FHFA will be revising minimum capital and risk-based capital requirements.

Second Quarter Capital Classification

Director Lockhart is classifying Fannie Mae and Freddie Mac as of June 30, 2008, prior to the conservatorship, as undercapitalized using FHFA's discretionary authority provided in the statute. Both Fannie Mae and Freddie Mac have publicly released financial results for the second quarter 2008. Although both Enterprises' capital calculations for June 30, 2008 reflect that they met the FHFA and statutory requirements for capital, the continued market downturn during late July and August raised significant questions about the sufficiency of capital. The following factors, which led to the need for conservatorship, support the Director's decision to downgrade the classification to undercapitalized:

- Accelerating safety and soundness weaknesses, especially with regard to credit risk, earnings outlook, and capitalization;
- Continued and substantial deterioration in equity, debt, and MBS market conditions;
- The current and projected financial performance and condition of each company as reflected in its second quarter financial reports and our ongoing examinations;
- The inability of the companies to raise capital or to issue debt according to normal practices and prices;
- The critical importance of each company in supporting the country's residential mortgage market; and
- Concerns that a growing proportion of their respective statutory core capital consisted of intangible assets.

The Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended by the Federal Housing Finance and Regulatory Reform Act, Division A of the Housing and Economic Recovery Act, Public Law No. 111-289, Stat. 2654 (2008) requires the FHFA Director to determine the capital level and classification of the Enterprises not less than quarterly, and to report the results to Congress. FHFA classifies the Enterprises as adequately capitalized, undercapitalized, significantly undercapitalized or critically undercapitalized. The Enterprises are required by federal statute to meet both minimum and risk-based capital standards to be classified as adequately capitalized. The Director has the authority to make a discretionary downgrade of the capital adequacy classification should certain safety and soundness conditions arise that could impact future capital adequacy. This classification requirement serves no purpose once an Enterprise has been placed into conservatorship.

SECOND QUARTER CAPITAL RESULTS

Minimum Capital

Fannie Mae's FHFA-directed capital requirement on June 30, 2008 was $37.5 billion and its statutory minimum capital requirement was $32.6 billion. Fannie Mae's core capital of $47.0 billion exceeded the FHFA-directed capital requirement by $9.4 billion.

Freddie Mac's FHFA-directed capital requirement on June 30, 2008 was $34.5 billion and its statutory minimum capital requirement was $28.7 billion. Freddie Mac's core capital of $37.1 billion exceeded the FHFA-directed minimum capital requirement by $2.7 billion.

Enterprise Minimum Capital Requirement (Billions of Dollars) (a,b)				
	Fannie Mae		**Freddie Mac**	
	30-Jun-08	31-Mar-08	30-Jun-08	31-Mar-08
Minimum Capital – Statutory Requirement	32.631	31.335	28.709	26.937
Minimum Capital – FHFA Directed Requirement	37.525	37.602	24.451	32.324
Core Capital	46.964	42.676	37.128	38.319
Surplus (Deficit) (based on FHFA Directed Requirement)	9.439	5.074	2.676	5.995
Surplus as a Percent of FHFA Directed Requirement	25.2%	13.5%	7.8%	18.5%

a. Numbers may not add due to rounding.

b. FHFA has directed both Fannie Mae and Freddie Mac to maintain additional capital in excess of the statutory minimum capital requirement. The excess capital requirement has been in place since January 28, 2004, for Freddie Mac and since September 30, 2005, for Fannie Mae. For both Enterprises the requirement was reduced from 30% to 20% on March 19, 2008. On May 19, 2008 the requirement was further reduced for Fannie Mae to 15%. The FHFA-directed minimum capital requirements and capital surplus numbers stated in these charts reflect the inclusion of the additional FHFA-directed capital requirements of 15% for Fannie Mae and 20% for Freddie Mac for the quarter-end June 30, 2008.

Risk-Based Capital

As of June 30, 2008, Fannie Mae's risk-based capital requirement was $36.3 billion. Fannie Mae's total capital of $55.6 billion on that date exceeded the requirement by $19.3 billion.

As of June 30, 2008, Freddie Mac's risk-based capital requirement was $20.1 billion. Freddie Mac's total capital of $42.9 billion on that date exceeded the requirement by $22.8 billion.

Enterprise Risk-Based Capital Requirement (Billions of Dollars) (a)								
Interest Rate Scenario	**Fannie Mae**				**Freddie Mac**			
	30-Jun-08		31-Mar-08		30-Jun-08		31-Mar-08	
	Up	Down	Up	Down	Up	Down	Up	Down
Risk Based Capital Requirement	6.196	36.288	14.344	23.099	0.237	20.139	5.127	26.060
Total Capital		55.568		47.666		42.916		42.173
Surplus (Deficit)		19.280		24.567		22.777		16.113

a. Numbers may not add due to rounding.

DEFINITION OF CAPITAL STANDARDS

Core Capital is the sum of outstanding common stock, perpetual, noncumulative preferred stock, paid-in capital, and retained earnings. Core capital does not include Accumulated Other Comprehensive Income (AOCI), which is captured as part of stockholder's equity.

Total Capital is the sum of Core Capital plus the allowance for loan losses.

Minimum Capital represents an essential amount of capital needed to protect an Enterprise against broad categories of business risk. For purposes of minimum capital, an Enterprise is considered by law adequately capitalized if core capital—common stock; perpetual noncumulative preferred stock; paid in capital; and retained earnings—equals or exceeds minimum capital. The minimum capital standard is 2.5 percent of assets plus 0.45 percent of adjusted off-balance-sheet obligations, including guaranteed mortgage securities.

The FHFA-directed capital requirement is the amount of capital the Enterprise is required to maintain to compensate for increased operational risks including systems, accounting, and internal control risks. The level is prescribed by the Director of FHFA. This requirement is calculated by multiplying the statutory minimum capital requirement by 1.x times, where x equals the percentage requirement in effect for the time period. On March 19, 2008, FHFA announced an agreement with the Enterprises to reduce the FHFA-directed capital requirement from 30 percent to 20 percent in recognition of the significant remediation efforts and the commitments by the Enterprises to raise significant new capital and to retain substantial surpluses over the FHFA-directed requirement. The FHFA-directed requirement as of June 30, 2008 was 1.20 times the statutory minimum capital requirement for Freddie Mac and 1.15 times the statutory minimum capital requirement for Fannie Mae.

FHFA's risk-based capital requirement is the amount of total capital—core capital plus a general allowance for loan losses less specific reserves—that an Enterprise must hold to absorb projected losses flowing from future adverse interest-rate and credit-risk conditions specified by statute, plus 30 percent mandated by statute to cover management and operations risk. The risk-based capital standard is based on stress test results calculated for the two statutorily prescribed interest rate scenarios, one in which 10-year Treasury yields rise 75 percent (up-rate scenario) and another in which they fall 50 percent (down-rate scenario). Changes in both scenarios are generally capped at 600 basis points. The risk-based capital level for an Enterprise is the amount of total capital that would enable it to survive the stress test in whichever scenario is more adverse for that Enterprise, plus 30 percent of that amount to cover management and operations risk.

The **critical capital** level is the amount of core capital below which an Enterprise must be classified as critically undercapitalized and generally must be placed in conservatorship. Critical capital levels are computed consistent with the Federal Housing Enterprises Safety and Soundness Act of 1992 as follows: One-half of the portion of minimum capital requirement associated with on-balance-sheet assets plus five-ninths of the portion of the minimum capital requirement associated with off-balance-sheet obligations. The critical capital trigger is irrelevant during the conservatorship period.

