

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

J. PATRICK COLLINS, *et al.*,

Plaintiffs,

vs.

THE FEDERAL HOUSING FINANCE
AGENCY, *et al.*,

Defendants.

No. 4:16-cv-03113

**APPENDIX TO PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO
DEFENDANTS' MOTIONS TO DISMISS AND IN SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT ON CONSTITUTIONAL CLAIM**

February 9, 2017

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APPENDIX TABLE OF CONTENTS

Exhibit 1:	Declaration of J. Patrick Collins	A01
Exhibit 2:	Declaration of Marcus J. Liotta.....	A03
Exhibit 3:	Declaration of William M. Hitchcock.....	A05
Exhibit 4:	Excerpts from MICHAEL BRIGHT & ED DEMARCO, WHY HOUSING REFORM STILL MATTERS, MILKEN INSTITUTE CENTER FOR FINANCIAL MARKETS (June 2016).....	A07
Exhibit 5:	FHFA, <i>About FHFA: Who We Are & What We Do</i>	A12
Exhibit 6:	Declaration of FHFA Director Melvin L. Watt (May 29, 2014)	A14
Exhibit 7:	David Logan, <i>Housing Share of GDP Expands</i> , NATIONAL ASSOCIATION OF HOME BUILDERS (June 28, 2016).....	A22
Exhibit 8:	Joe Light, <i>Fannie-Freddie Regulator Said to Plan to Stay On Under Trump</i> , BLOOMBERG NEWS (Dec. 15, 2016).....	A24
Exhibit 9:	Excerpts from FHFA Reply in Support of Renewed Motion to Substitute, <i>Gail C. Sweeney Estate Marital Trust v. United States Treasury Dep't</i> , No. 13-206 (D.D.C. Dec. 16, 2013), ECF No. 43.....	A28
Exhibit 10:	Declaration of Deputy Assistant Treasury Secretary Timothy Bowler (Oct. 28, 2013).....	A32
Exhibit 11:	FHFA's Notice of Filing Document Compilation, <i>Perry Capital v. Lew</i> , No. 13-1025 (D.D.C. Dec. 17, 2013), ECF No. 24.....	A35

EXHIBIT 1

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

J. PATRICK COLLINS, MARCUS J.
LIOTTA, and WILLIAM M. HITCHCOCK,

Plaintiffs,

vs.

THE FEDERAL HOUSING FINANCE
AGENCY, in its capacity as Conservator of the
Federal National Mortgage Association and the
Federal Home Loan Mortgage Corporation,
MELVIN L. WATT, in his official capacity as
Director of the Federal Housing Finance
Agency, THE DEPARTMENT OF THE
TREASURY, and JACOB J. LEW, in his
official capacity as Secretary of the Treasury,

Defendants.

DECLARATION OF J. PATRICK COLLINS

I, J. Patrick Collins, declare as follows:

1. I am a Plaintiff in the lawsuit captioned above.
2. I own shares of Freddie Mac's preferred stock. I have continuously owned shares of Freddie Mac's preferred stock since before the Net Worth Sweep was announced on August 17, 2012.
3. I own shares of Fannie Mae's preferred stock. I have continuously owned shares of Fannie Mae's preferred stock since before September 6, 2008.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct. Executed on February 7, 2017



J. Patrick Collins

EXHIBIT 2

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

J. PATRICK COLLINS, MARCUS J.
LIOTTA, and WILLIAM M. HITCHCOCK,

Plaintiffs,

vs.

THE FEDERAL HOUSING FINANCE
AGENCY, in its capacity as Conservator of the
Federal National Mortgage Association and the
Federal Home Loan Mortgage Corporation,
MELVIN L. WATT, in his official capacity as
Director of the Federal Housing Finance
Agency, THE DEPARTMENT OF THE
TREASURY, and JACOB J. LEW, in his
official capacity as Secretary of the Treasury,


Defendants.

DECLARATION OF WILLIAM M. HITCHCOCK

I, William M. Hitchcock, declare as follows:

1. I am a Plaintiff in the lawsuit captioned above.
2. Since before this lawsuit was filed, I have continuously owned shares of Fannie Mae's preferred stock.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct. Executed on February 7, 2017.



William M. Hitchcock

EXHIBIT 3

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

J. PATRICK COLLINS, MARCUS J.
LIOTTA, and WILLIAM M. HITCHCOCK,

Plaintiffs,

vs.

THE FEDERAL HOUSING FINANCE
AGENCY, in its capacity as Conservator of the
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Federal Home Loan Mortgage Corporation,
MELVIN L. WATT, in his official capacity as
Director of the Federal Housing Finance
Agency, THE DEPARTMENT OF THE
TREASURY, and JACOB J. LEW, in his
official capacity as Secretary of the Treasury,

Defendants.

DECLARATION OF MARCUS J. LIOTTA

I, Marcus J. Liotta, declare as follows:

1. I am a Plaintiff in the lawsuit captioned above.
2. Since before this lawsuit was filed, I have continuously owned shares of both Freddie Mac's common stock and Fannie Mae's common stock.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct. Executed on February 8, 2017.



