ORAL ARGUMENT SCHEDULED FOR APRIL 15, 2016

Nos. 14-5243 (L), 14-5254 (con.), 14-5260 (con.), 14-5262 (con.)

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

PERRY CAPITAL LLC, for and on behalf of investment funds for which it acts as investment manager,

Plaintiff-Appellant,

v.

JACOB J. LEW, in his official capacity as the Secretary of the Department of the Treasury, MELVIN L. WATT, in his official capacity as Director of the Federal Housing Finance Agency, UNITED STATES DEPARTMENT OF THE TREASURY, and FEDERAL HOUSING FINANCE AGENCY,

Defendants-Appellees.

On Appeal From The United States District Court
For The District Of Columbia

JOINT APPENDIX – VOLUME I of V (J.A. 1-820)

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TABLE OF CONTENTS

Page

VOLUME I

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

TABLE OF CONTENTS
(continued)

VOLUME II

TABLE OF CONTENTS
(continued)

TABLE OF CONTENTS
(continued)

TABLE OF CONTENTS
(continued)

Page

<u>VOLUME V</u>

TABLE OF CONTENTS
(continued)

Page

APPEAL,CLOSED,TYPE-C

U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:13-cv-01025-RCL

PERRY CAPITAL LLC v. LEW et al
Assigned to: Judge Royce C. Lamberth
Case in other court: USCA, 14-05243
Cause: 05:0706 Judicial Review of Agency Actions

Date Filed: 07/07/2013
Date Terminated: 10/10/2014
Jury Demand: None
Nature of Suit: 899 Administrative Procedure Act/Review or Appeal of Agency Decision
Jurisdiction: U.S. Government Defendant

Plaintiff

PERRY CAPITAL LLC
for and on behalf of investment funds for which it acts as investment manager

represented by

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V.

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Defendant

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Defendant

	represented by	

FEDERAL HOUSING FINANCE AGENCY	**Asim Varma** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED* **David Block Bergman** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED* **Howard Neil Cayne** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED*

Date Filed	#	Docket Text
07/07/2013	1	COMPLAINT against All Defendants (Filing fee $ 400 receipt number 0090-3389207) filed by PERRY CAPITAL LLC. (Attachments: # 1 Civil Cover Sheet, # 2 Summons Summons to US Attorney for the District of Columbia, # 3 Summons Summons to the Attorney General, # 4 Summons Summons to Edward DeMarco, # 5 Summons Summons to Jacob J. Lew, # 6 Summons Summons to Federal Housing Finance Agency, # 7 Summons Summons to Department of Treasury)(Cox, Douglas) (Entered: 07/07/2013)
07/07/2013	2	Corporate Disclosure Statement by PERRY CAPITAL LLC. (Cox, Douglas) (Entered: 07/07/2013)
07/07/2013		Case Assigned to Judge Robert L. Wilkins. (kb) (Entered: 07/08/2013)
07/08/2013	3	NOTICE of Appearance by David Michael Glass on behalf of DEPARTMENT OF THE TREASURY, JACOB J. LEW (Glass, David) (Entered: 07/08/2013)
07/08/2013	4	ELECTRONIC SUMMONS (6) Issued as to EDWARD DEMARCO, DEPARTMENT OF THE TREASURY, FEDERAL HOUSING FINANCE AGENCY, JACOB J. LEW, U.S. Attorney and U.S. Attorney General. (Attachments: # 1 Summons, # 2 Summons, # 3 Summons, # 4 Summons, # 5 Summons, # 6 Consent, # 7 Notice of Consent)(kb) (Entered: 07/08/2013)
07/08/2013	5	NOTICE of Appearance by Douglas R. Cox on behalf of PERRY CAPITAL LLC (Cox, Douglas) (Entered: 07/08/2013)
07/08/2013	6	NOTICE of Appearance by Nikesh Jindal on behalf of PERRY CAPITAL LLC (Jindal, Nikesh) (Entered: 07/08/2013)
07/08/2013	7	NOTICE of Appearance by Derek S. Lyons on behalf of PERRY CAPITAL LLC (Lyons, Derek) (Entered: 07/08/2013)
07/09/2013	8	NOTICE of Appearance by Theodore B. Olson on behalf of PERRY CAPITAL LLC (Olson, Theodore) (Entered: 07/09/2013)
07/12/2013	9	

		RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the United States Attorney. Date of Service Upon United States Attorney on 7/9/2013. Answer due for ALL FEDERAL DEFENDANTS by 9/7/2013. (Jindal, Nikesh) (Entered: 07/12/2013)
07/12/2013	10	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on United States Attorney General. Date of Service Upon United States Attorney General 07/09/2013. (Jindal, Nikesh) (Entered: 07/12/2013)
07/12/2013	11	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. DEPARTMENT OF THE TREASURY served on 7/9/2013 (Jindal, Nikesh) (Entered: 07/12/2013)
07/12/2013	12	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. EDWARD DEMARCO served on 7/9/2013 (Jindal, Nikesh) (Entered: 07/12/2013)
07/12/2013	13	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. FEDERAL HOUSING FINANCE AGENCY served on 7/9/2013 (Jindal, Nikesh) (Entered: 07/12/2013)
07/12/2013	14	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. JACOB J. LEW served on 7/9/2013 (Jindal, Nikesh) (Entered: 07/12/2013)
07/31/2013	15	NOTICE OF SUBSTITUTION OF COUNSEL by Joel L. McElvain on behalf of DEPARTMENT OF THE TREASURY, JACOB J. LEW Substituting for attorney David M. Glass (McElvain, Joel) (Entered: 07/31/2013)
07/31/2013	16	NOTICE of Appearance by Thomas David Zimpleman on behalf of DEPARTMENT OF THE TREASURY, JACOB J. LEW (Zimpleman, Thomas) (Entered: 07/31/2013)
08/26/2013	17	NOTICE of Appearance by Asim Varma on behalf of EDWARD DEMARCO, FEDERAL HOUSING FINANCE AGENCY (Varma, Asim) (Entered: 08/26/2013)
08/26/2013	18	NOTICE of Appearance by Howard Neil Cayne on behalf of EDWARD DEMARCO, FEDERAL HOUSING FINANCE AGENCY (Cayne, Howard) (Entered: 08/26/2013)
08/26/2013	19	NOTICE of Appearance by David Block Bergman on behalf of EDWARD DEMARCO, FEDERAL HOUSING FINANCE AGENCY (Bergman, David) (Entered: 08/26/2013)
09/08/2013	20	STIPULATION *as to Briefing Schedule* by DEPARTMENT OF THE TREASURY, JACOB J. LEW. (Attachments: # 1 Text of Proposed Order) (McElvain, Joel) (Entered: 09/08/2013)
09/09/2013		MINUTE ORDER: It is hereby ORDERED that all deadlines in this case shall be STAYED until further notice while the Court reviews all of the pending motions in all of the related pending cases. Signed by Judge Robert L. Wilkins on 9/9/2013. (tcb) (Entered: 09/09/2013)
09/23/2013		MINUTE ORDER: All briefing (including responses to pending motions) and obligations to answer, or otherwise respond to complaints, are hereby stayed

		until further notice of the court. Signed by Judge Robert L. Wilkins on 9/23/2013. (tcb). (Entered: 09/23/2013)
10/09/2013	21	PRELIMINARY CASE MANAGEMENT ORDER No. 1IN THE FANNIE MAE/FREDDIE MAC SENIOR PREFERRED STOCK PURCHASEAGREEMENT LITIGATIONS; On July 7, 2013, an investment manager filed a complaint in this court against a number of parties, including the Department of the Treasury (Treasury) and the Federal Housing Finance Agency (FHFA), in its capacity as the conservator for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac). Perry Capital LLC v. Lew, 13-cv-1025. All parties shall appear for a status hearing in this matter on November 12, 2013 at 2:00 pm to discuss the issues specified in this Order. Other than this Joint Status Report, all briefing (including responses to pending motions) and obligations to answer, or otherwise respond to complaints, are still stayed until further notice of the Court. (SEE ORDER FOR FULL DETAILS). Signed by Judge Robert L. Wilkins on 10/9/2013. (tcb) (Entered: 10/09/2013)
10/24/2013	22	NOTICE of Appearance by Matthew D McGill on behalf of PERRY CAPITAL LLC (McGill, Matthew) (Entered: 10/24/2013)
11/06/2013	23	STATUS REPORT *On Behalf Of All Parties* by PERRY CAPITAL LLC. (Attachments: # 1 Exhibit Exhibit A, # 2 Exhibit Exhibit B)(Olson, Theodore) (Entered: 11/06/2013)
11/12/2013		Minute Entry for proceedings held before Judge Robert L. Wilkins: Status Conference held and concluded on 11/12/2013. Plaintiff's Motion to Appoint Counsel; Heard and the Court to grant. Parties to submit a Word version of the proposed order to the Court. Motions Hearing set for 6/23/2014 at 9:30 AM in Courtroom 27A before Judge Robert L. Wilkins. (Court Reporter Patty Gels) (tcb). (Entered: 11/12/2013)
11/13/2013		Set/Reset Hearings: Motion Hearing set for 6/23/2014 at 9:30 AM in Courtroom 27A before Judge Robert L. Wilkins. (tcb) (Entered: 11/13/2013)
11/18/2013	24	ORDER REGARDING BRIEFING SCHEDULE IN ALL CASES: Upon consideration of the Joint Status Report submitted on November 6, 2013 and pursuant to the Federal Rule of Civil Procedure 42, it is hereby ORDERED that the above captioned cases proceed according to the following schedule: Interim co-lead class counsel file a consolidated class action complaint due by 12/3/2013. Defendants file the administrative record due by 12/17/2013.. Defendants file dispositive motions due by 1/17/2014. Plaintiffs file oppositions to defendants motions and cross-motions due by 2/19/2014. Defendants file replies in support of their motions and oppositions to plaintiffs cross motions due by 4/2/2014. Plaintiffs file replies in support of their cross motions due by 5/2/2014. Hearing on defendants dispositive motions and plaintiffs cross-motions set for 6/23/2014 at 9:30 AM in Courtroom 27A before Judge Robert L. Wilkins.(SEE ORDER FOR FULL DETAILS). Signed by Judge Robert L. Wilkins on 11/18/2013. (tcb) (Entered: 11/18/2013)
12/06/2013	25	STATUS REPORT *On Behalf Of All Parties* by PERRY CAPITAL LLC. (Olson, Theodore) (Entered: 12/06/2013)

12/17/2013	26	ADMINISTRATIVE RECORD by DEPARTMENT OF THE TREASURY, JACOB J. LEW. (Attachments: # 1 Exhibit Administrative Record part 1, # 2 Exhibit Administrative Record part 2, # 3 Exhibit Administrative Record part 3, # 4 Exhibit Administrative Record part 4, # 5 Exhibit Administrative Record part 5, # 6 Exhibit Administrative Record part 6, # 7 Exhibit Administrative Record part 7, # 8 Exhibit Administrative Record part 8, # 9 Exhibit Administrative Record part 9, # 10 Exhibit Administrative Record part 10, # 11 Exhibit Administrative Record part 11, # 12 Exhibit Administrative Record part 12, # 13 Exhibit Administrative Record part 13, # 14 Exhibit Administrative Record part 14)(McElvain, Joel) (Entered: 12/17/2013)
12/17/2013	27	NOTICE *OF FILING DOCUMENT COMPILATION REGARDING THIRD AMENDMENT TO SENIOR PREFERRED STOCK PURCHASE AGREEMENTS* by EDWARD DEMARCO, FEDERAL HOUSING FINANCE AGENCY (Attachments: # 1 Index, # 2 Exhibit Part 1, # 3 Exhibit Part 2, # 4 Exhibit Part 3, # 5 Exhibit Part 4, # 6 Exhibit Part 5, # 7 Exhibit Part 6, # 8 Exhibit Part 7, # 9 Exhibit Part 8, # 10 Exhibit Part 9, # 11 Exhibit Part 10, # 12 Exhibit Part 11, # 13 Exhibit Part 12, # 14 Exhibit Part 13, # 15 Exhibit Part 14, # 16 Exhibit Part 15, # 17 Exhibit Part 16, # 18 Exhibit Part 17)(Varma, Asim) (Entered: 12/17/2013)
12/19/2013	28	ERRATA *with Respect to Administrative Record* by DEPARTMENT OF THE TREASURY, JACOB J. LEW. (Attachments: # 1 Exhibit Freddie Mac 2010 Form 10-K (0640-1063), # 2 Exhibit Freddie Mac First Quarter 2011 Form 10-Q (1231-1461), # 3 Exhibit Freddie Mac Second Quarter 2011 Form 10-Q (1647-1892), # 4 Exhibit Freddie Mac Third Quarter 2011 Form 10-Q (2114-2357), # 5 Exhibit Freddie Mac 2011 Form 10-K (2765-3247), # 6 Exhibit Freddie Mac First Quarter 2012 Form 10-Q (3532-3774))(McElvain, Joel) (Entered: 12/19/2013)
12/20/2013	29	MOTION for Leave to Appear Pro Hac Vice :Attorney Name- Janet M. Weiss, :Firm- Gibson, Dunn & Crutcher LLP, :Address- 200 Park Ave., New York NY 10166. Phone No. - 212-351-3988. Fax No. - 212-351-5234 by PERRY CAPITAL LLC (Attachments: # 1 Declaration Declaration of Janet M. Weiss, # 2 Text of Proposed Order Text of Proposed Order)(Cox, Douglas) (Entered: 12/20/2013)
01/02/2014		MINUTE ORDER granting 29 Motion for Leave to Appear Pro Hac Vice of Attorney Janet M. Weiss. Attorney Weiss is permitted to appear pro hac vice in this matter on behalf of Plaintiff PERRY CAPITAL LLC. Signed by Judge Robert L. Wilkins on 1/2/2014. (tcb) (Entered: 01/02/2014)
01/06/2014		MINUTE ORDER: It is hereby ORDERED that Defendants briefs in support of their dispositive motion in the three non-consolidated actions (Perry Capital LLC v. Lew, et al., No. 13-cv-1025 (RLW), Fairholme Funds, Inc., et al. v. Federal Housing Finance Agency, et al., No. 13-cv-1053 (RLW), and Arrowood Indemnity Co., et al. v. Federal National Mortgage Association, et al., No. 13-cv-1439 (RLW)) shall not exceed 130 pages. It is further ORDERED that Plaintiffs briefs in support of their opposition to Defendants dispositive motion and in support of any cross-motion for summary judgment shall not exceed 150 pages. Should Plaintiffs conclude, after reviewing Defendants filings and