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The Federal Housing Finance Agency (FHFA) combines the responsibilities of the Office of Federal Housing Enterprise Oversight (OFHEO), the Federal Housing Finance Board (FHFB) and the HUD government-sponsored enterprise (GSE) mission team to regulate Fannie Mae, Freddie Mac and the 12 Federal Home Loan Banks. Together these 14 GSEs provide funding for $6.2 trillion of residential mortgages in the U.S.

Contacts: Corinne Russell (202) 649-3032 / Stefanie Johnson (202) 649-3030

Exhibit F

Introduction

Capital is critical in the evaluation of a regulated entity's financial condition. Capital protects the stakeholders, including shareholders/members, other Federal Home Loan Banks (FHLBanks) in the case of a particular FHLBank, and bondholders. Capital provides a measure of assurance to the shareholders of the Enterprises (Fannie Mae and Freddie Mac), members of the FHLBanks, and the public that the respective institution will continue to operate, honor its obligations, and fulfill its mission. This module refers to the FHLBanks and the Enterprises collectively as regulated entities.

The level, quality, and composition of capital are important in determining capital adequacy. Capital includes stock issued to the Enterprises' shareholders and FHLBanks' members. Another key element of capital, retained earnings, provides protection to these capital investments by absorbing losses.

The organizational structure of the Enterprises and FHLBanks are fundamentally different. Further, capital composition and statutory capital requirements are different for the Enterprises and the FHLBanks.

- The Enterprises, although in Conservatorship since September 2008 because they became critically undercapitalized, are publicly companies that – prior to Conservatorship – were permitted to issue common and preferred stock. The Enterprises' stocks are delisted from the New York Stock Exchange. In Conservatorship the Enterprises are capitalized via the Senior Preferred Stock Purchase Agreements (SPSPAs) with the United States Treasury (Treasury). In Conservatorship, the Enterprises have not been subject to the periodic, regulatory capital measurement requirements. For purposes of background, however, this module describes regulatory capital requirements as if they were in effect.
- The FHLBanks are cooperatives capitalized by the stock purchases of member institutions. As cooperatives, FHLBank stock represents the ownership interest of the members. Capital at an FHLBank is distinguished by the fact that much of the FHLBank's capital is redeemable. Typically, members of the FHLBanks can redeem capital stock at par with appropriate notice and the amount of capital stock outstanding may fluctuate with changes in borrowings and other activities. FHLBanks can repurchase "excess" stock at their discretion.

The capital requirements for the Enterprises and the FHLBanks are governed by the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (as amended) (the Safety and Soundness Act), the Federal Home Loan Bank Act (as amended), and by FHFA capital regulations. In assessing the adequacy of capital, it is important to look beyond the level of capital in relation to assets. A regulated entity should maintain capital commensurate with the nature and extent of the risks to the institution and the ability of management to identify, measure, monitor, and control these risks. The forward view of capital is best defined in terms of the institution's assets and their ability to generate future cash flows. Determination of a regulated entity's future capital needs typically requires a combination of actions, including assessing the capital plan of the regulated entity, modeling future income, and stress testing. Furthermore, examiners must assess qualitative factors to evaluate the adequacy of capital as well as the circumstances and risks of the particular regulated entity.

The board of directors is responsible for ensuring the maintenance of adequate capital. The board must oversee the capital management function to ensure continued and long-term financial viability. Key components of capital management are: (a) adequate capital planning that includes stress scenarios, establishment of a risk appetite, and an optimum capital goal that identifies an acceptable capital buffer (including retained earnings goals for FHLBanks); (b) reasonable dividend policies; and (c) compliance with all capital-related regulatory requirements.

Senior management is responsible for developing and implementing appropriate capital management policies and procedures.

Regulatory Environment

The primary authorities governing, or relevant to, capital of the Enterprises and the FHLBanks are set forth below. The examiner should ensure that the regulated entity and its legal counsel have considered the application of such authorities to a regulated entity.

1) ***The Federal Housing Finance Regulatory Reform Act of 2008 (Section 1, Division A of the Housing and Economic Recovery Act of 2008) amended certain provisions of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (the Safety and Soundness Act). Parts and sections relevant to capital include the following:***

   Section 1108 required the FHFA Director to establish prudential management and operations standards for the regulated entities.

   Section 1110 amended section 1361 of the Safety and Soundness Act regarding risk-based capital standards for the regulated entities.

   Section 1111 amended section 1362 of the Safety and Soundness Act regarding minimum capital standards.

   Sections 1141, 1142, 1143, 1144, and 1145 amended sections 1363, 1364, 1365, 1366 and 1367, respectively, of the Safety and Soundness Act regarding prompt corrective actions (PCA).

2) ***The Federal Housing Enterprises Financial Safety and Soundness Act of 1992, 12 U.S.C. 4501, et seq. (the Safety and Soundness Act). The Safety and Soundness Act***

contains the following provisions relevant to the Enterprises' capital:

12 U.S.C. Chapter 46, Subchapter II addresses required capital levels for regulated entities, special enforcement powers, and reviews of assets and liabilities. Specific parts and sections relative to capital include:

12 U.S.C. 4502(7) defines core capital.

12 U.S.C. 4611 defines risk-based capital requirements.

12 U.S.C. 4612 establishes minimum capital levels.

12 U.S.C. 4613 establishes critical capital levels.

12 U.S.C. 4614 defines capital classifications for PCA purposes.

12 U.S.C. 4615 discusses limitations on undercapitalized enterprises.

12 U.S.C. 4616 discusses limitations on significantly undercapitalized enterprises.

12 U.S.C. 4617 discusses limitations on critically undercapitalized enterprises.

12 U.S.C. 4618 addresses procedures for giving notice of classification or reclassification within a particular capital classification, and enforcement actions.

12 U.S.C. 4622 establishes procedures and requirements for capital restoration plans.

12 U.S.C. 4623 addresses judicial review of Director action.

12 U.S.C. 4624 allows the Director to establish criteria governing the portfolio holdings of the Enterprises, to ensure that the holdings are backed by sufficient capital and consistent with the mission and the safe and sound operations of the Enterprises. It also provides the Director with the authority to make temporary adjustments to the established standards and require the Enterprises to dispose of or acquire any asset.

3) ***The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) requires, among other things, certain financial companies with total consolidated assets of more than $10 billion, and which are regulated by a primary federal financial regulatory agency, to conduct annual stress tests to determine whether they have the capital to absorb losses because of adverse economic conditions. Section 165(i)(2)(C) of the Dodd-Frank Act requires FHFA, in coordination with the Federal Reserve Board of Governors and the Federal Insurance Office, to issue consistent and comparable regulations for annual stress***

testing. FHFA published a final rule effective October 28, 2013. The rule is applicable to Fannie Mae, Freddie Mac and the FHLBanks.

12 CFR 1238 of the FHFA's regulations sets forth the basic requirements for implementing stress tests and reporting the results. FHFA will supplement the rule annually with reporting schedules, guidance, and orders.

Dodd Frank Stress Tests Summary Instructions and Guidance dated November 26, 2013, provide all regulated entities with specific information in modeling the DFAST, and may assist examiners in developing a planned scope of review commensurate with the risks associated with the particular regulated entity.

4) Rules and Regulations of the Federal Housing Finance Agency (FHFA) and its predecessor, the Office of Federal Housing Enterprise Oversight (OFHEO), which include the following parts and sections relevant to the Enterprises' and FHLBanks' capital:

12 CFR 1225 of the FHFA's regulations provides standards for imposing a temporary increase in the minimum capital requirements for any regulated entity.

12 CFR 1237.12 of the FHFA's regulations prohibits capital distributions for any regulated entity while in Conservatorship without the approval of the Director.

12 CFR 1720 of OFHEO's regulations establishes minimum safety and soundness requirements, including standards for asset growth, the requirement for strategies in key areas, and policies and controls to implement those strategies.