Marcus J. Liotta

EXHIBIT 4



Why Housing Reform Still Matters

Michael Bright and Ed DeMarco

June 2016

The 2008 financial crisis left a lot of challenges in its wake. The events of that year led to years of stagnant growth, a painful process of global deleveraging, and the emergence of new banking regulatory regimes across the globe.

But at the epicenter of the crisis was the American housing market. And while America's housing finance system was fundamental to the financial crisis and the Great Recession, reform efforts have not altered America's mortgage market structure or housing access paradigms in a material way.

This work must get done. Eventually, legislators will have to resolve their differences to chart a modernized course for housing in our country. Reflecting upon the progress made and the failures endured in this effort since 2008, we have set ourselves to the task of outlining a framework meant to advance the public debate and help lawmakers create an achievable plan. Through a series of upcoming papers, our goal will be to not just foster debate but to push that debate toward resolution.

Before setting forth solutions, however, it is important to frame the issues and state why we should do this in the first place. In light of the growing chorus urging surrender and going back to the failed model of the past, our objective in this paper is to remind policymakers why housing finance reform is needed and help distinguish aspects of the current system that are worth preserving from those that should be scrapped.

Why Housing Finance Reform Is Needed, and What It Must Accomplish

Structural housing finance reform was never going to be an easy undertaking. But it can't be ignored. After years of debate, we understand that sensible reforms should seek to preserve the aspects of the old system that worked while ridding the system of its flaws. And we understand that transitioning to a new market infrastructure must be carried out without disruption—disruption that could upset mortgage availability in the near term or upset the processes and operations of the thousands of firms that make up the complex housing finance ecosystem.

So no, this was never going to be easy.

Still, nearly a decade after the financial crisis, housing finance is notable for its political and policy complexity as well as the passion that it stirs. Meaningful reform must be achieved, the vast majority of policymakers say, yet the decade anniversary of the conservatorships of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corp. (Freddie Mac) looms.

A home is the largest purchase most Americans will make in their lives. By some estimates, housing is the engine that propels nearly one-fifth of the American economy. Access to decent housing is crucial to a vibrant middle class. On top of all that, the system is enormously intricate; this is not your grandfather's housing market. No longer is the typical mortgage characterized by a 20 percent down payment and funded with community deposits from the local savings and loan. Today, the vast majority of America's mortgages come into existence via a complex financial infrastructure, not via local banks that simply take in deposits and lend them out. Instead we have a web of bank and non-bank lenders, bank and non-bank mortgage servicers, mortgage insurers, guaranteed securities, derivatives, credit investors, rate investors, and more that together connect savers across the globe with families across the country who seek to buy a house. All of this has led to structurally lower and less volatile interest rates. But it has also created complex terrain to navigate.

So here we are eight years after the financial crisis, with the two government-sponsored enterprises (GSEs) that sit at the heart of America's housing finance ecosystem—Fannie Mae and Freddie Mac—trapped in a state of legal limbo called conservatorship. The government life support given to them at the height of the financial crisis was meant to be temporary, followed by legislation replacing the toxic aspects of their activities and reforming our market structure. But a long-term decision about how to replace the life support with something better without disrupting the housing market requires political compromise and pragmatic thinking. Politically, members of Congress on both sides of the aisle will have to give on some issues to achieve an agreement. They will need to put ideology aside and ask, "Will this actually work?"

The challenge of finding sufficient political common ground to break the GSEs out of conservatorship has felt so daunting that it has led to doing nothing. But continued inaction is a de facto decision to stay with what we've got. Others have suggested we give up in a different way: return, hat in hand, to the old model that failed. These arguments are misguided and dangerous. Neither approach would address the failures of the past or the economic challenges of the present.

The former choice—remaining in conservatorship—would allow the entire housing system to rely almost entirely on the decisions of the Federal Housing Finance Agency (FHFA) director and the two CEOs he or she is meant to regulate. In the end, this “head in the sand” strategy is not a serious approach. Such a lack of legislative clarity turns market decisions, such as how to underwrite a loan or price its risk, into a bureaucratic exercise or worse. This is not the proper role for a regulatory agency. But until Congress acts, the FHFA is stuck in its role of regulator and conservator.

The latter idea—returning to the old model, in which the GSEs operate in a blessed state as government-sponsored enterprises that are tasked with a public mission but report to private shareholders, coupled with a management team incentivized to leverage all advantages not for the long-term health of the economy but instead for immediate financial gain—relies on the assumption that future congresses will also bail out Fannie and Freddie successor entities the next time there is a major market disruption. (And there will always be market disruptions.) This path, too, leaves the well-being of the housing market very much to chance.

As the events of 2008 demonstrated, the old model worked only because investors were confident that taxpayers stood behind the companies. If Fannie and Freddie were released from government control and, for all intents and purposes, returned to their pre-conservatorship quasi-private status, are we sure that a future Congress will inject emergency capital into them when they become insolvent or the mortgage-backed securities (MBS) market questions the strength of their guarantee?

Of course, the answer is no. Yet from Congress’ perspective, as much as it may never want to vote for taxpayer life support again, the pressure to keep two dominant players operating could very well lead to another vote to allocate emergency capital into successor entities.