		conferring in good faith, that an adequate response requires more than 150 pages, Plaintiffs counsel shall promptly inform the Court and file an appropriate motion. These page limits are inclusive of any supplemental briefs to be filed by the parties. Signed by Judge Robert L. Wilkins on 1/6/2014. (tcb) (Entered: 01/06/2014)
01/08/2014	30	Unopposed MOTION for Leave to File Excess Pages by DEPARTMENT OF THE TREASURY, JACOB J. LEW (McElvain, Joel) (Entered: 01/08/2014)
01/09/2014		MINUTE ORDER: Defendants 30 Unopposed MOTION for Leave to File Excess Pages is hereby GRANTED. Counsel for Defendants is admonished to comply with the local rules in the future and submit a proposed order with ALL motions pursuant to Local Rule 7(c). Signed by Judge Robert L. Wilkins on 1/9/2014. (tcb) (Entered: 01/09/2014)
01/17/2014	31	MOTION to Dismiss *or, in the Alternative, for Summary Judgment* by DEPARTMENT OF THE TREASURY, JACOB J. LEW (Attachments: # 1 Memorandum in Support, # 2 Text of Proposed Order)(McElvain, Joel). Added MOTION for Summary Judgment on 1/21/2014 (znmw,). (Entered: 01/17/2014)
01/17/2014	32	MOTION to Dismiss *All Claims and, in the Alternative, for Summary Judgment as to Plaintiffs Arbitrary and Capricious Claims and Memorandum in Support* by FEDERAL HOUSING FINANCE AGENCY (Attachments: # 1 Text of Proposed Order)(Cayne, Howard). Added MOTION for Summary Judgment on 1/21/2014 (znmw,). (Entered: 01/17/2014)
01/17/2014	33	MOTION to Take Judicial Notice by EDWARD DEMARCO, FEDERAL HOUSING FINANCE AGENCY (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Text of Proposed Order)(Cayne, Howard) (Entered: 01/17/2014)
01/22/2014		Case reassigned by consent to Judge Royce C. Lamberth. Judge Robert L. Wilkins has been elevated to the U.S. Court of Appeals for D.C. and is no longer assigned to the case. (gt,) (Entered: 01/22/2014)
01/30/2014	34	STIPULATION re 33 MOTION to Take Judicial Notice *Stipulation To Conform Briefing Schedule On Defendants' Motion For Judicial Notice To Briefing Schedule Established For Defendants' Dispositive Motions* by PERRY CAPITAL LLC. (Olson, Theodore) (Entered: 01/30/2014)
02/14/2014	35	STIPULATION *Regarding Briefing Schedule In All Cases* by PERRY CAPITAL LLC. (Olson, Theodore) (Entered: 02/14/2014)
03/14/2014	36	Memorandum in opposition to re 33 MOTION to Take Judicial Notice filed by PERRY CAPITAL LLC. (Attachments: # 1 Text of Proposed Order)(McGill, Matthew) (Entered: 03/14/2014)
03/21/2014	37	Cross MOTION for Summary Judgment *on Administrative Procedure Act Claims* by PERRY CAPITAL LLC (Attachments: # 1 Text of Proposed Order, # 2 Declaration of Michael C. Neus, # 3 Declaration of Eugene G. Ballard, # 4 Declaration of Bruce R. Berkowitz, # 5 Declaration of Sean Beatty)(Olson, Theodore) (Entered: 03/21/2014)

03/21/2014	38	Memorandum in opposition to re 32 MOTION to Dismiss *All Claims and, in the Alternative, for Summary Judgment as to Plaintiffs Arbitrary and Capricious Claims and Memorandum in Support* MOTION for Summary Judgment, 31 MOTION to Dismiss *or, in the Alternative, for Summary Judgment* MOTION for Summary Judgment filed by PERRY CAPITAL LLC. (Attachments: # 1 Text of Proposed Order, # 2 Declaration of Michael C. Neus, # 3 Declaration of Eugene G. Ballard, # 4 Declaration of Bruce R. Berkowitz, # 5 Declaration of Sean Beatty)(Olson, Theodore) (Entered: 03/21/2014)
05/02/2014	39	STIPULATION *Regarding Enlargement of Page Limits* by DEPARTMENT OF THE TREASURY, JACOB J. LEW. (McElvain, Joel) (Entered: 05/02/2014)
05/02/2014	40	REPLY to opposition to motion re 31 MOTION to Dismiss or, in the Alternative, for Summary Judgment filed by DEPARTMENT OF THE TREASURY, JACOB J. LEW. (McElvain, Joel) Modified on 5/5/2014 to correct docket link (jf,). (Entered: 05/02/2014)
05/02/2014	41	Memorandum in opposition to re 37 Cross MOTION for Summary Judgment *on Administrative Procedure Act Claims* filed by DEPARTMENT OF THE TREASURY, JACOB J. LEW. (McElvain, Joel) (Entered: 05/02/2014)
05/02/2014	42	REPLY to opposition to motion re 32 MOTION to Dismiss *All Claims and, in the Alternative, for Summary Judgment as to Plaintiffs Arbitrary and Capricious Claims and Memorandum in Support* MOTION for Summary Judgment filed by EDWARD DEMARCO, FEDERAL HOUSING FINANCE AGENCY. (Cayne, Howard) (Entered: 05/02/2014)
05/02/2014	43	Memorandum in opposition to re 37 Cross MOTION for Summary Judgment *on Administrative Procedure Act Claims* filed by EDWARD DEMARCO, FEDERAL HOUSING FINANCE AGENCY. (Cayne, Howard) (Entered: 05/02/2014)
05/02/2014	44	REPLY to opposition to motion re 33 MOTION to Take Judicial Notice filed by EDWARD DEMARCO, FEDERAL HOUSING FINANCE AGENCY. (Cayne, Howard) (Entered: 05/02/2014)
05/27/2014	45	NOTICE OF WITHDRAWAL OF APPEARANCE as to PERRY CAPITAL LLC. Attorney Derek S. Lyons terminated. (Olson, Theodore) (Entered: 05/27/2014)
06/02/2014	46	STIPULATION *Regarding Enlargement of Page Limits* by PERRY CAPITAL LLC. (Olson, Theodore) (Entered: 06/02/2014)
06/02/2014	47	REPLY to opposition to motion re 37 Cross MOTION for Summary Judgment *on Administrative Procedure Act Claims* filed by PERRY CAPITAL LLC. (Olson, Theodore) (Entered: 06/02/2014)
06/05/2014		MINUTE ORDER postponing the motions hearing set by the 11/12/2013 Minute Entry until further order of the Court. Signed by Judge Royce C. Lamberth on June 5, 2014. (lcrcl5) (Entered: 06/05/2014)
09/18/2014	48	NOTICE OF WITHDRAWAL OF APPEARANCE as to PERRY CAPITAL LLC. Attorney Nikesh Jindal terminated. (Olson, Theodore) (Entered: 09/18/2014)

09/18/2014	49	MOTION for Supplementation of Defendants' Administrative Records by PERRY CAPITAL LLC (Attachments: # 1 Text of Proposed Order, # 2 Declaration of Matthew D. McGill)(Olson, Theodore) (Entered: 09/18/2014)
09/30/2014	50	ORDER on DEFENDANTS' MOTION FOR JUDICIAL NOTICE granting in part and denying in part (33) Motion to Take Judicial Notice in case 1:13-cv-01025-RCL; granting in part and denying in part (29) Motion to Take Judicial Notice in case 1:13-cv-01053-RCL; granting in part and denying in part (37) Motion to Take Judicial Notice in case 1:13-cv-01439-RCL; granting in part and denying in part (21) Motion to Take Judicial Notice in case 1:13-mc-01288-RCL. Signed by Judge Royce C. Lamberth on 9/30/2014. (tg,) (Entered: 09/30/2014)
09/30/2014	51	MEMORANDUM OPINION. Signed by Judge Royce C. Lamberth on 9/30/2014. (tg,) (Entered: 09/30/2014)
09/30/2014	52	ORDER GRANTING the defendants' motions to dismiss and DENYING the plaintiffs' cross-motion for summary judgment. Signed by Judge Royce C. Lamberth on 9/30/2014. (tg,) (Entered: 09/30/2014)
09/30/2014	53	ORDER denying 49 Motion for supplementation of the administrative record, limited discovery, suspension of briefing on thedefendants' dispositive motions, and a status conference as moot due to the dismissal of this case pursuant to the Court's Order 52 issued this date. Signed by Judge Royce C. Lamberth on 9/30/2014. (tg,) (Entered: 09/30/2014)
10/02/2014	54	NOTICE OF APPEAL TO DC CIRCUIT COURT as to 51 Memorandum & Opinion, 53 Order on Motion for Miscellaneous Relief, 52 Order by PERRY CAPITAL LLC. Filing fee $ 505, receipt number 0090-3859059. Fee Status: Fee Paid. Parties have been notified. (Olson, Theodore) (Entered: 10/02/2014)
10/02/2014	55	Transmission of the Notice of Appeal, Order Appealed, and Docket Sheet to US Court of Appeals. The Court of Appeals fee was paid this date re 54 Notice of Appeal to DC Circuit Court. (rdj) (Entered: 10/02/2014)
10/08/2014		USCA Case Number 14-5243 for 54 Notice of Appeal to DC Circuit Court, filed by PERRY CAPITAL LLC. (kb) (Entered: 10/09/2014)

APPEAL,CLOSED,TYPE-C

U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:13-cv-01053-RCL

FAIRHOLME FUNDS, INC. et al v. FEDERAL HOUSING FINANCE AGENCY, et al
Assigned to: Judge Royce C. Lamberth
Case in other court: USCA, 14-05254
Cause: 05:702 Administrative Procedure Act

Date Filed: 07/10/2013
Date Terminated: 10/10/2014
Jury Demand: None
Nature of Suit: 890 Other Statutory Actions
Jurisdiction: U.S. Government Defendant

Plaintiff

FAIRHOLME FUNDS, INC
on behalf of its series, The Fairholme Fund

represented by

Peter A. Patterson
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Washington, DC 20036
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ATTORNEY TO BE NOTICED

Plaintiff

FAIRHOLME FUND
a series of Fairholme Funds, Inc.

represented by **Peter A. Patterson**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

David Henry Thompson
(See above for address)
ATTORNEY TO BE NOTICED

Howard C. Nielson , Jr.
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ATTORNEY TO BE NOTICED

Vincent John Colatriano
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ATTORNEY TO BE NOTICED