12 CFR 1750 of OFHEO's regulations defines the methodology for computing the minimum capital requirement and the risk-based capital level for each Enterprise.

12 CFR Part 1777 of OFHEO's regulations define capital categories for prompt corrective action and requirements for notification of category and submission of capital restoration plans.

5) Federal Home Loan Bank Act (FHLBank Act)

Section 6 of the FHLBank Act sets forth the capital structure of the FHLBanks. Specifically, Section 6 establishes leverage capital requirements for the FHLBanks, requires the Director to establish risk-based capital standards, and establishes requirements for FHLBank capital structure plans and other related matters. Section 6 also provides definitions for "permanent capital" and "total capital". Section 6 also limits a FHLBank's ability to redeem or repurchase stock by prohibiting such transactions if a FHLBank would fail to meet any capital requirement after the transaction, and further prohibits repurchases or redemptions without prior FHFA approval if the FHLBank has incurred, or is likely to incur, losses that would result in charges against the capital of the FHLBank.

Section 16 of the FHLBank Act separately provides that a FHLBank may pay dividends only from its previously retained earnings or from its current earnings remaining after certain specified reductions.

6) Rules and Regulations of the FHFA and its predecessor, Federal Housing Finance Board (Finance Board), which include the following parts and sections relevant to the FHLBank's capital:

12 CFR 917.3(b)(1) of the Finance Board's regulations requires each FHLBank's risk management policy to include the specific steps that the FHLBank will take to comply with its capital plan. This section also requires each FHLBank to include target ratios of total capital/total assets and permanent capital/total assets at which the FHLBank intends to operate, where such ratios are in excess of the minimum leverage and risk-based capital ratios and may be expressed as a range of ratios or a single ratio.

12 CFR 917.9 of the Finance Board's regulations requires that an FHLBank's board of directors declare and pay a dividend only from previously retained earnings or current net earnings and only if such payment will not result in a projected impairment of the par value of the institution's capital stock. This section also prohibits an FHLBank's board of directors from declaring or paying a dividend based on projected or anticipated earnings or if the par value of the FHLBank's stock is impaired or is projected to become impaired after paying such dividend.

12 CFR Part 930 of the Finance Board's regulations sets forth definitions applying to capital regulations.

12 CFR Part 931 of the Finance Board's regulations defines the classes of capital stock, procedures relating to capital stock, and limitations on the payment of dividends.

12 CFR 931.4 of the Finance Board's regulations requires that dividends only be paid out of previously retained earnings or current net earnings only in accordance with its capital plan, and may not pay any dividend if, after doing so, the FHLBank would fail to meet any minimum capital requirements.

12 CFR 931.8(a) of the Finance Board's regulations prohibits an FHLBank from redeeming or repurchasing any stock without the prior written approval of the FHFA if either the board of directors of the FHLBank, or the FHFA, has determined that the FHLBank has or is likely to incur losses that result in, or are likely to result in, charges against capital of the FHLBank.

12 CFR 932 of the Finance Board's regulations defines minimum total capital, leverage capital, and risk-based capital requirements, as well as guidance on how each capital requirement is calculated.

12 CFR 933 of the Finance Board's regulations requires the board of directors of each FHLBank to submit a capital plan to the Finance Board for approval which complies with 12 CFR 931, and which has sufficient total and permanent capital to comply with the regulatory capital requirements of 12 CFR 932.

12 CFR 1229 of the FHFA's regulations establishes capital classifications for Prompt Corrective Action and provides restrictions and remedies required by the FHLBanks in accordance with their capital classification.

12 CFR 1237.12 of the FHFA's regulations prohibits capital distributions for any regulated entity while in Conservatorship without the approval of the Director.

12 CFR 1261.4(a) of the FHFA regulations requires an FHLBank to file an annual capital stock report with the FHFA that provides information on its members' capital stock. FHFA uses the information on the members' stockholdings in allocating member directorships among the states in each FHLBank's district.

12 CFR 1263.23(b) of the FHFA's regulations prohibits any FHLBank with outstanding excess stock greater than 1 percent of its total assets from declaring or paying any stock dividends or otherwise issuing any excess stock. 12 CFR 1263.23(b) also prohibits any FHLBank from issuing excess stock, if after issuance, its outstanding excess stock would be greater than 1 percent of its total assets.

7) ***Rules and Regulations of the FHFA (12 CFR Part 1236):*** FHFA's final rule on Prudential Management and Operations Standards (PMOS), Standards 1, 8 and 10 establish the need for the regulated entities to ensure processes are in place to appropriately identify, manage, monitor, and control risk exposures and the need for a regulated entity to maintain financial records in compliance with Generally Accepted Accounting Principles.

8) ***Advisory Bulletins of the Federal Housing Finance Board that provide supervisory guidance relating to capital include the following:***

Advisory Bulletin 03-04, dated March 18, 2003, provides guidance on what FHLBanks should include in capital plan amendment submissions for FHFA approval. The advisory bulletin also describes the amount of time that will likely be necessary to complete the FHFA's review of the FHLBank's submission.

Advisory Bulletin 03-08, dated August 18, 2003, requires the board of directors to adopt a retained earnings policy and to review the FHLBank's analysis of the adequacy of its retained earnings.

Advisory Bulletin 09-01, dated July 20, 2009, provides guidance regarding the disclosure of preliminary capital classifications for Prompt Corrective Action.

Issues Specific to the Regulated Entities

Capital Adequacy

The FHLBanks and the Enterprises are subject to capital regulations requiring minimum regulatory capital levels. When assessing the adequacy of capital, it is important to consider factors that may require the regulated entity to maintain capital at a higher level than the regulatory minimums. The following provides a summary of factors that may be considered when evaluating capital. A particular factor may not be applicable to all regulated entities given the inherent differences between the Enterprises and the FHLBanks.

<u>Overall Financial Condition of the Regulated Entity</u>

A regulated entity's operations and overall financial condition are important in the assessment of capital. Asset quality problems can quickly deplete capital. Poor earnings performance can hinder capital formation. Poor internal controls could lead to losses that could potentially impair capital. Examiner judgment is required to review capital adequacy in relation to the overall financial condition. The examiner should consider the level of capital in relation to the risks on balance sheet and off balance sheet. Each regulated entity should have adequate modeling capabilities to establish its risk appetite and assess its capital needs, including under stress scenarios, and evaluate potential risks to capital. In addition, the assessment of capital should include consideration of the level, quality, and trend of earnings; the reasonableness of dividends; sensitivity to interest rate risk; and volatility in capital and earnings caused by certain accounting standards.

<u>Composition of Capital</u>

The Enterprises were placed in Conservatorship in September 2008 because they were critically undercapitalized. They receive financial support from Treasury through the SPSPA and they are not expected to rebuild capital levels as all excess earnings are swept to Treasury in accordance with the SPSPA, as amended.

For the FHLBanks, the level of retained earnings is critically important, as it is available to absorb losses and protect the par value of the capital stock. Losses in excess of the level of retained earnings may impair the ability of the FHLBank to buy and sell stock at par. Advisory Bulletin 03-08 entitled *Capital Management and Retained Earnings* dated August 18, 2003 requires that each FHLBank assess the level of retained earnings at least annually in light of alternative possible future forecasts. When assessing the need for retained earnings, the FHLBank should consider potential risks that could directly affect capital needs. The greater the market, credit, or operational risk to an institution, the greater its need for retained earnings.

In addition, Advisory Bulletin 03-08 requires that each FHLBank adopt a retained earnings policy that specifies the priority the FHLBank places on retained earnings relative to dividends. Examiners should evaluate these forecasts and policies to ensure that they are reasonable and do not negatively stress the FHLBank's future capital position. Examiners should determine whether the level of excess stock or mandatory redeemable stock might affect future capital adequacy.