All of this begs the question: Where, exactly, do we go from here?

There are notable, impressive successes inside America’s housing finance system. These must be preserved. Yet we must also reduce the likelihood that financial institutions will need emergency congressional action in the future. Additionally, incentives need to be properly structured and transparent, not comingled and opaque. Put another way, housing finance reform is about throwing out the dirty bathwater but keeping the baby. Fortunately, meaningful steps have already been taken, albeit slowly. And we are writing about these issues because it seems that meaningful policy debate in Washington may begin anew in 2017.

The Secondary Mortgage Market and Its Collapse

While the Bailey Brothers’ Building and Loan from the classic movie *It’s a Wonderful Life* renders a heartwarming picture of local housing finance, only remnants of that system remain today. At least since the savings and loan debacle in the 1980s, the U.S. housing finance system has been dominated by the secondary mortgage market, that is, the marketplace where lenders, bond investors, and the infrastructure of securitization meet.

In simple terms, the secondary market is where individual mortgages made across the country are bundled into large groups of mortgages, called pools, and sold to global investors in a structure called a

About the Authors

Michael Bright is a director in the Milken Institute's Center for Financial Markets. Bright worked as a trader of agency mortgage-backed securities and interest rate derivatives for six years, leaving Wachovia's corporate and investment bank in 2008 at the height of the financial crisis to come to Washington. He worked at the Office of the Comptroller of the Currency in the division of large bank supervision before joining the office of Sen. Bob Corker (R-TN) and serving as a principal author of S.1217, the "Corker-Warner" and later "Johnson-Crapo" housing finance reform bill. Bright has also been involved in the development of several credit-risk transfer deals since leaving Capitol Hill.

Ed DeMarco is a senior fellow in residence at the Milken Institute. Prior to that, he was a 28-year civil servant, culminating with his role as acting director of the Federal Housing Finance Agency from September 2009 to January 2014. There he dealt with the challenges of managing the mega-institutions Fannie Mae and Freddie Mac. DeMarco crafted the 2012 FHFA Strategic Plan for Enterprise Conservatorships and the associated scorecards and set into motion the credit-risk transfer and common securitization initiatives that underpin administrative efforts today.

About the Center for Financial Markets

Based in Washington, D.C., the Milken Institute Center for Financial Markets promotes financial market understanding and works to expand access to capital, strengthen—and deepen—financial markets, and develop innovative financial solutions to the most pressing global challenges.

About the Milken Institute

The Milken Institute is a nonprofit, nonpartisan think tank determined to increase global prosperity by advancing collaborative solutions that widen access to capital, create jobs, and improve health. We do this through independent, data-driven research, action-oriented meetings, and meaningful policy initiatives.

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EXHIBIT 5



WHO WE ARE & WHAT WE DO

FHFA is working to strengthen and secure the United States secondary mortgage markets by providing effective supervision, sound research, reliable data, and relevant policies.

We are an independent regulatory agency responsible for the oversight of vital components of the secondary mortgage markets—the housing government sponsored enterprises of Fannie Mae, Freddie Mac and the Federal Home Loan Bank System. Combined these entities provide more than \$5.8 trillion in funding for the U.S. mortgage markets and financial institutions. Additionally, FHFA is the conservator of Fannie Mae and Freddie Mac.

We are building a better secondary mortgage market for the future. FHFA is pursuing a series of initiatives and strategies to improve the future system of housing finance. One important initiative is the creation of a new Common Securitization Platform that will serve the dual purpose of modernizing current outdated infrastructures and provide the potential for other market participants to use the same infrastructure.

We work with those we regulate to preserve homeownership through the [Home Affordable Refinance Program](#) (HARP) and the [Home Affordable Modification Program](#) (HAMP). The programs provide real help to homeowners and communities - to date these programs have helped millions of Americans remain in their homes.

FHFA was created on July 30, 2008, when the President signed into law the [Housing and Economic Recovery Act of 2008](#).

Our Mission

Ensure that the housing government sponsored enterprises operate in a safe and sound manner so that they serve as a reliable source of

Financial Stability Oversight Council

FHFA is a member agency of the [Financial Stability Oversight Council](#). The Council is charged with identifying risks to the financial stability of the United States; promoting market discipline; and responding to emerging risks to the stability of the United States' financial system.

The other members of the Council are:

[Board of Governors Federal Reserve System](#)

[Commodity Futures Trading Commission](#)

[Consumer Financial Protection Bureau](#)

[Federal Deposit Insurance Corporation](#)

[National Credit Union Administration](#)

[Office of the Comptroller of the Currency](#)

[Securities and Exchange Commission](#)

[Treasury Department](#)

EXHIBIT 6

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

FAIRHOLME FUNDS, INC., <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	No. 13-465C
v.)	(Judge Sweeney)
)	
THE UNITED STATES,)	
)	
Defendant.)	