Charles Justin Cooper
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

BERKLEY INSURANCE COMPANY

represented by **Peter A. Patterson**
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LEAD ATTORNEY
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David Henry Thompson
(See above for address)
ATTORNEY TO BE NOTICED

Howard C. Nielson , Jr.
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Vincent John Colatriano
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Charles Justin Cooper
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Plaintiff

ACADIA INSURANCE COMPANY represented by **Peter A. Patterson**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

David Henry Thompson
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Howard C. Nielson , Jr.
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Vincent John Colatriano
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Charles Justin Cooper
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ATTORNEY TO BE NOTICED

Plaintiff

ADMIRAL INDEMNITY COMPANY represented by **Peter A. Patterson**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

David Henry Thompson
(See above for address)
ATTORNEY TO BE NOTICED

Howard C. Nielson , Jr.
(See above for address)
ATTORNEY TO BE NOTICED

Vincent John Colatriano
(See above for address)
ATTORNEY TO BE NOTICED

Charles Justin Cooper

		(See above for address) *ATTORNEY TO BE NOTICED*
Plaintiff		
ADMIRAL INSURANCE COMPANY	represented by	**Peter A. Patterson** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED* **David Henry Thompson** (See above for address) *ATTORNEY TO BE NOTICED* **Howard C. Nielson , Jr.** (See above for address) *ATTORNEY TO BE NOTICED* **Vincent John Colatriano** (See above for address) *ATTORNEY TO BE NOTICED* **Charles Justin Cooper** (See above for address) *ATTORNEY TO BE NOTICED*
Plaintiff		
BERKLEY REGIONAL INSURANCE COMPANY	represented by	**Peter A. Patterson** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED* **David Henry Thompson** (See above for address) *ATTORNEY TO BE NOTICED* **Howard C. Nielson , Jr.** (See above for address) *ATTORNEY TO BE NOTICED* **Vincent John Colatriano** (See above for address) *ATTORNEY TO BE NOTICED* **Charles Justin Cooper** (See above for address) *ATTORNEY TO BE NOTICED*
Plaintiff		
	represented by	

CAROLINA CASUALTY INSURANCE COMPANY		**Peter A. Patterson** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED* **David Henry Thompson** (See above for address) *ATTORNEY TO BE NOTICED* **Howard C. Nielson , Jr.** (See above for address) *ATTORNEY TO BE NOTICED* **Vincent John Colatriano** (See above for address) *ATTORNEY TO BE NOTICED* **Charles Justin Cooper** (See above for address) *ATTORNEY TO BE NOTICED*
Plaintiff		
MIDWEST EMPLOYERS CASUALTY INSURANCE COMPANY	represented by	**Peter A. Patterson** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED* **David Henry Thompson** (See above for address) *ATTORNEY TO BE NOTICED* **Howard C. Nielson , Jr.** (See above for address) *ATTORNEY TO BE NOTICED* **Vincent John Colatriano** (See above for address) *ATTORNEY TO BE NOTICED* **Charles Justin Cooper** (See above for address) *ATTORNEY TO BE NOTICED*
Plaintiff		
NAUTILUS INSURANCE COMPANY	represented by	**Peter A. Patterson** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED*

David Henry Thompson
(See above for address)
ATTORNEY TO BE NOTICED

Howard C. Nielson , Jr.
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Vincent John Colatriano
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Charles Justin Cooper
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Plaintiff

PREFERRED EMPLOYERS INSURANCE COMPANY

represented by **Peter A. Patterson**
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Vincent John Colatriano
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Charles Justin Cooper
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

FEDERAL HOUSING FINANCE AGENCY
in its capacity as Conservator of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation

represented by **Asim Varma**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

EDWARD DEMARCO
in his official capacity as Acting Director of the Federal Housing Finance Agency

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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

David Block Bergman
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Howard Neil Cayne
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

DEPARTMENT OF TREASURY

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ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
07/10/2013	1	COMPLAINT against All Defendants (Filing fee $ 400 receipt number 0090-3393808) filed by ADMIRAL INSURANCE COMPANY, PREFERRED EMPLOYERS INSURANCE COMPANY, BERKLEY INSURANCE COMPANY, BERKLEY REGIONAL INSURANCE COMPANY, MIDWEST EMPLOYERS CASUALTY INSURANCE COMPANY, FAIRHOLME FUND, CAROLINA CASUALTY INSURANCE COMPANY, ACADIA INSURANCE COMPANY, FAIRHOLME FUNDS, INC., NAUTILUS INSURANCE COMPANY, ADMIRAL INDEMNITY COMPANY. (Attachments: # 1 Civil Cover Sheet, # 2 Exhibit Rule 7.1 Corporate Disclosure Statement, # 3 Summons, # 4 Exhibit Notice of Related Cases)(Cooper, Charles). (Entered: 07/10/2013)
07/10/2013	2	NOTICE OF RELATED CASE by All Plaintiffs. Case related to Case No. 13-1025. (Cooper, Charles) (Entered: 07/10/2013)
07/10/2013	3	LCvR 7.1 CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests by ACADIA INSURANCE COMPANY, ADMIRAL INDEMNITY COMPANY, ADMIRAL INSURANCE COMPANY, BERKLEY INSURANCE COMPANY, BERKLEY REGIONAL INSURANCE COMPANY, CAROLINA CASUALTY INSURANCE COMPANY, Fairholme Fund, Fairholme Funds, Inc., MIDWEST EMPLOYERS CASUALTY INSURANCE COMPANY, NAUTILUS INSURANCE COMPANY, PREFERRED EMPLOYERS INSURANCE COMPANY (Cooper, Charles) (Entered: 07/10/2013)
07/11/2013	4	NOTICE of Appearance by David Henry Thompson on behalf of All Plaintiffs (Thompson, David) (Entered: 07/11/2013)
07/12/2013	5	NOTICE of Appearance by Vincent J. Colatriano on behalf of All Plaintiffs (Colatriano, Vincent) (Entered: 07/12/2013)
07/12/2013	6	ELECTRONIC SUMMONS (5) Issued as to EDWARD DEMARCO, DEPARTMENT OF TREASURY, FEDERAL HOUSING FINANCE AGENCY, U.S. Attorney and U.S. Attorney General (Attachments: # 1 Summons)(sth,) (Entered: 07/12/2013)
07/19/2013	7	

		RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. DEPARTMENT OF TREASURY served on 7/15/2013 (Cooper, Charles) Modified on 7/22/2013 (rdj). (Entered: 07/19/2013)
07/19/2013	8	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. DEPARTMENT OF TREASURY served on 7/15/2013 (Cooper, Charles) Modified on 7/22/2013 (rdj). (Entered: 07/19/2013)
07/19/2013	9	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. DEPARTMENT OF TREASURY served on 7/15/2013 (Cooper, Charles) Modified on 7/22/2013 (rdj). (Entered: 07/19/2013)
07/19/2013	10	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the United States Attorney. Date of Service Upon United States Attorney on 7/16/2013. Answer due for ALL FEDERAL DEFENDANTS by 9/14/2013. (Cooper, Charles) (Entered: 07/19/2013)
07/19/2013	11	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on United States Attorney General. Date of Service Upon United States Attorney General 07/16/2013. (Cooper, Charles) (Entered: 07/19/2013)
07/31/2013	12	NOTICE of Appearance by Joel L. McElvain on behalf of DEPARTMENT OF TREASURY (McElvain, Joel) (Entered: 07/31/2013)
07/31/2013	13	NOTICE of Appearance by Thomas David Zimpleman on behalf of DEPARTMENT OF TREASURY (Zimpleman, Thomas) (Entered: 07/31/2013)
08/12/2013	14	NOTICE of Appearance by Peter A. Patterson on behalf of All Plaintiffs (Patterson, Peter) (Entered: 08/12/2013)
08/26/2013	15	NOTICE of Appearance by Asim Varma on behalf of EDWARD DEMARCO, FEDERAL HOUSING FINANCE AGENCY (Varma, Asim) (Entered: 08/26/2013)
08/26/2013	16	NOTICE of Appearance by Howard Neil Cayne on behalf of EDWARD DEMARCO, FEDERAL HOUSING FINANCE AGENCY (Cayne, Howard) (Entered: 08/26/2013)
08/26/2013	17	NOTICE of Appearance by David Block Bergman on behalf of EDWARD DEMARCO, FEDERAL HOUSING FINANCE AGENCY (Bergman, David) (Entered: 08/26/2013)
09/09/2013	18	STIPULATION *as to Briefing Schedule* by DEPARTMENT OF TREASURY. (Attachments: # 1 Text of Proposed Order)(McElvain, Joel) (Entered: 09/09/2013)
09/10/2013		MINUTE ORDER: It is hereby ORDERED that all deadlines in this case shall be STAYED until further notice while the Court reviews all of the pending motions in all of the related pending cases. Signed by Judge Robert L. Wilkins on 9/10/2013. (tcb) (Entered: 09/10/2013)
09/23/2013		MINUTE ORDER: All briefing (including responses to pending motions) and obligations to answer, or otherwise respond to complaints, are hereby stayed until further notice of the court. Signed by Judge Robert L. Wilkins on 9/23/2013. (tcb). (Entered: 09/23/2013)

10/09/2013	19	PRELIMINARY CASE MANAGEMENT ORDER No. 1IN THE FANNIE MAE/FREDDIE MAC SENIOR PREFERRED STOCK PURCHASEAGREEMENT LITIGATIONS; On July 7, 2013, an investment manager filed a complaint in this court against a number of parties, including the Department of the Treasury (Treasury) and the Federal Housing Finance Agency (FHFA), in its capacity as the conservator for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac). Perry Capital LLC v. Lew, 13-cv-1025. All parties shall appear for a status hearing in this matter on November 12, 2013 at 2:00 pm to discuss the issues specified in this Order. Other than this Joint Status Report, all briefing (including responses to pending motions) and obligations to answer, or otherwise respond to complaints, are still stayed until further notice of the Court. (SEE ORDER FOR FULL DETAILS). Signed by Judge Robert L. Wilkins on 10/9/2013. (tcb) (Entered: 10/09/2013)
11/06/2013	20	STATUS REPORT by FAIRHOLME FUND, FAIRHOLME FUNDS, INC. (Attachments: # 1 Exhibit A - Stipulation and Proposed Order re: Consolidation, # 2 Exhibit B - Proposed Order re: Joint Status Report)(Cooper, Charles) (Entered: 11/06/2013)
11/12/2013		Minute Entry for proceedings held before Judge Robert L. Wilkins: Status Conference held and concluded on 11/12/2013. Plaintiff's Motion to Appoint Counsel; Heard and the Court to grant. Parties to submit a Word version of the proposed order to the Court. Motions Hearing set for 6/23/2014 at 9:30 AM in Courtroom 27A before Judge Robert L. Wilkins. (Court Reporter Patty Gels) (tcb). (Entered: 11/12/2013)
11/13/2013		Set/Reset Hearings: Motion Hearing set for 6/23/2014 at 9:30 AM in Courtroom 27A before Judge Robert L. Wilkins. (tcb) (Entered: 11/13/2013)
11/18/2013	21	ORDER REGARDING BRIEFING SCHEDULE IN ALL CASES: Upon consideration of the Joint Status Report submitted on November 6, 2013 and pursuant to the Federal Rule of Civil Procedure 42, it is hereby ORDERED that the above captioned cases proceed according to the following schedule: Interim co-lead class counsel file a consolidated class action complaint due by 12/3/2013. Defendants file the administrative record due by 12/17/2013.. Defendants file dispositive motions due by 1/17/2014. Plaintiffs file oppositions to defendants motions and cross-motions due by 2/19/2014. Defendants file replies in support of their motions and oppositions to plaintiffs cross motions due by 4/2/2014. Plaintiffs file replies in support of their cross motions due by 5/2/2014. Hearing on defendants dispositive motions and plaintiffs cross-motions set for 6/23/2014 at 9:30 AM in Courtroom 27A before Judge Robert L. Wilkins.(SEE ORDER FOR FULL DETAILS). Signed by Judge Robert L. Wilkins on 11/18/2013. (tcb) (Entered: 11/18/2013)
12/06/2013	22	STATUS REPORT by FAIRHOLME FUND, FAIRHOLME FUNDS, INC. (Cooper, Charles) (Entered: 12/06/2013)
12/17/2013	23	ADMINISTRATIVE RECORD by DEPARTMENT OF TREASURY. (Attachments: # 1 Exhibit Administrative Record part 1, # 2 Exhibit Administrative Record part 2, # 3 Exhibit Administrative Record part 3, # 4