Capital Remedies

The FHFA may use a variety of statutory tools to address capital deficiencies. When a regulated entity falls below a classification of Adequately Capitalized, FHFA will take action to address the capital deficiency, and the statutory tools available are linked to the capital classification level. Generally, a regulated entity must submit a capital plan if its capital adequacy becomes a concern, declines below thresholds established in the regulations, or if the Director uses discretionary authority either to lower the regulated entity's capital classification or to impose higher capital requirements.

Dodd Frank Act Stress Test (DFAST)

Fannie Mae, Freddie Mac, and the FHLBanks are required to complete a DFAST commencing in 2014 (Section 165(i)(2) of the Dodd Frank Act and 12 CFR 1238.3 of the FHFA's Regulations). The~~se~~ stress tests require that the regulated entities utilize base line information and run scenarios to simulate severe and sudden, financial and economic events. The scenarios stress the regulated entities' abilities to absorb the financial impacts given the balance sheets' compositions and forecasted compositions at the time the regulatory stress tests are run. FHFA annually may supplement the rule with reporting schedules, Orders or instructions as necessary.

Issues Specific to the FHLBanks

Capital Components

Capital Stock

Members of the FHLBanks must purchase capital stock as a condition of membership (known as membership investment requirement). FHLBanks also may also require members to purchase capital stock when they engage in activities with the FHLBank, such as obtaining an advance or an acquired member asset. (See the *Advances and Collateral* and the *Acquired Member Assets* modules.) The FHLBank Act defines two classes of capital stock, Class A capital stock and Class B capital stock.

> *Class A Capital Stock* is redeemable in cash at par six months following submission by a member of a written notice of its intent to redeem such shares.
>
> *Class B Capital Stock* is redeemable in cash at par five years following submission by a member of a written notice of its intent to redeem such shares. Class B stock confers ownership interest in the retained earnings, surplus, undivided profits, and equity reserves of the FHLBank.

Each FHLBank establishes its membership investment requirements and activity stock requirements per class of stock in its capital structure plan. (see 12 CFR Part 933 of the Finance Board regulations.) An FHLBank may amend its capital structure plan to change its investment and activity stock, but the amendments must be approved by the FHFA before they may take effect. Advisory Bulletin 03-04, *Amendments to Capital Plans,* dated March 18, 2003 describes procedures for submitting an amendment to the FHFA for approval.

Capital stock also includes *mandatorily redeemable capital stock* and *excess capital stock*.

> Mandatorily redeemable capital stock is defined as member capital stock that is subject to a redemption request. Although the FHFA considers mandatorily redeemable capital stock to be regulatory capital, Accounting Standards Codification (ASC) 480-10 *Distinguishing Liabilities from Equity* requires that it be reported as a liability and any dividends paid be reported as interest expense.
>
> Excess capital stock - defined as capital stock of an FHLBank that exceeds the aggregate amount of capital stock that each individual FHLBank membership must hold in order to meet its investment and activity stock purchase requirements - may exist for a number of reasons, including changes in member borrowing activity, the accumulation of stock dividends, and restrictions on capital redemptions and repurchases. Excess capital stock is included in regulatory capital.

Retained Earnings

Retained earnings represent an important component of capital at the FHLBanks since members can redeem capital stock with proper notice or after the redemption period expires. Losses in excess of current period earnings are charged first to retained earnings. If losses exceed retained earnings, capital stock is impaired. The FHLBank would then determine if the impairment was temporary or other than temporary based upon applicable accounting guidance.

In 1989, Congress established the Resolution Funding Corporation (RefCorp) to provide funding to the Resolution Trust Corporation to finance its efforts to resolve the savings and loan crisis. RefCorp issued approximately $30 billion of long-term bonds, the last of which was scheduled to mature in April 2030. Since 1999, all but two of the FHLBank's quarterly payments exceeded the $75 million benchmark calculation required to pay the obligation in full by its original maturity. As a result, the FHLBanks have paid the obligation in full effective July 15, 2011.

Subsequent to the fulfillment of the RefCorp obligation, the FHFA approved amendments to each FHLBank's capital plan that requires each FHLBank to allocate 20 percent of its net income to a restricted retained earnings account until the restricted account reaches a target of one percent of that FHLBank's outstanding consolidated obligations. Under the retained earnings provisions, the FHLBanks are prohibited from paying dividends from restricted retained earnings.

Accumulated Other Comprehensive Income

Accumulated Other Comprehensive Income (AOCI) is included in the equity section of the balance sheet for GAAP purposes and is used to accumulate unrealized gains or losses. The two principal components of AOCI for the FHLBanks are unrealized gains and losses on available for sale securities and the non-credit portion of other than temporary impairment on private-label mortgage-backed securities. The calculation of regulatory capital excludes AOCI.

Regulatory Capital versus GAAP Capital

Differences exist between capital reported by the FHLBanks on financial statements under GAAP and regulatory capital per FHFA regulations. The following table indicates similarities and differences between the capital measures.

Component	**Regulatory Capital**	**GAAP Capital**
Capital Stock – Membership Investment Requirement	Yes	Yes

Capital Stock – Activity Requirement	Yes	Yes
Capital Stock – Excess Stock	Yes	Yes
Capital Stock - Mandatorily Redeemable Capital Stock	Yes	No
Retained Earnings	Yes	Yes
Accumulated Other Comprehensive Income	No	Yes

Regulatory Capital Requirements

The FHLBanks are required to maintain capital that is sufficient to cover the credit risk, market risk, and operational risk to which the FHLBank is subject. The FHLBank Act requires that the FHLBanks meet both a leverage capital requirement and a risk-based capital requirement.

Permanent Capital Definition

The FHLBank Act defines “permanent capital” as the amounts paid for an FHLBank’s Class B stock and the FHLBank’s retained earnings as determined in accordance with GAAP.

Total Capital Definition

The FHLBank Act defines “total capital” to include permanent capital, the amounts paid for Class A stock, any general allowance for losses that are not held against specific assets (as determined in accordance with GAAP and FHFA regulations), and any other amounts available to absorb losses that the FHFA determines by regulation to be appropriate to be included in capital. (The FHFA has not determined “any other amounts available to absorb losses” to be appropriate to be included in capital.)

FHFA regulations require that “general allowance for loan losses” be consistent with GAAP and not include any amounts held against specific assets or class of assets, such as AMA, of the FHLBank.

Total Capital Requirement

Each FHLBank is required to maintain a ratio of total capital to total assets of no less than 4 percent. Each FHLBank is also required to maintain a leverage ratio of total capital to total assets of 5 percent. In calculating the leverage ratio, the amounts paid in for Class B stock and the amounts of retained earnings (permanent capital) are multiplied by 1.5 percent, and all other items of total capital are included at face value.

Risk-Based Capital Requirement

Each FHLBank is required to maintain permanent capital in an amount that is sufficient, as determined in accordance with Finance Board regulations, to cover the credit, market, and operational risks to which the FHLBank is subject, as set forth below.

Credit risk capital requirement - Equal to the sum of the FHLBank's credit risk capital charges for all on-balance sheet assets, off-balance items, and derivatives contracts. Section 932.4 of the Finance Board's regulations sets forth the specific requirements for calculating the credit risk capital requirement.

Market risk capital requirement - Equal to the sum of (1) the market value of the FHLBank's portfolio at risk, estimated by the FHLBank's approved internal risk model and (2) the amount by which the FHLBank's current market value of total capital is less than 85 percent of the FHLBank's book value of total capital. Section 932.5 of the Finance Board's regulations sets forth the specific requirements for calculating the market risk capital requirement.