DECLARATION OF MELVIN L. WATT

I, Melvin L. Watt, hereby declare, based on personal knowledge and/or information and belief as follows:

1. I am Director of the Federal Housing Finance Agency ("FHFA" or the "Conservator") and assumed office on January 6, 2014. Prior to assuming office as Director, I served as an elected Member of the United States House of Representatives from January 1993 until January 2014.
2. FHFA is an independent federal agency with regulatory authority over the Federal National Mortgage Association ("Fannie Mae"), the Federal Home Loan Mortgage Corporation ("Freddie Mac") (together, the "Enterprises") and the 12 Federal Home Loan Banks. Congress created FHFA in July 2008 in response to the housing and economic crisis with the goal of stabilizing the Enterprises and the national housing market. FHFA has served as the Conservator of the Enterprises since September 6, 2008.
3. I have reviewed Plaintiffs' Requests for Production. I have also reviewed the Declaration of Christopher H. Dickerson that will be contemporaneously filed in this case, and I share the concerns expressed about the potential disclosure of predecisional documents plaintiffs seek relating to ongoing and future operations of the conservatorships. The purpose of this

declaration is to set forth some of the significant ways in which Plaintiffs' discovery requests pursuant to the Court's February 26, 2014 Order would adversely impact the ability of FHFA to exercise its powers and functions as Conservator and adversely impact the financial markets. The disclosure of the information requested will have extraordinarily deleterious consequences on the Conservator's conduct of the ongoing and future operations of the conservatorships.

4. In my role as Director, I am responsible for making policy decisions on behalf of the Agency. As such, I am frequently involved in confidential internal deliberations regarding a wide range of policy matters relating to the management, supervision, operation and function of the Enterprises. These deliberations, which frequently concern how the conservatorships should proceed on a wide variety of fronts, embody issues at the heart of the Conservator's congressionally-defined missions.

5. I am aware that Plaintiffs' claims and allegations in this case challenge the Third Amendment to the Preferred Senior Stock Agreements ("PSPAs") between FHFA, on behalf of the Enterprises, and the U.S. Department of the Treasury. I am also aware of this Court's February 26, 2014 Discovery Order, and that on April 7, 2014 Plaintiffs served their First Set of Requests for Production.

6. Plaintiffs' discovery plan -- through document requests, interrogatories and deposing Agency officials -- seeks to obtain confidential, non-public information concerning a range of critical issues such as potential courses of action regarding the future of the conservatorships that relate directly to the Conservator's ongoing mission. Specifically, Plaintiffs' document requests 1 [to the extent it seeks documents relating to ongoing and future operations of the Enterprises], 6, 7, 8, 9 and 10 each seeks information that relates to ongoing or future conservatorship operations. The disclosure of such information, including information

relating to or considered in connection with past conservatorship decisions or relevant to the Conservator's conduct of the ongoing and future operations of the conservatorships, will affect the exercise of powers or functions of the Conservator in a number of ways.

7. The Conservator is charged with directing the largest conservatorships in U.S. history in support of the Nation's multi-trillion dollar mortgage finance system. The disclosure of any plans relating to ongoing and future operation of the conservatorships, including the projections of the future profitability of Fannie Mae and Freddie Mac (or lack thereof) under a range of economic, business and policy scenarios, can be anticipated to have a destabilizing effect on the Nation's housing market and economy.

8. The Enterprises provide critical liquidity to the national housing finance system. To discharge their missions, the Enterprises purchase residential mortgages originated by banks and other qualified lenders, which in turn use the proceeds from those sales to engage in further lending to homebuyers in the primary mortgage market. To finance their purchases of residential mortgages, the Enterprises borrow funds from investors by issuing debt securities, and they also bundle the mortgages into mortgage-backed securities that are in turn sold to investors. The prices at which the Enterprises can sell their debt securities and mortgage-backed securities to such investors are directly related to market perceptions of the Enterprises' financial viability. If the market perception is that the Enterprises are not financially viable, they will have greater difficulty selling their debt and mortgage-backed securities, leading to lower proceeds from such sales. As less capital becomes available to the Enterprises for their future operations, the Enterprises become less able to purchase mortgages from loan originators. That effect would in turn result in higher mortgage rates, reduced loan availability for homebuyers in the primary

market, or both, as loan originators find it more difficult to generate capital for further lending and reduce portfolio risk by re-selling their loans in the secondary market.

9. The disclosure of forward-looking, non-public financial projections could immediately alter market expectations and have a destabilizing impact on the housing market in both the short and long term. For example, disclosure of projections that suggested (or that market participants interpreted as suggesting) that the Enterprises' financial conditions were worse than previously assumed could, through the mechanism outlined above, increase current prices in the primary and secondary mortgage markets. Conversely, disclosure of projections that tended to suggest that the Enterprises' financial viability were enhanced relative to current market expectations could also impact the sales of the Enterprises' debt and mortgage-backed securities, and hence the rates available in the primary and secondary markets. In either case, disclosure of forward-looking, non-public information could result in an array of consequences such as sharp spikes or declines in the cost of obtaining credit for borrowers and large shifts in the demand for mortgage-backed securities. This result would undermine FHFA's ability to direct the conservatorships and detract from Congress's goal of maintaining stability in the federal housing markets. In sum, making available potentially market-moving information regarding projections of future profitability (responsive to document request 1) of the Enterprises, as well as how the conservatorships may end (responsive to document requests 6, 7, 8, 9 and 10), easily could set off a chain of volatile and unpredictable reactions in the financial markets that could not be contained.