		Exhibit Administrative Record part 4, # 5 Exhibit Administrative Record part 5, # 6 Exhibit Administrative Record part 6, # 7 Exhibit Administrative Record part 7, # 8 Exhibit Administrative Record part 8, # 9 Exhibit Administrative Record part 9, # 10 Exhibit Administrative Record part 10, # 11 Exhibit Administrative Record part 11, # 12 Exhibit Administrative Record part 12, # 13 Exhibit Administrative Record part 13, # 14 Exhibit Administrative Record part 14)(McElvain, Joel) (Entered: 12/17/2013)
12/17/2013	24	NOTICE *OF FILING DOCUMENT COMPILATION REGARDING THIRD AMENDMENT TO SENIOR PREFERRED STOCK PURCHASE AGREEMENTS* by EDWARD DEMARCO, FEDERAL HOUSING FINANCE AGENCY (Attachments: # 1 Index, # 2 Exhibit Part 1, # 3 Exhibit Part 2, # 4 Exhibit Part 3, # 5 Exhibit Part 4, # 6 Exhibit Part 5, # 7 Exhibit Part 6, # 8 Exhibit Part 7, # 9 Exhibit Part 8, # 10 Exhibit Part 9, # 11 Exhibit Part 10, # 12 Exhibit Part 11, # 13 Exhibit Part 12, # 14 Exhibit Part 13, # 15 Exhibit Part 14, # 16 Exhibit Part 15, # 17 Exhibit Part 16, # 18 Exhibit Part 17)(Varma, Asim) (Entered: 12/17/2013)
12/19/2013	25	ERRATA *with Respect to Administrative Record* by DEPARTMENT OF TREASURY. (Attachments: # 1 Exhibit Freddie Mac 2010 Form 10-K (0640-1063), # 2 Exhibit Freddie Mac First Quarter 2011 Form 10-Q (1231-1461), # 3 Exhibit Freddie Mac Second Quarter 2011 Form 10-Q (1647-1892), # 4 Exhibit Freddie Mac Third Quarter 2011 Form 10-Q (2114-2357), # 5 Exhibit Freddie Mac 2011 Form 10-K (2765-3247), # 6 Exhibit Freddie Mac First Quarter 2012 Form 10-Q (3532-3774))(McElvain, Joel) (Entered: 12/19/2013)
01/06/2014		MINUTE ORDER: It is hereby ORDERED that Defendants briefs in support of their dispositive motion in the three non-consolidated actions (Perry Capital LLC v. Lew, et al., No. 13-cv-1025 (RLW), Fairholme Funds, Inc., et al. v. Federal Housing Finance Agency, et al., No. 13-cv-1053 (RLW), and Arrowood Indemnity Co., et al. v. Federal National Mortgage Association, et al., No. 13-cv-1439 (RLW)) shall not exceed 130 pages. It is further ORDERED that Plaintiffs briefs in support of their opposition to Defendants dispositive motion and in support of any cross-motion for summary judgment shall not exceed 150 pages. Should Plaintiffs conclude, after reviewing Defendants filings and conferring in good faith, that an adequate response requires more than 150 pages, Plaintiffs counsel shall promptly inform the Court and file an appropriate motion. These page limits are inclusive of any supplemental briefs to be filed by the parties. Signed by Judge Robert L. Wilkins on 1/6/2014. (tcb) (Entered: 01/06/2014)
01/08/2014	26	Unopposed MOTION for Leave to File Excess Pages by DEPARTMENT OF TREASURY (McElvain, Joel) (Entered: 01/08/2014)
01/09/2014		MINUTE ORDER: Defendant's 26 Unopposed MOTION for Leave to File Excess Pages is hereby GRANTED. Counsel for Defendants is admonished to comply with the local rules in the future and submit a proposed order with ALL motions pursuant to Local Rule 7(c). Signed by Judge Robert L. Wilkins on 1/9/2014. (tcb) (Entered: 01/09/2014)
01/17/2014	27	MOTION to Dismiss *or, in the Alternative, for Summary Judgment* by DEPARTMENT OF TREASURY (Attachments: # 1 Memorandum in Support,

		# 2 Text of Proposed Order)(McElvain, Joel). Added MOTION for Summary Judgment on 1/21/2014 (znmw,). (Entered: 01/17/2014)
01/17/2014	28	MOTION to Dismiss *All Claims and, in the Alternative, for Summary Judgment as to Plaintiffs Arbitrary and Capricious Claims and Memorandum in Support* by FEDERAL HOUSING FINANCE AGENCY (Attachments: # 1 Text of Proposed Order)(Cayne, Howard). Added MOTION for Summary Judgment on 1/21/2014 (znmw,). (Entered: 01/17/2014)
01/17/2014	29	MOTION to Take Judicial Notice by EDWARD DEMARCO, FEDERAL HOUSING FINANCE AGENCY (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Text of Proposed Order)(Cayne, Howard) (Entered: 01/17/2014)
01/22/2014		Case reassigned by consent to Judge Royce C. Lamberth. Judge Robert L. Wilkins has been elevated to U.S. Court of Appeals for D.C. and is no longer assigned to the case. (gt,) (Entered: 01/22/2014)
01/30/2014	30	STIPULATION *To Conform Briefing Schedule on Defendants' Motion for Judicial Notice to Briefing Schedule Established for Defendants' Dispositive Motions* by FAIRHOLME FUND, FAIRHOLME FUNDS, INC. (Thompson, David) (Entered: 01/30/2014)
02/12/2014	31	MOTION for Supplementation of the Administrative Records, for Limited Discovery, for Suspension of Briefing on Defendants' Dispositive Motions, and for a Status Conference by FAIRHOLME FUND, FAIRHOLME FUNDS, INC (Attachments: # 1 Text of Proposed Order)(Cooper, Charles). Added MOTION for Discovery, MOTION for Hearing, MOTION for Leave to File Supplement on 2/13/2014 (znmw,). (Entered: 02/12/2014)
02/12/2014	32	MEMORANDUM re 31 MOTION for Supplementation of the Administrative Records, for Limited Discovery, for Suspension of Briefing on Defendants' Dispositive Motions, and for a Status Conference filed by FAIRHOLME FUNDS, INC, FAIRHOLME FUND by FAIRHOLME FUND, FAIRHOLME FUNDS, INC. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4 (Declaration of Vincent J. Colatriano))(Cooper, Charles) (Entered: 02/12/2014)
03/04/2014	33	Memorandum in opposition to re 31 MOTION for Suspension of Briefing on Defendants' Dispositive Motions MOTION for Discovery MOTION for Hearing MOTION for Leave to File filed by DEPARTMENT OF TREASURY. (McElvain, Joel) (Entered: 03/04/2014)
03/04/2014	34	Memorandum in opposition to re 31 MOTION for Suspension of Briefing on Defendants' Dispositive Motions MOTION for Discovery MOTION for Hearing MOTION for Leave to File filed by EDWARD DEMARCO, FEDERAL HOUSING FINANCE AGENCY. (Cayne, Howard) (Entered: 03/04/2014)
03/05/2014	35	NOTICE *of Filing of Discovery Order Issued by United States Court of Federal Claims* by FAIRHOLME FUND, FAIRHOLME FUNDS, INC (Attachments: # 1 Exhibit A)(Cooper, Charles) (Entered: 03/05/2014)
03/13/2014	36	

		REPLY to opposition to motion re 31 MOTION for Suspension of Briefing on Defendants' Dispositive Motions MOTION for Discovery MOTION for Hearing MOTION for Leave to File filed by FAIRHOLME FUND, FAIRHOLME FUNDS, INC. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(Cooper, Charles) (Entered: 03/13/2014)
03/18/2014	37	Memorandum in opposition to re 29 MOTION to Take Judicial Notice filed by FAIRHOLME FUND, FAIRHOLME FUNDS, INC. (Attachments: # 1 Exhibit Order [Proposed By Plaintiffs] On Defendants' Motion For Judicial Notice) (Thompson, David) (Entered: 03/18/2014)
03/21/2014	38	Memorandum in opposition to re 28 MOTION to Dismiss *All Claims and, in the Alternative, for Summary Judgment as to Plaintiffs Arbitrary and Capricious Claims and Memorandum in Support* MOTION for Summary Judgment filed by ACADIA INSURANCE COMPANY, ADMIRAL INDEMNITY COMPANY, ADMIRAL INSURANCE COMPANY, BERKLEY INSURANCE COMPANY, BERKLEY REGIONAL INSURANCE COMPANY, CAROLINA CASUALTY INSURANCE COMPANY, FAIRHOLME FUND, FAIRHOLME FUNDS, INC, MIDWEST EMPLOYERS CASUALTY INSURANCE COMPANY, NAUTILUS INSURANCE COMPANY, PREFERRED EMPLOYERS INSURANCE COMPANY (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5)(Cooper, Charles) Modified on 3/24/2014 (jf,). (Entered: 03/21/2014)
03/21/2014	39	SUPPLEMENTAL MEMORANDUM to re 28 MOTION to Dismiss *All Claims and, in the Alternative, for Summary Judgment as to Plaintiffs Arbitrary and Capricious Claims and Memorandum in Support* MOTION for Summary Judgment, 27 MOTION to Dismiss *or, in the Alternative, for Summary Judgment* MOTION for Summary Judgment -- *Plaintiffs' Suppl. Memorandum on APA, Fiduciary Duty, and Contract Claims* filed by FAIRHOLME FUND, FAIRHOLME FUNDS, INC. (Attachments: # 1 Exhibit 1)(Cooper, Charles) (Entered: 03/21/2014)
03/21/2014	40	Cross MOTION for Summary Judgment by ACADIA INSURANCE COMPANY, ADMIRAL INDEMNITY COMPANY, ADMIRAL INSURANCE COMPANY, BERKLEY INSURANCE COMPANY, BERKLEY REGIONAL INSURANCE COMPANY, CAROLINA CASUALTY INSURANCE COMPANY, FAIRHOLME FUND, FAIRHOLME FUNDS, INC, MIDWEST EMPLOYERS CASUALTY INSURANCE COMPANY, NAUTILUS INSURANCE COMPANY, PREFERRED EMPLOYERS INSURANCE COMPANY. (See Docket Entry 38 to view document) (jf,) (Entered: 03/24/2014)
04/10/2014	41	NOTICE *of Filing of Discovery Order Issued by United States Court of Federal Claims* by ACADIA INSURANCE COMPANY, ADMIRAL INDEMNITY COMPANY, ADMIRAL INSURANCE COMPANY, BERKLEY INSURANCE COMPANY, BERKLEY REGIONAL INSURANCE COMPANY, CAROLINA CASUALTY INSURANCE COMPANY, FAIRHOLME FUND, FAIRHOLME FUNDS, INC, MIDWEST EMPLOYERS CASUALTY INSURANCE COMPANY, NAUTILUS INSURANCE