Operational risk capital requirement - Equal to 30 percent of the sum of the FHLBank's credit and market risk capital requirements. Section 932.6 of the Finance Board's regulations sets forth this requirement and allows an FHLBank to substitute an alternative method for calculating operational risk if such method is approved by the FHFA.

<u>Other Regulatory Requirements</u>

Capital Plans – The 1999 amendments to the FHLBank Act required the board of directors of each FHLBank to submit, not later than October 29, 2001, to the Finance Board a plan to implement a new capital structure for the FHLBank. Each FHLBank's capital structure plan must comply with the requirements of Part 931, regarding FHLBank Capital Stock, and must result in the FHLBank having sufficient total and permanent capital to comply with the regulatory capital requirements of Part 932 regarding FHLBank Capital Requirements. As of January 1, 2012, all FHLBanks have implemented approved capital plans.

Target Operating Ratios - Section 917.3(b)(1) of Finance Board regulations requires the FHLBanks to set target ratios of total regulatory capital to total assets and permanent capital to total assets at which the FHLBank intends to operate. These target ratios should be in excess of the minimum leverage and risk-based capital ratios. The target ratios are to be included in the FHLBank's risk management policy.

Dividends – Section 917.9 and 931.4 of the Finance Board regulations allow an FHLBank to declare or pay dividends on Class A or Class B stock only out of previously retained earnings or current net earnings and may not declare or pay a dividend if the par value of the FHLBank's stock is impaired or is projected to become impaired after paying such dividend. Dividends must conform to the FHLBank's capital plan, although the capital plan may establish different dividend rates or preferences for each class or subclass of stock.

Excess Stock Threshold - Section 1263.23(b) of the FHFA regulations prohibits any FHLBank with outstanding excess stock greater than 1 percent of its total assets from declaring or paying any stock dividends or otherwise issuing any excess stock. Section 1263.23(b) also prohibits any FHLBank from issuing excess stock if, after issuance, its outstanding excess stock would be greater than 1 percent of its total assets.

Prompt Corrective Action

12 CFR Part 1229 of the FHFA's regulations sets forth standards and remedies under the Prompt Corrective Action rule for the FHLBanks.

Each quarter, the FHFA's Director determines each FHLBank's capital classification in accordance with the following PCA definitions:

Adequately capitalized - Except where the Director has exercised authority to reclassify an FHLBank, an FHLBank shall be considered adequately capitalized if, at the time of the determination under 12 CFR 1229.2(a), the FHLBank has sufficient permanent and total capital, as applicable, to meet or exceed its risk-based and minimum capital requirements.

Undercapitalized - Except where the Director has exercised authority to reclassify an FHLBank, an FHLBank shall be considered undercapitalized if, at the time of the determination under 12 CFR 1229.2(a), the FHLBank does not have sufficient permanent or total capital, as applicable, to meet any one or more of its risk-based or minimum capital requirements but such deficiency is not of a magnitude to classify the FHLBank as significantly undercapitalized or critically undercapitalized.

Significantly undercapitalized - Except where the Director has exercised authority to reclassify an FHLBank, an FHLBank shall be considered significantly undercapitalized if, at the time of the determination under 12 CFR 1229.2(a), the amount of permanent or total capital held by the FHLBank is less than 75 percent of what is required to meet any one of its risk-based or minimum capital requirements but the magnitude of the FHLBank's deficiency in total capital is not sufficient to classify it as critically undercapitalized.

Critically undercapitalized - Except where the Director has exercised authority to reclassify an FHLBank, an FHLBank shall be considered critically undercapitalized if, at the time of the determination under 12 CFR 1229.2(a), the total capital held by the FHLBank is less than or equal to the critical capital level for an FHLBank as defined under 12 CFR 1229.1.

The regulation provides discretionary reclassification authority to the Director and specifies certain restrictions and remedies under PCA. An adequately capitalized FHLBank may not make a capital distribution if after doing so the FHLBank's capital would not be sufficient to maintain a classification of adequately capitalized. If an FHLBank becomes undercapitalized, significantly undercapitalized, or critically undercapitalized, the FHLBank must submit a capital restoration plan to the FHFA. The regulation also places limits on capital distributions, asset growth, new business activities, and executive officer compensation depending on the capital classification.

Advisory Bulletin 2009-AB-01, *Disclosure of Preliminary Capital Classifications* dated July 20, 2009 states that preliminary capital classifications should be treated as unpublished information under Part 911 of the Finance Board's regulations and provides guidance as to when the preliminary capital classification should be disclosed in financial statements. Note that Part 911 of the Finance Board regulations has been replaced by Part 1214 of the FHFA regulations, and that the term "unpublished information" has been replace by the term "confidential supervisory information." Capital classifications of the FHLBanks would be considered to be "confidential supervisory information" and subject to the prohibitions on disclosure, without the Director's written approval, in Section 1214.3.

Issues Specific to the Enterprises

Capital Components

The statutory components of capital under the Safety and Soundness Act include:

Common Stock

The Enterprises were authorized to issue common stock; during Conservatorship they are not permitted to do so without the approval of the FHFA and Treasury. The par value of the outstanding shares of common stock is included in capital.

Non-Cumulative Perpetual Preferred Stock

The Enterprises were authorized to issue non-cumulative perpetual preferred stock; during Conservatorship they are not allowed to do this without approval of the FHFA and Treasury. The par value of such preferred stock is reflected in this capital account. Preferred stock has preference over common stock for dividend payments and in the event of liquidation. Perpetual preferred stock has no fixed date on which invested capital will be returned to the shareholder, although there are redemption privileges held by the Enterprises. Non-cumulative preferred stock means that dividends will not accumulate if undeclared and paid.

Paid-in Capital for Common and Preferred Stock

Paid-in capital represents the premium paid over and above par value for the purchase of common stock or preferred stock. Paid in capital for common stock and non-cumulative perpetual preferred stock is included in regulatory capital; paid in capital for cumulative perpetual preferred stock is not included in regulatory capital.

Retained Earnings

Retained earnings represent the cumulative amount of earnings not paid out as dividends.

Accumulated Other Comprehensive Income

Accumulated Other Comprehensive Income (AOCI) is included in the GAAP equity section of the financial statements. It is used to accumulate unrealized gains or losses. The two principal components of AOCI for the Enterprises are unrealized gains and losses on available for sale (AFS) securities and the non-credit portion of other than temporary impairment (OTTI) on private-label mortgage-backed securities. If regulatory capital was calculated for the Enterprises, AOCI would be excluded from the calculation.

Regulatory Capital versus GAAP Capital

Differences exist between capital reported by the Enterprises on financial statements under GAAP and regulatory capital per regulations. The following table indicates where these definitions are the same and where they differ.

GAAP Capital	**Regulatory Capital**
Common Stock – Par value	Common Stock – Par Value
Non-Cumulative Perpetual Preferred Stock – Par Value	Non-Cumulative Perpetual Preferred Stock – Par Value
Cumulative Perpetual Preferred Stock – Par Value	N/A
Paid-in Capital – Common Stock	Paid-in Capital – Common Stock
Paid-in Capital - Non-Cumulative Perpetual Preferred Stock	Paid-in Capital - Non-Cumulative Perpetual Preferred Stock
Paid-in Capital - Cumulative Perpetual Preferred Stock	N/A
Trust Preferred Securities	N/A
Retained Earnings	Retained Earnings

Accumulated Other Comprehensive Income	N/A

Regulatory Capital Requirements

The Enterprises are generally required to maintain minimum capital levels, as determined by regulations, to mitigate credit, market, interest rate and operational risks. As noted previously, the FHFA placed the Enterprises into Conservatorship in September 2008 and suspended capital classifications after the 3Q08 capital classification under the Safety and Soundness Act. Appropriate capital requirements will be implemented if and when the Enterprises exit Conservatorship. At this time, the FHFA monitors the capital needs of the Enterprises and authorizes special draws from Treasury pursuant to the SPSPAs to ensure each Enterprise maintains a positive GAAP net worth.