10. The intention of the PSPAs was to instill market confidence in the Enterprises. Disclosure of confidential information relating to ongoing and future operations of the conservatorships, which was for internal use by FHFA, and not intended for public disclosure

and consumption, would directly undermine that goal and could induce precisely the market instability that FHFA was created to prevent.

11. Making available in this litigation the type of non-public and confidential information relating to the Conservator's conduct of the ongoing and future operations of the conservatorships could also adversely affect the Conservator's ability to operate the conservatorships because it would enable the Enterprises to gain access to confidential internal FHFA documents that were not intended to be shared with or reviewed by the Enterprises. It is essential for the Conservator to be able to restrict access to confidential agency documents that reflect internal policy deliberations, the disclosure of which would affect the Conservator's ability to direct the ongoing and future operations and activities of the Enterprises. A contrary result would greatly restrain the unfettered ability Congress conferred upon the Conservator to continue to develop and implement the most effective policy solutions for the wide array of operational and other challenges confronting the Enterprises.

12. Disclosure of documents relating to the future of the Enterprises, such as documents responsive to document requests 6 and 8 pertaining to a possible future wind down and termination of the conservatorships, could also severely affect employee stability at Fannie Mae and Freddie Mac, thereby compromising critical policy matters regarding the conservatorships. Between late 2011 and early 2012, voluntary departures from Freddie Mac reached 17% in the wake of different proposals to alter its compensation system. Disclosure of confidential information about the Enterprises' futures could lead to equivalent, or greater, departure levels.

13. Disclosure of information sought by Plaintiffs concerning a wide range of operational and other issues about which final decisions have not yet been made or implemented

fully, such as documents responsive to requests 8 and 10, would mislead the public and adversely affect market participants by disseminating raw data and information suggesting courses of action that may later be rejected or significantly altered. This would be extremely damaging because of the critical policy matters regarding the conservatorships currently under examination and evaluation. The release of documents that reflect prior thinking of Agency personnel concerning matters about which the Agency may follow a different course during my tenure as Director are likely to lead to the public and market participants second-guessing every decision, and will make any changes to Agency policy more difficult at both the deliberation and implementation stages. Thus, the disclosure of such documents and information would substantially impair my ability to direct the operations of the conservatorships in the manner I believe to be in the best interests of the conservatorships and the Agency. Accordingly, disclosure of deliberations of my immediate predecessor and during my tenure could have adverse impact to the Enterprises and market consequences.

14. In summary, any disclosure of information concerning the Conservator's future financial projections, strategic analyses, operational plans, and a broad range of related information responsive to requests 1, 6, 7, 8, 9 and 10 that relate to the Conservator's conduct of the ongoing and future operations of the conservatorships would affect the Conservator's ability to direct the Enterprises. Likewise, the potential negative impact on the Enterprises' financial health from disclosure of such confidential, nonpublic information would undermine the Conservator's ability to conserve and preserve the assets and property of the Enterprises and maintain stability in the housing finance market.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 29th day of May 2014 at Washington, D.C.

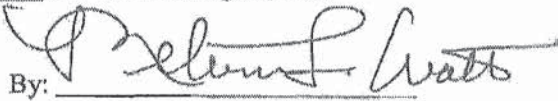
By: 
MELVIN L. WATT

EXHIBIT 7

Housing Share of GDP Expands

BY [DAVID LOGAN](#) on [JUNE 28, 2016](#) • [\(0\)](#)

With the release of the final estimates of first quarter 2016 GDP growth (revised up two-tenths to a 1.1% growth rate), housing's share of gross domestic product (GDP) ticked up slightly to 15.4%. The home building and remodeling component – residential fixed investment – as a share of GDP expanded to 3.4%.

Housing-related activities contribute to GDP in two basic ways.

The first is through residential fixed investment (RFI). RFI is effectively the measure of the home building, multifamily development, and remodeling contributions to GDP. It includes construction of new single-family and multifamily structures, residential remodeling, production of manufactured homes and brokers' fees.

For the first quarter, RFI was 3.4% of the economy, reaching a \$568 billion seasonally adjusted annual rate (SAAR) in inflation-adjusted 2009 dollars. This is the highest quarterly rate for RFI in more than eight years. The first quarter growth for RFI added 0.5 points to the headline GDP growth rate (i.e. GDP would have only expanded 0.6% absent the RFI contribution), the largest contribution since 2012.

The second impact of housing on GDP is the measure of housing services, which includes gross rents (including utilities) paid by renters, and owners' imputed rent (an estimate of how much it would cost to rent owner-occupied units) and utility payments. The inclusion of owners' imputed rent is necessary from a national income accounting approach, because without this measure, increases in homeownership would result in declines for GDP. For the first quarter, housing services was 12.0% of the economy or \$1.98 trillion (SAAR).

Taken together, housing's share of GDP was 15.4% for the first quarter.