		COMPANY, PREFERRED EMPLOYERS INSURANCE COMPANY (Attachments: # 1 Exhibit A)(Cooper, Charles) (Entered: 04/10/2014)
05/02/2014	42	STIPULATION *Regarding Enlargement of Page Limits* by DEPARTMENT OF TREASURY. (McElvain, Joel) (Entered: 05/02/2014)
05/02/2014	43	REPLY to opposition to motion re 27 MOTION to Dismiss or, in the Alternative, for Summary Judgment filed by DEPARTMENT OF TREASURY. (McElvain, Joel) Modified on 5/5/2014 to correct docket link (jf,). (Entered: 05/02/2014)
05/02/2014	44	Memorandum in opposition to re 40 MOTION for Summary Judgment filed by DEPARTMENT OF TREASURY. (McElvain, Joel) (Entered: 05/02/2014)
05/02/2014	45	REPLY to opposition to motion re 28 MOTION to Dismiss *All Claims and, in the Alternative, for Summary Judgment as to Plaintiffs Arbitrary and Capricious Claims and Memorandum in Support* MOTION for Summary Judgment filed by EDWARD DEMARCO, FEDERAL HOUSING FINANCE AGENCY. (Cayne, Howard) (Entered: 05/02/2014)
05/02/2014	46	Memorandum in opposition to re 40 MOTION for Summary Judgment filed by EDWARD DEMARCO, FEDERAL HOUSING FINANCE AGENCY. (Cayne, Howard) (Entered: 05/02/2014)
05/02/2014	47	REPLY to opposition to motion re 29 MOTION to Take Judicial Notice filed by EDWARD DEMARCO, FEDERAL HOUSING FINANCE AGENCY. (Cayne, Howard) (Entered: 05/02/2014)
05/05/2014	48	NOTICE OF RELATED CASE by DEPARTMENT OF TREASURY. Case related to Case No. 4:14-cv-42 (S.D. Iowa). (McElvain, Joel) (Entered: 05/05/2014)
05/05/2014	49	NOTICE OF RELATED CASE by EDWARD DEMARCO, FEDERAL HOUSING FINANCE AGENCY. Case related to Case No. 4:14-cv-0042 (S.D. Iowa). (Varma, Asim) (Entered: 05/05/2014)
06/02/2014	50	STIPULATION *Regarding Enlargement of Page Limits* by ACADIA INSURANCE COMPANY, ADMIRAL INDEMNITY COMPANY, ADMIRAL INSURANCE COMPANY, BERKLEY INSURANCE COMPANY, BERKLEY REGIONAL INSURANCE COMPANY, CAROLINA CASUALTY INSURANCE COMPANY, FAIRHOLME FUND, FAIRHOLME FUNDS, INC, MIDWEST EMPLOYERS CASUALTY INSURANCE COMPANY, NAUTILUS INSURANCE COMPANY, PREFERRED EMPLOYERS INSURANCE COMPANY. (Cooper, Charles) (Entered: 06/02/2014)
06/02/2014	51	REPLY to opposition to motion re 40 MOTION for Summary Judgment *on Administrative Procedure Act Claims* filed by ACADIA INSURANCE COMPANY, ADMIRAL INDEMNITY COMPANY, ADMIRAL INSURANCE COMPANY, BERKLEY INSURANCE COMPANY, BERKLEY REGIONAL INSURANCE COMPANY, CAROLINA CASUALTY INSURANCE COMPANY, FAIRHOLME FUND, FAIRHOLME FUNDS, INC, MIDWEST EMPLOYERS CASUALTY INSURANCE

		COMPANY, NAUTILUS INSURANCE COMPANY, PREFERRED EMPLOYERS INSURANCE COMPANY. (Cooper, Charles) (Entered: 06/02/2014)
06/05/2014		MINUTE ORDER postponing the motions hearing set by the 11/12/2013 Minute Entry until further order of the Court. Signed by Judge Royce C. Lamberth on June 5, 2014. (lcrcl5) (Entered: 06/05/2014)
08/12/2014	52	NOTICE of Appearance by Howard C. Nielson, Jr on behalf of All Plaintiffs (Nielson, Howard) (Entered: 08/12/2014)
08/26/2014	53	NOTICE OF SUPPLEMENTAL AUTHORITY by EDWARD DEMARCO, FEDERAL HOUSING FINANCE AGENCY (Attachments: # 1 Exhibit A (S.D. Iowa Order))(Cayne, Howard) (Entered: 08/26/2014)
09/03/2014	54	REPONSE re 53 NOTICE OF SUPPLEMENTAL AUTHORITY filed by ACADIA INSURANCE COMPANY, ADMIRAL INDEMNITY COMPANY, ADMIRAL INSURANCE COMPANY, BERKLEY INSURANCE COMPANY, BERKLEY REGIONAL INSURANCE COMPANY, CAROLINA CASUALTY INSURANCE COMPANY, FAIRHOLME FUND, FAIRHOLME FUNDS, INC, MIDWEST EMPLOYERS CASUALTY INSURANCE COMPANY, NAUTILUS INSURANCE COMPANY, PREFERRED EMPLOYERS INSURANCE COMPANY. (Attachments: # 1 Exhibit Transcript of July 10, 2014 Hearing in S.D. Iowa)(Cooper, Charles) Modified on 9/4/2014 to correct event(rdj). (Entered: 09/03/2014)
09/30/2014	55	ORDER on DEFENDANTS' MOTION FOR JUDICIAL NOTICE granting in part and denying in part (33) Motion to Take Judicial Notice in case 1:13-cv-01025-RCL; granting in part and denying in part (29) Motion to Take Judicial Notice in case 1:13-cv-01053-RCL; granting in part and denying in part (37) Motion to Take Judicial Notice in case 1:13-cv-01439-RCL; granting in part and denying in part (21) Motion to Take Judicial Notice in case 1:13-mc-01288-RCL. Signed by Judge Royce C. Lamberth on 9/30/2014. (tg,) (Entered: 09/30/2014)
09/30/2014	56	MEMORANDUM OPINION. Signed by Judge Royce C. Lamberth on 9/30/2014. (tg,) (Entered: 09/30/2014)
09/30/2014	57	ORDER GRANTING the defendants' motions to dismiss and DENYING the plaintiffs' cross-motion for summary judgment. Signed by Judge Royce C. Lamberth on 9/30/2014. (tg,) (Entered: 09/30/2014)
09/30/2014	58	ORDER denying 31 Motion for supplementation of the administrative record, limited discovery, suspension of briefing on thedefendants' dispositive motions, and a status conference as moot due to the dismissal of this case pursuant to the Court's Order 57 issued this date. Signed by Judge Royce C. Lamberth on 9/30/2014. (ztg,) (Entered: 09/30/2014)
10/10/2014	59	NOTICE OF APPEAL TO DC CIRCUIT COURT as to 57 Order, 56 Memorandum & Opinion, 58 Order on Motion for Miscellaneous Relief, Order on Motion for Discovery, Order on Motion for Hearing, Order on Motion for Leave to File,,,, by ACADIA INSURANCE COMPANY, ADMIRAL INDEMNITY COMPANY, ADMIRAL INSURANCE COMPANY,

		BERKLEY INSURANCE COMPANY, BERKLEY REGIONAL INSURANCE COMPANY, CAROLINA CASUALTY INSURANCE COMPANY, FAIRHOLME FUND, FAIRHOLME FUNDS, INC, MIDWEST EMPLOYERS CASUALTY INSURANCE COMPANY, NAUTILUS INSURANCE COMPANY, PREFERRED EMPLOYERS INSURANCE COMPANY. Filing fee $ 505, receipt number 0090-3867937. Fee Status: Fee Paid. Parties have been notified. (Cooper, Charles) (Entered: 10/10/2014)
10/10/2014	60	Transmission of the Notice of Appeal, Order Appealed, and Docket Sheet to US Court of Appeals. The Court of Appeals fee was paid this date re 59 Notice of Appeal to DC Circuit Court,. (rdj) (Entered: 10/10/2014)
10/17/2014		USCA Case Number 14-5254 for 59 Notice of Appeal to DC Circuit Court,, filed by BERKLEY REGIONAL INSURANCE COMPANY, FAIRHOLME FUNDS, INC, ACADIA INSURANCE COMPANY, MIDWEST EMPLOYERS CASUALTY INSURANCE COMPANY, NAUTILUS INSURANCE COMPANY, ADMIRAL INDEMNITY COMPANY, PREFERRED EMPLOYERS INSURANCE COMPANY, ADMIRAL INSURANCE COMPANY, BERKLEY INSURANCE COMPANY, CAROLINA CASUALTY INSURANCE COMPANY, FAIRHOLME FUND. (kb) (Entered: 10/17/2014)

PACER Service Center			
Transaction Receipt			
02/07/2016 10:55:40			
PACER Login:	gi0002:2554876:4036719	**Client Code:**	73817-00001
Description:	Docket Report	**Search Criteria:**	1:13-cv-01053-RCL
Billable Pages:	14	**Cost:**	1.40

APPEAL,CLOSED,JURY,TYPE-C

U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:13-cv-01439-RCL

ARROWOOD INDEMNITY COMPANY et al v. FEDERAL NATIONAL MORTGAGE ASSOCIATION et al Assigned to: Judge Royce C. Lamberth Demand: $9,999,000 Case in other court: USCA, 14-05260 Cause: 05:702 Administrative Procedure Act	Date Filed: 09/20/2013 Date Terminated: 10/10/2014 Jury Demand: Plaintiff Nature of Suit: 890 Other Statutory Actions Jurisdiction: U.S. Government Defendant

Plaintiff

ARROWOOD INDEMNITY COMPANY	represented by	**Michael H. Barr** DENTONS US LLP 1221 Avenue of the Americas NY, NY 10020 (212)768-6788 Fax: (212)768-6800 Email: michael.barr@dentons.com *LEAD ATTORNEY* *PRO HAC VICE* *ATTORNEY TO BE NOTICED* **Richard M. Zuckerman** DENTONS US LLP 1221 Avenue of the Americas NY, NY 10020 (212)398-5213 Fax: (212)768-6800 Email: richard.zuckerman@dentons.com *LEAD ATTORNEY* *PRO HAC VICE* *ATTORNEY TO BE NOTICED* **Sandra D Hauser** DENTONS US LLP 1221 Avenue of the Americes New York, NY 10020 (212) 768-6802 Fax: (212)768-6800 Email: sandra.hauser@dentons.com *LEAD ATTORNEY* *PRO HAC VICE*

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Plaintiff

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LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Richard M. Zuckerman
(See above for address)
LEAD ATTORNEY
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Sandra D Hauser
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Drew William Marrocco
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Plaintiff

FINANCIAL STRUCTURES LIMITED represented by **Michael H. Barr**
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LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Richard M. Zuckerman
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Sandra D Hauser

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Drew William Marrocco
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ATTORNEY TO BE NOTICED

V.

Defendant

FEDERAL NATIONAL MORTGAGE ASSOCIATION represented by **Paul Clement**
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Defendant

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Defendant

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Defendant

DEPARTMENT OF TREASURY represented by **Joel L. McElvain**
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LEAD ATTORNEY

		ATTORNEY TO BE NOTICED **Thomas David Zimpleman** U.S. DEPARTMENT OF JUSTICE P.O. Box 883 Washington, DC 20044 (202) 514-3346 Fax: (202) 616-8470 Email: thomas.d.zimpleman@usdoj.gov *ATTORNEY TO BE NOTICED*
Defendant		
EDWARD DEMARCO	represented by	**Asim Varma** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED* **David Block Bergman** (See above for address) *ATTORNEY TO BE NOTICED* **Howard Neil Cayne** (See above for address) *ATTORNEY TO BE NOTICED*
Defendant		
JACOB J. LEW	represented by	**Joel L. McElvain** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED* **Thomas David Zimpleman** (See above for address) *ATTORNEY TO BE NOTICED*

Date Filed	#	Docket Text
09/20/2013	1	COMPLAINT against EDWARD DEMARCO, DEPARTMENT OF TREASURY, FEDERAL HOME LOAN MORTGAGE CORPORATION, FEDERAL HOUSING FINANCE AGENCY, FEDERAL NATIONAL MORTGAGE ASSOCIATION, JACOB J. LEW with Jury Demand (Filing fee $ 400 receipt number 0090-3474187) filed by FINANCIAL STRUCTURES LIMITED, ARROWOOD SURPLUS LINES INSURANCE COMPANY, ARROWOOD INDEMNITY COMPANY. (Attachments: # 1 Civil Cover Sheet, # 2 Summons Summonses for all Defendants)(Marrocco, Drew) (Entered: 09/20/2013)
09/20/2013	2	LCvR 7.1 CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests by ARROWOOD INDEMNITY COMPANY, ARROWOOD