After Conservatorship, both Enterprises' common and preferred stocks were delisted from the New York Stock Exchange (NYSE). They currently trade in the over-the-counter market. Given the Conservatorships, FHFA suspended regulatory capital classifications. FHFA has not issued capital classifications since September 2008. Any capital needs (ensuring both Enterprises maintain positive GAAP net worth) are fulfilled by Treasury under the SPSPAs. Information about these agreements is available on the FHFA's website and in all SEC filings by the Enterprises.

The SPSPAs require the Enterprises to maintain positive GAAP net worth. Any need for funding will increase the Liquidation Preference Share price (the stock value) by an amount commensurate with the draw needs of the Enterprise. Under this arrangement, FHFA administers the draws and subsequent dividend payments to Treasury by the Enterprises.

Capital requirements for the Enterprises are discussed below; however, due to the Conservatorship, examiners need not conduct supervisory activities related to these requirements.

<u>Core Capital</u>

The Safety and Soundness Act defines core capital as (as determined in accordance with GAAP) the sum of the par or stated value of outstanding common stock; the par or stated value of outstanding perpetual, noncumulative preferred stock; paid-in capital; and retained earnings. The core capital of an Enterprise does not include any amounts that the Enterprise could be required to pay, at the option of investors, to retire capital instruments.

<u>Total Capital</u>

This measure of capital is determined by summing core capital, the general allowance, and reserves the Director deems as part of total capital; it excludes specific reserves. For regulatory measurement purposes, total capital must exceed risk-based capital.

<u>Minimum Capital</u>

The Safety and Soundness Act establishes a formulaic measurement of the Enterprises' on- and off-balance sheet assets. This is a measure to ensure that asset growth does not exceed a sustainable capital base and to ensure on and off balance sheet asset growth is effectively managed. The general calculation requires 2.5 percent of the on-balance sheet assets plus 0.45 percent of the adjusted off-balance sheet assets as the minimum capital requirement. The result is then compared to the Enterprise's core capital.

<u>Risk-Based Capital</u>

The Enterprises were subject to a risk-based capital test prior to Conservatorship. It was published in 2001, implemented in 2002 and suspended in 2011. FHFA does not currently use this model.

FHFA previously required the Enterprises to maintain capital levels that exceeded estimates resulting from risk-based modeling of capital needs. An assessment of the Enterprise's capital requirements included estimating additional capital needs based on changing internal and external factors. The Safety and Soundness Act requires a capital measure that measures risk in the context of the overall portfolio, including the effectiveness of the Enterprise's risk management activities. The stress test simulated an Enterprise's financial performance over a 10-year period under severe economic conditions, including high levels of mortgage defaults, with associated losses and large, sustained movements in interest rates. The estimated capital required to survive the stress test is compared to the total capital figure. The total capital level must exceed the binding risk-based capital requirement. A shortfall results in an undercapitalized condition for an Enterprise.

Prompt Corrective Action

Standards and remedies for Prompt Corrective Action for the Enterprises are detailed in 12 CFR Part 1777 of OFHEO's rules and regulations.

The Safety and Soundness Act requires the FHFA's Director to determine the Enterprise's capital classification, on a quarterly basis. Since the Enterprises have been in Conservatorship, the capital classifications for each have been suspended. When the capital classifications were issued by FHFA, they were based upon the following:

> *Adequately capitalized* – Except where the Director has exercised the authority to reclassify an Enterprise, an Enterprise shall be considered adequately capitalized

if, at the time of the determination under 12 CFR 1777.21(a), the Enterprise holds total capital equaling or exceeding the risk-based capital level and holds core capital equaling or exceeding the minimum capital level.

Undercapitalized - Except where the Director has exercised the authority to reclassify an Enterprise, an Enterprise shall be considered undercapitalized if, at the time of the determination under 12 CFR 1777.21(a), the Enterprise holds total capital less than the risk-based capital level and holds core capital equaling or exceeding the minimum capital level.

Significantly undercapitalized - Except where the Director has exercised the authority to reclassify an Enterprise, an Enterprise shall be considered significantly undercapitalized if, at the time of the determination under 12 CFR 1777.21(a), the Enterprise holds core capital less than the minimum capital level and holds core capital equaling or exceeding the critical capital level.

Critically undercapitalized - Except where the Director has exercised the authority to reclassify an Enterprise, an Enterprise shall be considered critically undercapitalized if, at the time of the determination under 12 CFR 1777.21(a), the Enterprise holds core capital less than the critical capital level.

The capital regulations provide discretionary reclassification authority to the Director and specify certain restrictions and remedies under the PCA provisions. An Enterprise may not make a capital distribution if, after doing so, the Enterprise's total capital would be less than risk-based capital or the core capital of the Enterprise would be less than the minimum capital level without the prior approval of the FHFA. In addition, if the Enterprise is not classified as adequately capitalized, it shall make no capital distribution that would result in the Enterprise being classified into a lower capital classification than the one to which it is classified at the time of the distribution. Finally, if the Enterprise is classified as significantly or critically undercapitalized, it may not make any capital distribution without the prior written approval of the FHFA. If an Enterprise is classified as undercapitalized, significantly undercapitalized, or critically undercapitalized, the Enterprise must submit a capital restoration plan in writing to the FHFA.

Examination Guidance

The workprogram for the Capital module is detailed below. If this module is included in the examination scope, the examiner must perform work steps sufficient in coverage to document the basis for conclusions on the quantity of risk and quality of risk management pertaining to this area. The Examiner is not required to perform each workstep, but must document the reason(s) for omitting a portion of the workprogram. Transaction testing, however, is mandatory and must evidence sufficient worksteps from Section 4, *Testing* to support the findings and conclusions from this examination module.

In determining the extent of review and testing to be conducted in completing each examination, the examiner should take into account and document applicable FHFA off-site monitoring or analysis reports, such as analyses of the quality and effectiveness of corporate governance practices, financial condition and performance, economic and housing industry conditions, internal controls, and audit coverage relating to the institution's capital management.

NOTE: Text in (*italics*) referenced in a workstep represents illustrative guidance that serves as suggestions for specific inquiry.

1. Scope of Examination Work Performed

1) Review past reports of examination for outstanding issues or previous problems related to capital.

2) Review FHFA off-site monitoring or analysis reports, and workpapers produced as part of on-going monitoring, related to capital.

3) Assess the status or review the remediation progress based on management's commitments of any outstanding examination findings (e.g., Matters Requiring Attention, Violations, or Recommendations) or remediation plans pertaining to the Enterprise's management of multifamily credit risk.

4) Review internal audit reports for outstanding issues relating to capital.

5) Review minutes of meetings of the board of directors and relevant board and management committees for any issues regarding capital.

6) Review on-going reporting related to the regulated entity's capital position, including reports in the FHFA call reporting system.

7) Review any reports dealing with the financial condition and performance of the regulated entity.

8) Identify potential risks to the institution's capital position.

9) For FHLBanks, in conjunction with examiners responsible for the credit, market and operational risk areas, consider the adequacy of capital in protecting the regulated entity from future losses.

10) For FHLBanks, evaluate the regulated entity's current capital levels and conclude on the adequacy of capital in meeting regulatory requirements. If warranted, make recommendation to the Director on adjusting capital requirements.

Summarize the work performed in the examination of capital. To the extent there were modifications to the originally planned scope based on concerns identified during the examination, document those changes and the reasons for such changes.

2. Description of Risks

1) Review recent SEC filings for issues or concerns related to capital.

2) Review any prompt corrective actions and any limitations placed on the institution.