EXHIBIT 8

Fannie-Freddie Regulator Said to Plan to Stay On Under Trump

by **Joe Light**

December 15, 2016, 5:00 AM EST

- Mel Watt said to tell FHFA employees of plan to remain in job
- Republican efforts to reshape housing policy could be affected

When Barack Obama leaves office on Jan. 20, Democratic appointees across the government are expected to follow him out the door, to be replaced by officials chosen by Donald Trump. Not Mel Watt -- he isn't planning to go anywhere.

As head of the little-known but powerful Federal Housing Finance Agency, Watt oversees [Fannie Mae](#) and [Freddie Mac](#), the companies that underpin nearly half of U.S. mortgages. Watt has told employees and others close to him that he plans to stay at his post after Trump becomes president to serve out a term that doesn't end until January 2019, according to people familiar with the matter who asked not to be named because the discussions were private.



Mel Watt Photographer: Andrew Harrer/Bloomberg

That could make Watt a potential hurdle to any plans Trump and the Republican-controlled Congress have to overhaul the system that finances the nation's housing market. Steven Mnuchin, Trump's nominee for Treasury Secretary, has already said that removing Fannie and Freddie from government control will be a top priority of the incoming administration.

Watt, through an FHFA spokesman, declined to comment.

A25

Unique Role

Watt, a Democrat who was a member of Congress before taking the FHFA job in 2014, is in a unique role. Because the FHFA is an independent regulator, its leadership isn't supposed to be subject to the will of the president.

At the same time, the agency's decisions can have an almost unrivaled effect on a broad swath of the economy. It can affect mortgage rates by lowering or raising the fees Fannie and Freddie charge. It can also make loans easier or harder to get by changing the companies' credit standards.

For investors who own Fannie and Freddie shares, Watt's status could be a deciding factor in whether they get a financial windfall. The companies have been in U.S. conservatorship since they were bailed out during the 2008 financial crisis at an eventual cost of \$187.5 billion. The companies have since paid Treasury dividends of more than \$250 billion. Some private shareholders say the law gives the FHFA director the power to release them into the private market. If that happened, investors who bought when the companies seemed certain to be wound down could make billions of dollars.

"The agency is profoundly important," said Lisa Rice, executive vice president of the National Fair Housing Alliance, adding that she hopes and expects Watt to stay.

Watt's Approval

While Trump's team hasn't articulated a housing-finance agenda, FHFA's role rose to the fore late last month when Mnuchin said the incoming administration plans to free the companies from the government. To make such a move without legislation, the administration would likely need sign-off from Watt.

Watt has made statements suggesting he might be amenable to allowing the companies to retain more capital. The current bailout terms require them to send nearly all of their profits to Treasury, and by 2018 they will have no capital buffer to protect against losses. In February, he called the companies' shrinking buffers "the most serious risk and the one that has the most potential for escalating in the future."

At the same time, Watt has consistently said that housing-finance reform must be done through Congress, suggesting that he might not back any solution that Trump tries to push through on his own.

In May 2014, Watt said he believed FHFA had the authority to end the conservatorship, "but the alternatives would not be desirable alternatives." The agency's goals "are consistent with continuing the operation of Fannie and Freddie in the here and the now and we'll do that until there is legislation passed," he said at the time.

In November 2014, Watt told reporters that in the long-term he wouldn't rule out recapitalizing and releasing the companies and that the Treasury Department would have to start that conversation.

Congressional Input

Treasury is forbidden to sell its stakes in Fannie and Freddie without congressional approval until 2018 under the terms of legislation passed last year.

"Congress has made its position known clearly that if you're going to end the conservatorship, they want a voice in that decision," said Michael Stegman, who helped shape housing policy in the Obama White House and is now a fellow at the Bipartisan Policy Center in Washington.

Still, some groups have pushed for Watt and the administration to act without Congress.

"The best thing to do is to recap and release," said National Community Reinvestment Coalition President John Taylor, who argues that preserving the companies is necessary to protect their mandates to serve lower income borrowers and fund affordable housing.

Fannie and Freddie don't make mortgages. They buy them from lenders, wrap them into securities and make guarantees to investors in case of default. Through the first half of the year, they backed 43 percent of new mortgages, according to the Urban Institute's Housing Finance Policy

Center.

Trump Pressure

It isn't yet clear whether Trump and the Republican Congress want Watt to leave and what leverage they could bring to bear to make it happen.

A recent court ruling said a president should be able to remove the director of the Consumer Financial Protection Bureau at will and said the FHFA has a similar governance structure. That decision is under appeal.

While Watt plans to stay, there are tactics lawmakers could use to make his life unpleasant, including frequent congressional hearings, investigations or other public conflicts. Watt turns 72 years old next year.

Before he started his five-year term in January 2014, many Republicans believed that Watt would tell Fannie and Freddie to lower credit standards, slash prices and take other steps that reflected his two-decade tenure in Congress as a North Carolina Democrat.

Instead, Watt has taken more measured steps, often frustrating members of both parties.

His predecessor refused requests to slash mortgage balances for borrowers who owed more than their homes were worth. This year, Watt released a program to reduce principal, but one that was much smaller than some advocates sought.