		SURPLUS LINES INSURANCE COMPANY, FINANCIAL STRUCTURES LIMITED (Marrocco, Drew) (Entered: 09/20/2013)
09/20/2013	3	NOTICE OF RELATED CASE by ARROWOOD INDEMNITY COMPANY, ARROWOOD SURPLUS LINES INSURANCE COMPANY, FINANCIAL STRUCTURES LIMITED. Case related to Case No. (See Form for Further Information). (Marrocco, Drew) (Entered: 09/20/2013)
09/20/2013		Case Assigned to Judge Robert L. Wilkins. (sth,) (Entered: 09/20/2013)
09/20/2013	4	ELECTRONIC SUMMONS (8) Issued as to EDWARD DEMARCO, DEPARTMENT OF TREASURY, FEDERAL HOME LOAN MORTGAGE CORPORATION, FEDERAL HOUSING FINANCE AGENCY, FEDERAL NATIONAL MORTGAGE ASSOCIATION, FINANCIAL STRUCTURES LIMITED, U.S. Attorney and U.S. Attorney General (Attachments: # 1 Summons)(sth,) (Entered: 09/20/2013)
09/26/2013	5	MOTION for Leave to Appear Pro Hac Vice :Attorney Name- Michael H. Barr, :Firm- Dentons US LLP, :Address- 1221 Avenue of the Americas, NY, NY 10020. Phone No. - 212-768-6788. Fax No. - 212-768-6800 by ARROWOOD INDEMNITY COMPANY, ARROWOOD SURPLUS LINES INSURANCE COMPANY, FINANCIAL STRUCTURES LIMITED (Attachments: # 1 Declaration of Michael Barr, # 2 Text of Proposed Order)(Marrocco, Drew) (Entered: 09/26/2013)
09/26/2013	6	MOTION for Leave to Appear Pro Hac Vice :Attorney Name- Sandra D. Hauser, :Firm- Dentons US LLP, :Address- 1221 Avenue of the Americas, NY, NY 10020. Phone No. - 212-768-6802. Fax No. - 212-768-6800 by ARROWOOD INDEMNITY COMPANY, ARROWOOD SURPLUS LINES INSURANCE COMPANY, FINANCIAL STRUCTURES LIMITED (Attachments: # 1 Declaration of Sandra Hauser, # 2 Text of Proposed Order)(Marrocco, Drew) (Entered: 09/26/2013)
09/26/2013	7	MOTION for Leave to Appear Pro Hac Vice :Attorney Name- Richard M. Zuckerman, :Firm- Dentons US LLP, :Address- 1221 Avenue of the Americas, NY, NY 10020. Phone No. - 212-398-5213. Fax No. - 212-768-6800 by ARROWOOD INDEMNITY COMPANY, ARROWOOD SURPLUS LINES INSURANCE COMPANY, FINANCIAL STRUCTURES LIMITED (Attachments: # 1 Declaration of Richard Zuckerman, # 2 Text of Proposed Order)(Marrocco, Drew) (Entered: 09/26/2013)
10/01/2013	8	NOTICE of Appearance by Michael Joseph Ciatti on behalf of FEDERAL HOME LOAN MORTGAGE CORPORATION (Ciatti, Michael) (Entered: 10/01/2013)
10/02/2013		MINUTE ORDER granting 5 Motion for Leave to Appear Pro Hac Vice of Attorney Micheal H. Barr ; granting 6 Motion for Leave to Appear Pro Hac Vice of Attorney Sandra D. Hauser ; granting 7 Motion for Leave to Appear Pro Hac Vice of Attorney Richard M. Zuckerman. Mr. Barr, Ms. Hauser and Mr. Zuckerman are permitted to appear pro hac vice in this matter on behalf of Plaintiffs. Signed by Judge Robert L. Wilkins on 10/2/2013. (ztcb,) (Entered: 10/02/2013)

10/03/2013	9	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. FEDERAL NATIONAL MORTGAGE ASSOCIATION served on 9/26/2013, answer due 10/17/2013 (Marrocco, Drew) (Entered: 10/03/2013)
10/03/2013	10	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. FEDERAL HOME LOAN MORTGAGE CORPORATION served on 9/25/2013, answer due 10/16/2013 (Marrocco, Drew) (Entered: 10/03/2013)
10/03/2013	11	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. FEDERAL HOUSING FINANCE AGENCY served on 9/24/2013 (Marrocco, Drew) (Entered: 10/03/2013)
10/03/2013	12	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. DEPARTMENT OF TREASURY served on 9/24/2013 (Marrocco, Drew) (Entered: 10/03/2013)
10/03/2013	13	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. EDWARD DEMARCO served on 9/24/2013 (Marrocco, Drew) (Entered: 10/03/2013)
10/03/2013	14	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. JACOB J. LEW served on 9/24/2013 (Marrocco, Drew) (Entered: 10/03/2013)
10/03/2013	15	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the United States Attorney. Date of Service Upon United States Attorney on 9/24/2013. Answer due for ALL FEDERAL DEFENDANTS by 11/23/2013. (Marrocco, Drew) (Entered: 10/03/2013)
10/03/2013	16	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on United States Attorney General. Date of Service Upon United States Attorney General 09/24/13. (Marrocco, Drew) (Entered: 10/03/2013)
10/08/2013	17	NOTICE of Appearance by Asim Varma on behalf of EDWARD DEMARCO, FEDERAL HOUSING FINANCE AGENCY (Varma, Asim) (Entered: 10/08/2013)
10/08/2013	18	NOTICE of Appearance by David Block Bergman on behalf of EDWARD DEMARCO, FEDERAL HOUSING FINANCE AGENCY (Bergman, David) (Entered: 10/08/2013)
10/08/2013	19	NOTICE of Appearance by Howard Neil Cayne on behalf of EDWARD DEMARCO, FEDERAL HOUSING FINANCE AGENCY (Cayne, Howard) (Entered: 10/08/2013)
10/09/2013	20	PRELIMINARY CASE MANAGEMENT ORDER No. 1IN THE FANNIE MAE/FREDDIE MAC SENIOR PREFERRED STOCK PURCHASEAGREEMENT LITIGATIONS; On July 7, 2013, an investment manager filed a complaint in this court against a number of parties, including the Department of the Treasury (Treasury) and the Federal Housing Finance Agency (FHFA), in its capacity as the conservator for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac). Perry Capital LLC v. Lew, 13-cv-1025. All parties shall appear for a status hearing in this matter on November 12, 2013 at 2:00 pm to discuss the issues specified in this Order. Other than this Joint Status Report, all briefing

		(including responses to pending motions) and obligations to answer, or otherwise respond to complaints, are still stayed until further notice of the Court. (SEE ORDER FOR FULL DETAILS). Signed by Judge Robert L. Wilkins on 10/9/2013. (tcb) (Entered: 10/09/2013)
10/11/2013	21	NOTICE of Appearance by Graciela Maria Rodriguez on behalf of FEDERAL HOME LOAN MORTGAGE CORPORATION (Rodriguez, Graciela) (Entered: 10/11/2013)
11/06/2013	22	NOTICE of Appearance by Paul Clement on behalf of FEDERAL NATIONAL MORTGAGE ASSOCIATION (Clement, Paul) (Entered: 11/06/2013)
11/06/2013	23	STATUS REPORT by ARROWOOD INDEMNITY COMPANY, ARROWOOD SURPLUS LINES INSURANCE COMPANY. (Attachments: # 1 Text of Proposed Order Stipulation and Proposed Order re Consolidation, # 2 Text of Proposed Order Proposed Order re Joint Status Report)(Hauser, Sandra) (Entered: 11/06/2013)
11/07/2013	24	MOTION for Leave to Appear Pro Hac Vice :Attorney Name- Stephen V. Potenza, :Firm- Bancroft PLLC, :Address- 1001 Avenue of the Americas, 11th Fl., New York, NY 10018. Phone No. - 212-813-8388. Fax No. - 202-234-2806 by FEDERAL NATIONAL MORTGAGE ASSOCIATION (Attachments: # 1 Declaration Declaration, # 2 Text of Proposed Order Proposed Order)(Clement, Paul) (Entered: 11/07/2013)
11/07/2013	25	NOTICE of Appearance by Joel L. McElvain on behalf of DEPARTMENT OF TREASURY, JACOB J. LEW (McElvain, Joel) (Entered: 11/07/2013)
11/07/2013	26	NOTICE of Appearance by Thomas David Zimpleman on behalf of DEPARTMENT OF TREASURY, JACOB J. LEW (Zimpleman, Thomas) (Entered: 11/07/2013)
11/12/2013		Minute Entry for proceedings held before Judge Robert L. Wilkins: Status Conference held and concluded on 11/12/2013. Plaintiff's Motion to Appoint Counsel; Heard and the Court to grant. Parties to submit a Word version of the proposed order to the Court. Motions Hearing set for 6/23/2014 at 9:30 AM in Courtroom 27A before Judge Robert L. Wilkins. (Court Reporter Patty Gels) (tcb). (Entered: 11/12/2013)
11/12/2013		MINUTE ORDER granting 24 Motion for Leave to Appear Pro Hac Vice of Attorney Stephen V. Potenza. Attorney Potenza is permitted to appear pro hac vice in this matter on behalf of Defendant FEDERAL NATIONAL MORTGAGE ASSOCIATION. Signed by Judge Robert L. Wilkins on 11/12/2013. (tcb). (Entered: 11/12/2013)
11/13/2013		Set/Reset Hearings: Motion Hearing set for 6/23/2014 at 9:30 AM in Courtroom 27A before Judge Robert L. Wilkins. (tcb) (Entered: 11/13/2013)
11/18/2013	27	ORDER REGARDING BRIEFING SCHEDULE IN ALL CASES: Upon consideration of the Joint Status Report submitted on November 6, 2013 and pursuant to the Federal Rule of Civil Procedure 42, it is hereby ORDERED that the above captioned cases proceed according to the following schedule: Interim co-lead class counsel file a consolidated class action complaint due by

		12/3/2013. Defendants file the administrative record due by 12/17/2013.. Defendants file dispositive motions due by 1/17/2014. Plaintiffs file oppositions to defendants motions and cross-motions due by 2/19/2014. Defendants file replies in support of their motions and oppositions to plaintiffs cross motions due by 4/2/2014. Plaintiffs file replies in support of their cross motions due by 5/2/2014. Hearing on defendants dispositive motions and plaintiffs cross-motions set for 6/23/2014 at 9:30 AM in Courtroom 27A before Judge Robert L. Wilkins.(SEE ORDER FOR FULL DETAILS). Signed by Judge Robert L. Wilkins on 11/18/2013. (tcb) (Entered: 11/18/2013)
12/06/2013	28	STATUS REPORT / *Joint Status Report in Response to Order Regarding Briefing Schedule in Three Cases* by ARROWOOD INDEMNITY COMPANY, ARROWOOD SURPLUS LINES INSURANCE COMPANY, FINANCIAL STRUCTURES LIMITED. (Barr, Michael) (Entered: 12/06/2013)
12/17/2013	29	ADMINISTRATIVE RECORD by DEPARTMENT OF TREASURY, JACOB J. LEW. (Attachments: # 1 Exhibit Administrative Record part 1, # 2 Exhibit Administrative Record part 2, # 3 Exhibit Administrative Record part 3, # 4 Exhibit Administrative Record part 4, # 5 Exhibit Administrative Record part 5, # 6 Exhibit Administrative Record part 6, # 7 Exhibit Administrative Record part 7, # 8 Exhibit Administrative Record part 8, # 9 Exhibit Administrative Record part 9, # 10 Exhibit Administrative Record part 10, # 11 Exhibit Administrative Record part 11, # 12 Exhibit Administrative Record part 12, # 13 Exhibit Administrative Record part 13, # 14 Exhibit Administrative Record part 14)(McElvain, Joel) (Entered: 12/17/2013)
12/17/2013	30	NOTICE *OF FILING DOCUMENT COMPILATION REGARDING THIRD AMENDMENT TO SENIOR PREFERRED STOCK PURCHASE AGREEMENTS* by EDWARD DEMARCO, FEDERAL HOUSING FINANCE AGENCY (Attachments: # 1 Exhibit Index, # 2 Exhibit Part 1, # 3 Exhibit Part 2, # 4 Exhibit Part 3, # 5 Exhibit Part 4, # 6 Exhibit Part 5, # 7 Exhibit Part 6, # 8 Exhibit Part 7, # 9 Exhibit Part 8, # 10 Exhibit Part 9, # 11 Exhibit Part 10, # 12 Exhibit Part 11, # 13 Exhibit Part 12, # 14 Exhibit Part 13, # 15 Exhibit Part 14, # 16 Exhibit Part 15, # 17 Exhibit Part 16, # 18 Exhibit Part 17)(Varma, Asim) (Entered: 12/17/2013)
12/19/2013	31	ERRATA *with Respect to Administrative Record* by DEPARTMENT OF TREASURY, JACOB J. LEW. (Attachments: # 1 Exhibit Freddie Mac 2010 Form 10-K (0640-1063), # 2 Exhibit Freddie Mac First Quarter 2011 Form 10-Q (1231-1461), # 3 Exhibit Freddie Mac Second Quarter 2011 Form 10-Q (1647-1892), # 4 Exhibit Freddie Mac Third Quarter 2011 Form 10-Q (2114-2357), # 5 Exhibit Freddie Mac 2011 Form 10-K (2765-3247), # 6 Exhibit Freddie Mac First Quarter 2012 Form 10-Q (3532-3774))(McElvain, Joel) (Entered: 12/19/2013)
01/06/2014		MINUTE ORDER: It is hereby ORDERED that Defendants briefs in support of their dispositive motion in the three non-consolidated actions (Perry Capital LLC v. Lew, et al., No. 13-cv-1025 (RLW), Fairholme Funds, Inc., et al. v. Federal Housing Finance Agency, et al., No. 13-cv-1053 (RLW), and Arrowood Indemnity Co., et al. v. Federal National Mortgage Association, et al., No. 13-cv-1439 (RLW)) shall not exceed 130 pages. It is further ORDERED that