3) Review any enforcement actions to determine any capital restrictions.

4) Review information from the Call Report System for trends in capital since the previous examination.

5) Identify and assess any changes in the institution's products or condition that might affect capital.

6) Identify and assess any market, regulatory or other events that might affect capital.

7) Review income projections for the regulated entity. Assess forecasts for AOCI. Conclude on the effect these financial forecasts may have on capital needs in the future. Determine if capital is likely to be adversely affected by these projections.

3. Risk Management

Risk Identification Process

1) Based on worksteps performed under **Description of Risks**, assess and conclude on the adequacy of the institution's risk identification process. *(Has the institution appropriately identified all areas of potential risk that could affect capital? Is risk exposure monitored on an ongoing basis? Does the institution report on risk exposure to the appropriate parties within the organization?)*

2) Evaluate the effectiveness of the annual risk assessment and determine if it reasonably identifies all material risks, both quantitative and qualitative aspects, of

the institution's capital management program. Investigate any action plans arising from the assessment and check corrective actions for effectiveness.

3) Evaluate the effectiveness of management planning, reporting and responding to capital needs of the organization. (*Has management adequately considered potential threats to the institution's capital in its risk identification process? How has management planned and, responded to the DFAST results?)*

4) Identify and analyze executive management communication to the Board regarding meaningful and significant risks faced by the institution.

Organizational Structure

1) Determine how decisions regarding retained earnings and dividends are made and who is responsible.

2) Evaluate the quality of capital management staffing.

3) Assess the adequacy of contingency procedures that ensure data accuracy.

4) Evaluate executive level capital management *(Are individuals charged with managing the regulated entity's overall financial condition aware of risks? Do they consider these risks when making decisions related to the entity's capital position?)*

Policy and Procedure Development

1) Assess the adequacy of the retained earnings and dividend policy. (*Are retained earnings in excess of required risk-based capital? Does the institution's retained earnings target consider credit, market, and operational risks? What confidence level does the institution use in determining its target? Does the institution consider the various risks it considers in determining its retained earnings target to be independent or correlated? To what extent does the institution use insurance products to mitigate operational risks?)*

2) Assess the adequacy of the risk management policy as it pertains to capital.

3) Evaluate procedures to ensure compliance with capital regulations and the effectiveness of those procedures.

4) Evaluate procedures to ensure compliance with internal policies and the effectiveness of those procedures.

Risk Metrics

1) Evaluate the method used to determine dividend levels and retained earnings levels and ascertain the extent of board involvement in these decisions.

2) Review the reasonableness of the strategic plan and budget as it relates to capital.

3) Assess capital plans and evaluate the plans relative to actual results for the period under examination.

4) Assess the appropriateness of capital risk metrics.

5) Identify and analyze management- produced metrics for board of directors use. *(Are they produced periodically? Are the metrics, meaningful? Does the board understand the information? Does the board question management and direct them to take action(s)?)*

Reporting

1) Evaluate the reporting to executive management of capital risk metrics. (*Do such metrics appropriately consider all aspects of potential risk to the organization? Is management communicating the data that the executive management needs to know?*

2) Evaluate the reporting to the board of capital risk metrics. *(Do such metrics appropriately consider all aspects of potential risk to the organization? Is executive management communicating the data that the board needs to know?)*

3) Evaluate and conclude on the appropriateness of metrics and reporting. (*Does reporting include an evaluation of potential risks to the institution's capital?)*

Internal/External Audit

1) Evaluate the adequacy of the scope, testing, and workpapers completed by internal audit. (*Has the audit function considered potential threats to capital and evaluated the appropriateness and accuracy of reporting capital levels?*)

2) Evaluate the adequacy of the scope and testing completed by external audit and determine the status of corrective actions for findings. (*Are all areas of potential risk considered? If not, why not? Are reasons for not including certain areas within the scope of the audit work reasonable and supported?)*

Information Technology

1) Identify and assess the automated and manual systems and applicable controls used for determining capital ratios and capital risk metrics.

2) Evaluate potential concerns related to manual entry and non-automated feeds of information. *(Are reports produced accurate and timely?)*

Compliance

1) Evaluate and conclude on the adequacy of the regulated entity's efforts to ensure compliance with regulatory guidance.

2) Identify actions necessary, if applicable, to address the failure to meet regulatory requirements or the regulated entity's policy/ procedural requirements.

3) Evaluate and conclude on the adequacy of the institution's efforts to ensure compliance with its own internally-developed standards related to capital adequacy.

4. Testing

1) Evaluate the DFAST process. Reference should be made to "Dodd Frank Stress Tests Summary Instructions and Guidance" dated November 26, 2013 and any subsequent amendments to this document. The examination of DFAST at the Enterprises also should be in alignment with any parameters defined by the SPSPA. *(Are the regulated entities able to absorb losses stemming from DFAST? Is the regulated entity's DFAST process based upon a core foundation of strong internal controls for the following risk disciplines: governance, modeling, market, credit, operational and enterprise-wide risks?)*

2) For the FHLBanks, ensure all capital ratios comply with regulations.

3) Evaluate the institution's compliance with plans developed for the management of capital.

4) Assess the long-term and recent trend of total GAAP capital and total regulatory capital.

5) For the FHLBanks, assess the long-term and recent trends of the institution's retained earnings.

6) For the FHLBanks, evaluate and conclude on the adequacy of the FHLBank's actions to establish restricted retained earnings accounts per the terms of the System-wide agreement.

7) For the FHLBanks. assess the recent and long-term trends of capital stock.

5. Conclusions

1) Summarize conclusions for all examination work performed, including work performed by other FHFA staff as it relates to the regulated entity's capital. Develop a memorandum describing the risks to the institution related to capital and the regulated entity's management of those risks. The memorandum should clearly and articulately describe the basis of conclusions reached and summarize the analysis completed. Discuss the types of risk the regulated entity is exposed to in the capital area (*e.g*., market, credit, operational); the level of risk exposure; the direction of risk (stable, decreasing, increasing); and the quality of risk management practices (strong, adequate, weak). A memorandum must be prepared irrespective of whether the examiner's assessment is positive or negative. For FHLB examinations, the memorandum should include a recommended rating for the Capital area based on the FHFA examination rating system.

2) Conclude on the responsiveness to previous examination findings. Evaluate the adequacy of the regulated entity's response to previous examination findings and concerns.

3) Develop findings and prepare supporting memoranda, as appropriate. Based on examination work performed, develop findings communicating concerns identified during the examination. Findings should identify the most significant risks to the institution and the potential effect to the regulated entity resulting from the concerns identified. Findings should describe a remediation plan specifying the appropriate corrective action to address examination concerns and establish a reasonable deadline for the regulated entity to remediate the finding. Communicate preliminary findings to the EIC, other interested examiners, and senior FHFA staff, as appropriate. Discuss findings with regulated entity personnel to ensure the findings are free of factual errors or misrepresentations in the analysis.

4) Develop a list of follow-up items to evaluate during the next annual examination. In addition to findings developed in the steps above, include concerns noted during the examination that do not rise to the level of a finding. Potential concerns include issues the regulated entity is in the process of addressing, but require follow-up work to ensure actions are completed appropriately. In addition, potential concerns should include anticipated changes to the institution's practices or anticipated external changes that could affect the institution's future capital needs or management practices.

Workprogram

1. Scope of Examination Work Performed

Workpapers must document the examination activities undertaken to evaluate potential risks related to capital.