Replacement Unknown

The middle path taken by Watt could reduce the urgency among Republicans to seek a replacement, especially while Trump barrels through dozens of other confirmations, said Mark Calabria, director of financial regulation studies at the libertarian Cato Institute.

That doesn't mean advocates of more mortgage lending to low- and moderate-income borrowers aren't concerned. Taylor, of the National Community Reinvestment Coalition, said affordable housing advocates have encouraged Watt to stay.

Taylor said he hopes Watt increases the number of loans Fannie and Freddie back to low- and moderate-income borrowers and lowers their fees.

"We and others are worried about what the replacement would look like," he said.

EXHIBIT 9

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

GAIL C. SWEENEY ESTATE MARITAL
TRUST, derivatively on behalf of FEDERAL
NATIONAL MORTGAGE ASSOCIATION,

Plaintiff,

v.

UNITED STATES TREASURY
DEPARTMENT and JACOB J. LEW, in his
capacity as Secretary of the Treasury,

Defendants,

and

FEDERAL NATIONAL MORTGAGE
ASSOCIATION; FEDERAL HOUSING
FINANCE AGENCY; and EDWARD J.
DEMARCO, in his capacity as Acting Director
of FEDERAL HOUSING FINANCE
AGENCY,

Nominal Defendants.

Civil Action No.: 1:13-cv-00206 (ABJ)

**REPLY IN SUPPORT OF RENEWED MOTION OF THE FEDERAL HOUSING
FINANCE AGENCY AS CONSERVATOR OF FANNIE MAE TO SUBSTITUTE FOR
SHAREHOLDER DERIVATIVE PLAINTIFF**

Plaintiff's Opposition contends that the Conservator's authority to substitute for derivative plaintiffs must be nullified because of a purported "conflict of interest" between the Federal Housing Finance Agency ("FHFA") and the U.S. Treasury. This argument, however, is based on the false premise that there is a "conflict of interest" exception to the Congressional directive that the Conservator succeeds to "all rights, titles, powers, and privileges . . . of any stockholder." 12 U.S.C. § 4617(b)(2)(A)(i). There is not. Section 4617(b)(2)(A)(i) transfers all rights, titles, powers, and privileges of any stockholder to the Conservator without qualification or limitation. Accordingly, Plaintiff's Opposition fails as a matter of law.

Moreover, even accepting the false premise that such a "conflict of interest" exception exists, Plaintiff fails to plead facts sufficient to establish any conflict whatsoever, let alone one so manifest as to override the absolute congressional mandate that all such rights, titles, powers, and privileges be vested exclusively in the Conservator. Plaintiff predicates its statutory nullification argument on two decisions issued by other circuits applying a different statute to factual scenarios that even Plaintiff concedes are not present here. Plaintiff is thus reduced to urging this Court to bar the Conservator from complying with its statutory obligation to assume and exercise the rights, titles, powers, and privileges of all stockholders on nothing more substantial than a listing of every connection it can find or imagine between FHFA and Treasury, none of which are even remotely supportive of Plaintiff's "conflict of interest" claims.

FHFA is an independent agency that operates autonomously and with full legislative authority. As a matter of statute, FHFA is not beholden to Treasury or any other agency. Thus, even if there were a conflict of interest exception to the statutory succession provisions at issue here — and there is not — Plaintiff is unable to allege any conflict of interest that could justify

nullifying the congressional mandate that the Conservator succeed to “all rights, titles, powers, and privileges . . . of any stockholder.”

I. THERE IS NO CONFLICT OF INTEREST EXCEPTION TO HERA THAT WOULD LIMIT THE CONSERVATOR’S RIGHTS AND AUTHORITY

As this Court and the D.C. Circuit have recognized, the directive in the Housing and Economic Recovery Act (“HERA”) that the Conservator succeeds to “all rights, titles, powers, and privileges . . . of any stockholder,” 12 U.S.C. § 4617(b)(2)(A)(i), “plainly transfers shareholders’ ability to bring derivative suits . . . to FHFA.” *Kellmer v. Raines*, 674 F.3d 848, 850 (D.C. Cir. 2012). HERA consolidates all the powers of the Enterprises, their directors, and their shareholders in the Conservator, and it contains no qualification to the Conservator’s immediate statutory succession to these rights and powers. Indeed, Congress went to great lengths to insulate the Conservator’s lawful exercise of its statutory authorities from judicial challenges such as this. *See, e.g.*, 12 U.S.C. § 4617(f) (“[N]o court may take any action to restrain or affect the exercise of powers or functions of the Agency as a conservator or a receiver.”).