		Plaintiffs briefs in support of their opposition to Defendants dispositive motion and in support of any cross-motion for summary judgment shall not exceed 150 pages. Should Plaintiffs conclude, after reviewing Defendants filings and conferring in good faith, that an adequate response requires more than 150 pages, Plaintiffs counsel shall promptly inform the Court and file an appropriate motion. These page limits are inclusive of any supplemental briefs to be filed by the parties. Signed by Judge Robert L. Wilkins on 1/6/2014. (tcb) (Entered: 01/06/2014)
01/08/2014	32	Unopposed MOTION for Leave to File Excess Pages by DEPARTMENT OF TREASURY, JACOB J. LEW (McElvain, Joel) (Entered: 01/08/2014)
01/09/2014		MINUTE ORDER: Defendants 32 Unopposed MOTION for Leave to File Excess Pages is hereby GRANTED. Counsel for Defendants is admonished to comply with the local rules in the future and submit a proposed order with ALL motions pursuant to Local Rule 7(c). Signed by Judge Robert L. Wilkins on 1/9/2014. (tcb) (Entered: 01/09/2014)
01/17/2014	33	Corporate Disclosure Statement by FEDERAL HOME LOAN MORTGAGE CORPORATION. (Rodriguez, Graciela) (Entered: 01/17/2014)
01/17/2014	34	LCvR 7.1 CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests *Corporate Disclosure Statement* by FEDERAL NATIONAL MORTGAGE ASSOCIATION (Clement, Paul) (Entered: 01/17/2014)
01/17/2014	35	MOTION to Dismiss *or, in the Alternative, for Summary Judgment* by DEPARTMENT OF TREASURY, JACOB J. LEW (Attachments: # 1 Memorandum in Support, # 2 Text of Proposed Order)(McElvain, Joel). Added MOTION for Summary Judgment on 1/21/2014 (znmw,). (Entered: 01/17/2014)
01/17/2014	36	MOTION to Dismiss *All Claims and, in the Alternative, for Summary Judgment as to Plaintiffs Arbitrary and Capricious Claims and Memorandum in Support* by FEDERAL HOME LOAN MORTGAGE CORPORATION, FEDERAL HOUSING FINANCE AGENCY, FEDERAL NATIONAL MORTGAGE ASSOCIATION (Attachments: # 1 Text of Proposed Order)(Cayne, Howard). Added MOTION for Summary Judgment on 1/21/2014 (znmw,). (Entered: 01/17/2014)
01/17/2014	37	MOTION to Take Judicial Notice by EDWARD DEMARCO, FEDERAL HOME LOAN MORTGAGE CORPORATION, FEDERAL HOUSING FINANCE AGENCY, FEDERAL NATIONAL MORTGAGE ASSOCIATION (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Text of Proposed Order)(Cayne, Howard) (Entered: 01/17/2014)
01/24/2014		Case reassigned to the Calendar Committee who will oversee it until it is reassigned to another judge. Judge Robert L. Wilkins has been elevated to the U.S. Court of Appeals for DC and is no longer assigned to the case. Any questions should be directed to Terri Barrett, formerly Judge Wilkins deputy clerk, at 202-354-3179 or terri_barrett@dcd.uscourts.gov (zgt,) (Entered: 01/24/2014)

01/29/2014	38	STIPULATION / *Stipulation To Conform Briefing Schedule On Defendants' Motion For Judicial Notice To Briefing Schedule Established For Defendants' Dispositive Motions* by ARROWOOD INDEMNITY COMPANY, ARROWOOD SURPLUS LINES INSURANCE COMPANY, FINANCIAL STRUCTURES LIMITED. (Zuckerman, Richard) (Entered: 01/29/2014)
02/18/2014	39	STIPULATION *Regarding Briefing Schedule In All Cases* by ARROWOOD INDEMNITY COMPANY, ARROWOOD SURPLUS LINES INSURANCE COMPANY, FINANCIAL STRUCTURES LIMITED. (Zuckerman, Richard) (Entered: 02/18/2014)
02/20/2014	40	NOTICE *of Joinder In Motion By Plaintiffs Fairholme Funds, Inc. For Supplementation of The Administrative Records, For Limited Discovery, For Suspension of Briefing on Defendants' Dispositive Motions, and For A Status Conference* by ARROWOOD INDEMNITY COMPANY, ARROWOOD SURPLUS LINES INSURANCE COMPANY, FINANCIAL STRUCTURES LIMITED (Zuckerman, Richard) (Entered: 02/20/2014)
02/26/2014		Case reassigned by consent to Judge Royce C. Lamberth. Judge Robert L. Wilkins has been elevated to U.S. Court of Appeals for D.C. and is no longer assigned to the case. (tcb) (Entered: 02/26/2014)
03/04/2014	41	RESPONSE re 40 Notice (Other), filed by DEPARTMENT OF TREASURY, JACOB J. LEW. (McElvain, Joel) (Entered: 03/04/2014)
03/04/2014	42	RESPONSE re 40 Notice (Other), filed by EDWARD DEMARCO, FEDERAL HOME LOAN MORTGAGE CORPORATION, FEDERAL HOUSING FINANCE AGENCY, FEDERAL NATIONAL MORTGAGE ASSOCIATION. (Cayne, Howard) (Entered: 03/04/2014)
03/14/2014	43	Memorandum in opposition to re 37 MOTION to Take Judicial Notice / *Plaintiffs' Memorandum In Partial Opposition To Defendants' Motion For Judicial Notice* filed by ARROWOOD INDEMNITY COMPANY, ARROWOOD SURPLUS LINES INSURANCE COMPANY, FINANCIAL STRUCTURES LIMITED. (Attachments: # 1 Order [Proposed By Plaintiffs] On Defendants' Motion For Judicial Notice)(Zuckerman, Richard) (Entered: 03/14/2014)
03/21/2014	44	Memorandum in opposition to re 36 MOTION to Dismiss *All Claims and, in the Alternative, for Summary Judgment as to Plaintiffs Arbitrary and Capricious Claims and Memorandum in Support* MOTION for Summary Judgment, 35 MOTION to Dismiss *or, in the Alternative, for Summary Judgment* MOTION for Summary Judgment / *Plaintiffs' Cross-Motion for Summary Judgment* filed by ARROWOOD INDEMNITY COMPANY, ARROWOOD SURPLUS LINES INSURANCE COMPANY, FINANCIAL STRUCTURES LIMITED. (Attachments: # 1 Memorandum in Support /Memorandum of Law of Plaintiffs in Opposition to Defendants' Motions to Dismiss and Motions for Summary Judgment and in Support of Plaintiffs' Cross-Motion for Summary Judgment on Administrative Procedure Act Claims, # 2 Declaration /Declaration of Eugene G. Ballard, # 3 Declaration /Declaration of Bruce R. Berkowitz, # 4 Declaration /Declaration of Sean Beatty, # 5 Declaration /Declaration of Michael C. Neus, # 6 Text of Proposed Order [Proposed] Order Denying

		Defendants' Motions to Dismiss and Motions for Summary Judgment, and Granting Plaintiffs' Cross-Motion for Summary Judgment)(Zuckerman, Richard) (Entered: 03/21/2014)
03/21/2014	45	SUPPLEMENTAL MEMORANDUM re 36 MOTION to Dismiss *All Claims and, in the Alternative, for Summary Judgment as to Plaintiffs Arbitrary and Capricious Claims and Memorandum in Support* MOTION for Summary Judgment, 35 MOTION to Dismiss *or, in the Alternative, for Summary Judgment* MOTION for Summary Judgment / *Supplemental Memorandum of Law of Plaintiffs in Opposition to Defendants' Motions to Dismiss and Motions for Summary Judgment and in Support of Plaintiffs' Cross-Motion for Summary Judgment on Administrative Procedure Act Claims* filed by ARROWOOD INDEMNITY COMPANY, ARROWOOD SURPLUS LINES INSURANCE COMPANY, FINANCIAL STRUCTURES LIMITED. (Attachments: # 1 Text of Proposed Order [Proposed] Supplemental Order Denying Defendants' Motion to Dismiss Common Law Claims)(Zuckerman, Richard) Modified on 3/24/2014 (jf,). (Entered: 03/21/2014)
03/21/2014	46	Cross MOTION for Summary Judgment by ARROWOOD INDEMNITY COMPANY, ARROWOOD SURPLUS LINES INSURANCE COMPANY, FINANCIAL STRUCTURES LIMITED. (See Docket Entry 44 to view document) (jf,) (Entered: 03/24/2014)
05/02/2014	47	STIPULATION *Regarding Enlargement of Page Limits* by DEPARTMENT OF TREASURY, JACOB J. LEW. (McElvain, Joel) (Entered: 05/02/2014)
05/02/2014	48	REPLY to opposition to motion re 35 MOTION to Dismiss *or, in the Alternative, for Summary Judgment* MOTION for Summary Judgment filed by DEPARTMENT OF TREASURY, JACOB J. LEW. (McElvain, Joel) (Entered: 05/02/2014)
05/02/2014	49	Memorandum in opposition to re 46 MOTION for Summary Judgment filed by DEPARTMENT OF TREASURY, JACOB J. LEW. (McElvain, Joel) (Entered: 05/02/2014)
05/02/2014	50	REPLY to opposition to motion re 36 MOTION to Dismiss *All Claims and, in the Alternative, for Summary Judgment as to Plaintiffs Arbitrary and Capricious Claims and Memorandum in Support* MOTION for Summary Judgment filed by EDWARD DEMARCO, FEDERAL HOME LOAN MORTGAGE CORPORATION, FEDERAL HOUSING FINANCE AGENCY, FEDERAL NATIONAL MORTGAGE ASSOCIATION. (Cayne, Howard) (Entered: 05/02/2014)
05/02/2014	51	Memorandum in opposition to re 46 MOTION for Summary Judgment filed by EDWARD DEMARCO, FEDERAL HOME LOAN MORTGAGE CORPORATION, FEDERAL HOUSING FINANCE AGENCY, FEDERAL NATIONAL MORTGAGE ASSOCIATION. (Cayne, Howard) (Entered: 05/02/2014)
05/02/2014	52	REPLY to opposition to motion re 37 MOTION to Take Judicial Notice filed by EDWARD DEMARCO, FEDERAL HOME LOAN MORTGAGE CORPORATION, FEDERAL HOUSING FINANCE AGENCY, FEDERAL

		NATIONAL MORTGAGE ASSOCIATION. (Cayne, Howard) (Entered: 05/02/2014)
06/02/2014	53	STIPULATION *Regarding Enlargement of Page Limits* by ARROWOOD INDEMNITY COMPANY, ARROWOOD SURPLUS LINES INSURANCE COMPANY, FINANCIAL STRUCTURES LIMITED. (Barr, Michael) (Entered: 06/02/2014)
06/02/2014	54	REPLY to opposition to motion re 46 MOTION for Summary Judgment *on Administrative Procedure Act Claims* filed by ARROWOOD INDEMNITY COMPANY, ARROWOOD SURPLUS LINES INSURANCE COMPANY, FINANCIAL STRUCTURES LIMITED. (Barr, Michael) (Entered: 06/02/2014)
06/03/2014	55	SUPPLEMENTAL MEMORANDUM to re 44 Memorandum in Opposition,,,, 46 MOTION for Summary Judgment / *Supplemental Declaration of Sean Beatty* filed by ARROWOOD INDEMNITY COMPANY, ARROWOOD SURPLUS LINES INSURANCE COMPANY, FINANCIAL STRUCTURES LIMITED. (Zuckerman, Richard) (Entered: 06/03/2014)
06/05/2014		MINUTE ORDER postponing the motions hearing set by the 11/12/2013 Minute Entry until further order of the Court. Signed by Judge Royce C. Lamberth on June 5, 2014. (lcrcl5) (Entered: 06/05/2014)
08/26/2014	56	NOTICE OF SUPPLEMENTAL AUTHORITY by EDWARD DEMARCO, DEPARTMENT OF TREASURY, FEDERAL HOME LOAN MORTGAGE CORPORATION, FEDERAL HOUSING FINANCE AGENCY, FEDERAL NATIONAL MORTGAGE ASSOCIATION (Attachments: # 1 Exhibit A (S.D. Iowa Order))(Cayne, Howard) (Entered: 08/26/2014)
09/30/2014	57	ORDER on DEFENDANTS' MOTION FOR JUDICIAL NOTICE granting in part and denying in part (33) Motion to Take Judicial Notice in case 1:13-cv-01025-RCL; granting in part and denying in part (29) Motion to Take Judicial Notice in case 1:13-cv-01053-RCL; granting in part and denying in part (37) Motion to Take Judicial Notice in case 1:13-cv-01439-RCL; granting in part and denying in part (21) Motion to Take Judicial Notice in case 1:13-mc-01288-RCL. Signed by Judge Royce C. Lamberth on 9/30/2014. (tg,) (Entered: 09/30/2014)
09/30/2014	58	MEMORANDUM OPINION. Signed by Judge Royce C. Lamberth on 9/30/2014. (tg,) (Entered: 09/30/2014)
09/30/2014	59	ORDER GRANTING the defendants' motions to dismiss and DENYING the plaintiffs' cross-motion for summary judgment. Signed by Judge Royce C. Lamberth on 9/30/2014. (tg,) (Entered: 09/30/2014)
09/30/2014	60	ORDER denying motion, pursuant to the plaintiffs' notice of joinder 40 , for supplementation of the administrative record, limited discovery, suspension of briefing on the defendants' dispositive motions, and a status conference as moot due to the dismissal of this case pursuant to the Court's Order 59 issued this date. Signed by Judge Royce C. Lamberth on 9/30/2014. (ztg,) (Entered: 09/30/2014)
10/09/2014	61	