2. Description of Risks

- Identify areas of concern related to capital
- Assess current risks and trends in the risk to the institution related to capital
- Evaluate changes within the institution or industry affecting risk
- Evaluate the entity's own risk-identification practices and conclude on their adequacy

3. Risk Management

- Assess and conclude on the adequacy of the institution's risk identification process
- Assess and conclude on the overall adequacy of internal controls, including an evaluation of:
  - The regulated entity's organizational structure
  - Policy and procedure development for this area
  - Appropriateness of risk metrics established in this area
  - Reporting by management and the board
- Assess and conclude on the internal and external audit of risks
- Assess and conclude on the adequacy of information technology and controls related to capital
- Assess and conclude on the adequacy of the institution's efforts to ensure:
  - Compliance with laws, regulations and other supervisory guidance
  - Compliance with the organization's policies and procedures

4. Testing

- Complete testing, as appropriate, to assess adherence with examination standards

5. Conclusions

- Summarize conclusions for all examination work performed related to capital
  - Conclude on the level of risk to the institution
  - Include an assessment of the adequacy of an institution's monitoring of risk and establishment of internal controls to mitigate risk
- Conclude on responsiveness to examination findings from previous examinations
- Develop examination findings , as appropriate
- Identify areas requiring follow-up examination activities or monitoring

Exhibit G

proof as aforesaid of the completion of the additional sections of the road as aforesaid; and upon the failure of either company to complete either section as aforesaid, to be annually built, the portion of the land remaining uncertified shall become subject to the control and disposition of the legislature of the State of Iowa, to aid in the completion of such road.

Lands hereafter certified, to be offered for sale within three years, &c.

SEC. 9. *And be it further enacted*, That all lands hereafter certified to either of the land-grant railroads in said state, and lying opposite any completed section of such road, shall be offered for sale by the company to which they shall be certified within three years from the completion of such section, if then certified; and if not, then within three years from the date of such certificate at reasonable prices; and if not all sold within that period then during the fourth year all such lands remaining unsold shall be exposed to public sale, after previous notice posted at the county seat of the county in which such lands shall be situated, to the highest bidder, and in tracts not exceeding one hundred and sixty acres each.

When to be exposed to public sale.

APPROVED, June 2, 1864.

CHAP. CIV. — *An Act to incorporate the News-boys' Home.*

June 2, 1864.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Joseph Henry, J. W. Forney, Henry Beard, Sayles J. Bowen, and A. M. Gangwer, their associates and successors, being members of said society, by paying into its treasury the sum of two dollars annually, or life members, by paying fifty dollars at one time, are hereby incorporated and made a body politic, by the name of "The News-boys' Home of Washington City," for the purpose of providing lodgings, meals, and instruction to such homeless and indigent boys as may properly come under the charge of such association, to provide for them a suitable home, board, clothing, and instruction, and to bring them under Christian influence; and by that name shall have perpetual succession, with power to use a common seal, to sue and be sued, to plead and be impleaded in any court of competent jurisdiction within the District of Columbia, to collect subscriptions, make by-laws, rules, and regulations needful for the government of said corporation not inconsistent with the laws of the United States; to have, hold, and receive real estate by purchase, gift, or devise; to use, sell, or convey the same for the purposes and benefit of said corporation, and to choose such officers and teachers as may be necessary, prescribe their duties, and fix the rate of their compensation.

"The News-boys' Home of Washington city" incorporated.

Powers of corporation.

SEC. 2. *And be it further enacted*, That the officers of said association shall consist of a president, two vice-presidents, secretary, treasurer, and a board of managers, to be composed of fifteen members, the whole to constitute an executive committee, whose duty it shall be to carry into effect the plans and purposes for which said association was formed, all of which officers shall be elected on the first Tuesday in February in each year at the annual meeting of said association, which shall be held on said day; their successors shall be elected and hold their offices for the term of one year, and until their successors shall be duly elected. And in case of a vacancy it shall be filled by the other members of the executive committee.

Officers, &c.

APPROVED, June 2, 1864.

CHAP. CVI. — *An Act to provide a National Currency, secured by a Pledge of United States Bonds, and to provide for the Circulation and Redemption thereof.*

June 3, 1864.

1865, ch. 78, §§ 6, 7.
Post, p. 484.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there shall be established in the treasury department a separate bureau, which shall be charged with the execution of this and all other laws that may be passed by congress respecting the issue and regulation of a national currency

Currency bureau established.

Comptroller of the currency. Appointment. Term of office. Salary. Deputy comptroller. Clerks. Comptroller to take oath within what time. Bond. Oath and bond of deputy comptroller. Not to be interested in any banking association.

secured by United States bonds. The chief officer of the said bureau shall be denominated the comptroller of the currency, and shall be under the general direction of the Secretary of the Treasury. He shall be appointed by the President, on the recommendation of the Secretary of the Treasury, by and with the advice and consent of the Senate, and shall hold his office for the term of five years unless sooner removed by the President, upon reasons to be communicated by him to the Senate; he shall receive an annual salary of five thousand dollars; he shall have a competent deputy, appointed by the secretary, whose salary shall be two thousand five hundred dollars, and who shall possess the power and perform the duties attached by law to the office of comptroller during a vacancy in such office and during his absence or inability; he shall employ, from time to time, the necessary clerks to discharge such duties as he shall direct, which clerks shall be appointed and classified by the Secretary of the Treasury in the manner now provided by law. Within fifteen days from the time of notice of his appointment the comptroller shall take and subscribe the oath of office prescribed by the constitution and laws of the United States; and he shall give to the United States a bond in the penalty of one hundred thousand dollars, with not less than two responsible sureties, to be approved by the Secretary of the Treasury, conditioned for the faithful discharge of the duties of his office. The deputy-comptroller so appointed shall also take the oath of office prescribed by the constitution and laws of the United States, and shall give a like bond in the penalty of fifty thousand dollars. The comptroller and deputy-comptroller shall not, either directly or indirectly, be interested in any association issuing national currency under the provisions of this act.

Seal of currency bureau, and where to be kept. Certain papers under such seal to be evidence. Impression may be upon paper.

SEC. 2. *And be it further enacted*, That the comptroller of the currency, with the approval of the Secretary of the Treasury, shall devise a seal, with suitable inscriptions, for his office, a description of which, with a certificate of approval by the Secretary of the Treasury, shall be filed in the office of the Secretary of State with an impression thereof, which shall thereupon become the seal of office of the comptroller of the currency, and the same may be renewed when necessary. Every certificate, assignment, and conveyance executed by the comptroller, in pursuance of any authority conferred on him by law, and sealed with his seal of office, shall be received in evidence in all places and courts whatsoever; and all copies of papers in the office of the comptroller, certified by him and authenticated by the said seal, shall in all cases be evidence equally and in like manner as the original. An impression of such seal directly on the paper shall be as valid as if made on wax or wafer.

Rooms for currency bureau. Fire-proof vaults. Furniture, &c.

SEC. 3. *And be it further enacted*, That there shall be assigned to the comptroller of the currency by the Secretary of the Treasury suitable rooms in the treasury building for conducting the business of the currency bureau, in which shall be safe and secure fire-proof vaults, in which it shall be the duty of the comptroller to deposit and safely keep all the plates not necessarily in the possession of engravers or printers, and other valuable things belonging to his department; and the comptroller shall from time to time furnish the necessary furniture, stationery, fuel, lights, and other proper conveniencies for the transaction of the said business.

Term "United States Bonds" to include what.

SEC. 4. *And be it further enacted*, That the term "United States Bonds," as used in this act, shall be construed to mean all registered bonds now issued, or that may hereafter be issued, on the faith of the United States by the Secretary of the Treasury in pursuance of law.

Banking associations, how may be formed.

SEC. 5. *And be it further enacted*, That associations for carrying on the business of banking may be formed by any number of persons, not less in any case than five, who shall enter into articles of association, which shall specify in general terms the object for which the association is formed, and may contain any other provisions, not inconsistent with the pro-