The Plaintiff asks the Court to create a “conflict of interest” exception to both the withdrawal of jurisdiction effected by Section 4617(f) and the Conservator’s mandatory succession obligations under Section 4617(b)(2)(A)(i) based on decisions from the Ninth and Federal Circuits applying the Financial Institutions Reform, Recovery, and Enforcement Act (“FIRREA”). *See First Hartford Corp. Pension Plan & Trust v. United States*, 194 F.3d 1279 (Fed. Cir. 1999); *Delta Savs. Bank v. United States*, 265 F.3d 1017 (9th Cir. 2001). Neither of these FIRREA decisions, arising under factual circumstances bearing no relation to those at issue here, support the creation of an extra-textual exception to HERA in this case. *See, e.g., United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 242 (1989) (“The plain meaning of legislation

EXHIBIT 10

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**


)	No. 1:13-cv-00206-ABJ
GAIL C. SWEENEY ESTATE)	
MARITAL TRUST,)	
)	
Plaintiff,)	
)	
v.)	
)	
U.S. DEPARTMENT OF THE)	
TREASURY, <i>et al.</i>,)	
)	
Defendants.)	
)	

DECLARATION OF TIMOTHY BOWLER

I, Timothy Bowler, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am currently Deputy Assistant Secretary, Capital Markets in the U.S. Department of the Treasury (Treasury). I have held this position since August 1, 2011.
2. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith.
3. Treasury is an executive agency. Treasury functions autonomously from the Federal Housing Finance Agency (FHFA).
4. Treasury has not attempted to subject FHFA to its supervision or direction in its exercise of its rights, powers, and privileges as conservator or receiver of Federal National Mortgage Association (Fannie Mae).
5. Treasury and FHFA work collaboratively on certain issues but Treasury makes independent determinations.

6. Treasury has not and does not prevent FHFA from suing Treasury if FHFA chooses to do so.
7. The Preferred Stock Purchase Agreements do not allow Treasury to refrain from funding draws by Fannie Mae if FHFA brings a lawsuit against Treasury.
8. The Secretary of the Treasury serves as a member of the Federal Housing Finance Oversight Board (FHFOB), along with the Secretary of Housing and Urban Development, the Chairman of the U.S. Securities and Exchange Commission, and the Director of FHFA.
9. The Director of FHFA is the Chairperson of the FHFOB. The statutory mandate and function of FHFOB is to advise the Director of FHFA. The FHFOB has not and does not control the Director of FHFA.
10. I declare, under penalty of perjury that the foregoing is true and correct. Executed on September 30, 2013, in Washington, DC.



Timothy Bowler
Deputy Assistant Secretary, Capital Markets
U.S. Department of the Treasury

EXHIBIT 11

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

<p>PERRY CAPITAL LLC,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>JACOB J. LEW, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>Civil Action No. 13-cv-1025 (RLW)</p>
<p>FAIRHOLME FUNDS, INC., <i>et al.</i></p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>FEDERAL HOUSING FINANCE AGENCY, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>Civil Action No. 13-cv-1053 (RLW)</p>
<p>ARROWOOD INDEMNITY COMPANY, <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>FEDERAL NATIONAL MORTGAGE ASSOCIATION, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>Civil Action No. 13-cv-1439 (RLW)</p>
<p>In re Fannie Mae/Freddie Mac Senior Preferred Stock Purchase Agreement Class Action Litigations</p> <hr/> <p>This document relates to: ALL CASES</p>	<p>Misc. Action No. 13-mc-01288 (RLW)</p>

**NOTICE OF FILING DOCUMENT COMPILATION BY DEFENDANTS
FEDERAL HOUSING FINANCE AGENCY AND EDWARD DEMARCO
REGARDING THIRD AMENDMENT TO
SENIOR PREFERRED STOCK PURCHASE AGREEMENTS**

Defendants Federal Housing Finance Agency (“FHFA” or “Conservator”), as Conservator for the Federal National Mortgage Association (“Fannie Mae”) and the Federal Home Loan Mortgage Corporation (“Freddie Mac,” together with Fannie Mae, the “Enterprises”), and Edward DeMarco, in his official capacity as Acting Director of the Federal Housing Finance Agency (collectively, the “FHFA Defendants”) hereby provide this notice of filing a document compilation.

Plaintiffs allege that the Third Amendment to the Treasury Agreement is arbitrary and capricious under the Administrative Procedure Act (“APA”). It is undisputed that the actions challenged by plaintiffs were undertaken by FHFA in its capacity as statutory Conservator of Fannie Mae and Freddie Mac. This Court is without jurisdiction to review such actions of the Conservator. 12 U.S.C. § 4617(f). As the APA does not permit review of actions of the Conservator (5 U.S.C. § 701(a)(2)), Defendants FHFA and DeMarco are not required to—and have not—created or maintained an administrative record relating to the execution of the Third Amendment. Nevertheless, the enclosed documents reflect the considerations and views FHFA as Conservator took into account in connection with execution of the Third Amendment. The enclosed index to the documents identifies the relevant considerations.

Dated: December 17, 2013

/s/ Asim Varma

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Agency and Edward DeMarco*

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

J. PATRICK COLLINS, *et al.*,

Plaintiffs,

vs.

THE FEDERAL HOUSING FINANCE
AGENCY, *et al.*,

Defendants.

No. 4:16-cv-03113

[PROPOSED] ORDER

Upon consideration of the Motions to Dismiss filed by Defendants Federal Housing Finance Agency as Conservator for Fannie Mae and Freddie Mac, FHFA Director Melvin L. Watt, the Department of the Treasury, and Treasury Secretary Jacob J. Lew, it is hereby ORDERED that Defendants' motions are DENIED.

Dated: _____

Honorable Nancy F. Atlas
United States District Court Judge