		NOTICE OF APPEAL TO DC CIRCUIT COURT as to 58 Memorandum & Opinion, 60 Order, 59 Order by ARROWOOD INDEMNITY COMPANY, ARROWOOD SURPLUS LINES INSURANCE COMPANY, FINANCIAL STRUCTURES LIMITED. Filing fee $ 505, receipt number 0090-3867209. Fee Status: Fee Paid. Parties have been notified. (Marrocco, Drew) (Entered: 10/09/2014)
10/09/2014	62	Transmission of the Notice of Appeal, Order Appealed, and Docket Sheet to US Court of Appeals. The Court of Appeals fee was paid this date re 61 Notice of Appeal to DC Circuit Court. (rdj) (Entered: 10/09/2014)
10/20/2014		USCA Case Number 14-5260 for 61 Notice of Appeal to DC Circuit Court, filed by ARROWOOD SURPLUS LINES INSURANCE COMPANY, ARROWOOD INDEMNITY COMPANY, FINANCIAL STRUCTURES LIMITED. (kb) (Entered: 10/20/2014)

PACER Service Center			
Transaction Receipt			
02/07/2016 11:01:31			
PACER Login:	gi0002:2554876:4036719	**Client Code:**	73817-00001
Description:	Docket Report	**Search Criteria:**	1:13-cv-01439-RCL
Billable Pages:	10	**Cost:**	1.00

APPEAL,CLOSED,CONSOL

U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:13-mc-01288-RCL

IN RE: FANNIE MAE/FREDDIE MAC SENIOR PREFERRED STOCK PURCHASE AGREEMENT CLASS ACTION LITIGATIONS
Assigned to: Judge Royce C. Lamberth
Case in other court: USCA, 14-05262
Cause: Civil Miscellaneous Case

Date Filed: 11/18/2013
Date Terminated: 10/10/2014
Jury Demand: Defendant
Nature of Suit: 890 Other Statutory Actions
Jurisdiction: Federal Question

In Re

FANNIE MAE/FREDDIE MAC SENIOR PREFERRED STOCK PURCHASE AGREEMENT CLASS ACTION LITIGATIONS

Plaintiff

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13cv1094

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MARNEU HOLDINGS CO. *derivatively on behalf of the FEDERAL NATIONAL MORTGAGE ASSOCIATION and FEDERAL HOME LOAN MORTGAGE CORPORATION ; 13cv1421*	represented by	**Geoffrey C. Jarvis** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED*
Plaintiff		
111 JOHN REALTY CORP. *derivatively on behalf of the FEDERAL NATIONAL MORTGAGE ASSOCIATION and FEDERAL HOME LOAN MORTGAGE CORPORATION ; 13cv1421*	represented by	**Geoffrey C. Jarvis** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED*
Plaintiff		
	represented by	

BARRY P. BORODKIN *13cv1443*		**Barbara J. Hart** LOWEY DANNENBERG COHEN& HART White Plains Plaza One North Broadway,Suite 509 White Plains, NY 10601 (914) 997 0500 Fax: (914) 997 0035 Email: bhart@lowey.com *LEAD ATTORNEY* *PRO HAC VICE* *ATTORNEY TO BE NOTICED* **Craig L. Briskin** MEHRI & SKALET, PLLC 1250 Connecticut Avenue, NW Suite 300 Washington, DC 20036 (202) 822-5100 Fax: (202) 822-4997 Email: cbriskin@findjustice.com *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED* **Thomas A. Skelton** LOWEY DANNENBERG COHEN& HART White Plains Plaza One North Broadway,Suite 509 White Plains, NY 10601 (914)997-0500 Fax: (914)997-0035 *LEAD ATTORNEY* *PRO HAC VICE* *ATTORNEY TO BE NOTICED*
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V.

Defendant

JACOB J. LEW
In his Official Capacity as the Secretary of the Department of Treasury ; 13cv1094

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Defendant

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Defendant

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Howard Neil Cayne
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LEAD ATTORNEY
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Defendant

FEDERAL NATIONAL MORTGAGE ASSOCIATION *13cv1169*	represented by	**Paul Clement** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED* **Stephen V Potenza** (See above for address) *LEAD ATTORNEY* *PRO HAC VICE* *ATTORNEY TO BE NOTICED*

Defendant

FEDERAL HOME LOAN MORTGAGE CORPORATION *13cv1169*	represented by	**Graciela Maria Rodriguez** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED* **Michael Joseph Ciatti** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED*

Defendant

FEDERAL HOUSING FINANCE ADMINISTRATION *13cv1169*	represented by	**Asim Varma** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED* **David Block Bergman** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED* **Howard Neil Cayne** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED*

Defendant

FEDERAL HOUSING FINANCE AGENCY *As Conservator Of Federal National Mortgage Association And Federal Home Loan Mortgage Corporation ;* *13cv1184*	represented by	**Asim Varma** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED* **David Block Bergman**

(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Howard Neil Cayne
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

DEPARTMENT OF THE TREASURY
13cv1184

represented by **Joel L. McElvain**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Thomas David Zimpleman
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

FEDERAL HOUSING FINANCE AGENCY
in its capacity as Conservator of the Federal National Mortgage Association ; 13cv1208

represented by **Asim Varma**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

David Block Bergman
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Howard Neil Cayne
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

UNITED STATES DEPARTMENT OF THE TREASURY
13cv1208

represented by **Joel L. McElvain**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Thomas David Zimpleman
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

represented by

FEDERAL NATIONAL MORTGAGE ASSOCIATION *13cv1208*		**Paul Clement** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED* **Stephen V Potenza** (See above for address) *LEAD ATTORNEY* *PRO HAC VICE* *ATTORNEY TO BE NOTICED*

Defendant

FEDERAL HOUSING FINANCE AGENCY *in its capacity as Conservator of the Federal National Mortgage Association and Federal Home Loan Mortgage Corporation ; 13cv1421*	represented by	**Howard Neil Cayne** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED*

Defendant

UNITED STATES DEPARTMENT OF THE TREASURY *13cv1421*	represented by	**Joel L. McElvain** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED* **Thomas David Zimpleman** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED*

Defendant

FEDERAL NATIONAL MORTGAGE ASSOCIATION *13cv1421*	represented by	**Paul Clement** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED* **Stephen V Potenza** (See above for address) *LEAD ATTORNEY* *PRO HAC VICE* *ATTORNEY TO BE NOTICED*

Defendant

FEDERAL HOME LOAN MORTGAGE CORPORATION *13cv1421*	represented by	**Graciela Maria Rodriguez** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED* **Michael Joseph Ciatti**

(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

FEDERAL NATIONAL MORTGAGE ASSOCIATION *13cv1443*	represented by	**Paul Clement** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED* **Stephen V Potenza** (See above for address) *LEAD ATTORNEY* *PRO HAC VICE* *ATTORNEY TO BE NOTICED*

Defendant

FEDERAL HOUSING FINANCE AGENCY *13cv1443*	represented by	**Howard Neil Cayne** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED*

Movant

JOHN CANE *13cv1149*	represented by	**Reuben A. Guttman** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED*

Movant

AMERICAN EUROPEAN INSURANCE COMPANY *13cv1149*	represented by	**Jeremy A. Lieberman** (See above for address) *LEAD ATTORNEY* *PRO HAC VICE* *ATTORNEY TO BE NOTICED* **Lesley F. Portnoy** (See above for address) *LEAD ATTORNEY* *PRO HAC VICE* *ATTORNEY TO BE NOTICED* **Michael Glenn McLellan** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED* **Patrick V. Dahlstrom** (See above for address) *LEAD ATTORNEY*

		PRO HAC VICE *ATTORNEY TO BE NOTICED* **Reuben A. Guttman** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED*
Movant		
FRANCIS J. DENNIS *13cv1094*	represented by	**Geoffrey C. Jarvis** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED* **Reuben A. Guttman** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED*
Movant		
MARY MEIYA LIAO *13cv1149*	represented by	**Reuben A. Guttman** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED*

Date Filed	#	Docket Text
11/18/2013	1	ORDER FOR CONSOLIDATION Signed by Judge Robert L. Wilkins on 11/18/2013. (Attachments: # 1 Appendix A-2) (rdj) (Entered: 11/18/2013)
11/18/2013	2	ORDER REGARDING BRIEFING SCHEDULE IN ALL CASES: Upon consideration of the Joint Status Report submitted on November 6, 2013 and pursuant to the Federal Rule of Civil Procedure 42, it is hereby ORDERED that the above captioned cases proceed according to the following schedule: Interim co-lead class counsel file a consolidated class action complaint due by 12/3/2013. Defendants file the administrative record due by 12/17/2013.. Defendants file dispositive motions due by 1/17/2014. Plaintiffs file oppositions to defendants motions and cross-motions due by 2/19/2014. Defendants file replies in support of their motions and oppositions to plaintiffs cross motions due by 4/2/2014. Plaintiffs file replies in support of their cross motions due by 5/2/2014. Hearing on defendants dispositive motions and plaintiffs cross-motions set for 6/23/2014 at 9:30 AM in Courtroom 27A before Judge Robert L. Wilkins.(SEE ORDER FOR FULL DETAILS). Signed by Judge Robert L. Wilkins on 11/18/2013. (tcb) (Entered: 11/18/2013)
11/20/2013		MINUTE ORDER: It is hereby ORDERED that all counsel of record who has filed an application to appear pro hac vice in their respective cases is hereby GRANTED permission to appear in this matter on the master docket. Signed by Judge Robert L. Wilkins on 11/20/2013. (tcb) (Entered: 11/20/2013)

11/25/2013	3	MOTION for Leave to Appear Pro Hac Vice :Attorney Name- Patrick V. Dahlstrom, :Firm- Pomerantz Grossman Hufford Dahlstrom & Gross LLP, :Address- 10 South LaSalle - Suite 3505 Chicago, IL 60603. Phone No. - (312) 377-1181. Fax No. - (312) 377-1184 by AMERICAN EUROPEAN INSURANCE COMPANY (Attachments: # 1 Exhibit Declaration of Patrick V. Dahlstrom, # 2 Text of Proposed Order)Associated Cases: 1:13-mc-01288-RLW, 1:13-cv-01169-RLW(McLellan, Michael) (Entered: 11/25/2013)
12/03/2013	4	AMENDED COMPLAINT against All Defendants with Jury Demand filed by JOSEPH CACCIAPELLE.(Zagar, Eric) (Entered: 12/03/2013)
12/05/2013		MINUTE ORDER granting 3 Motion for Leave to Appear Pro Hac Vice of Attorney Patrick V. Dahlstrom. Attorney Dahlstrom is permitted to appear pro hac vice in this matter on behalf of Plaintiff AMERICAN EUROPEAN INSURANCE COMPANY. Signed by Judge Robert L. Wilkins on 12/5/2013. (tcb) (Entered: 12/05/2013)
12/17/2013	5	NOTICE *of Verification of John Cane* by JOSEPH CACCIAPELLE re 4 Amended Complaint (Zagar, Eric) (Entered: 12/17/2013)
12/17/2013	6	ADMINISTRATIVE RECORD by UNITED STATES DEPARTMENT OF THE TREASURY, DEPARTMENT OF THE TREASURY, JACOB J. LEW, DEPARTMENT OF THE TREASURY(13cv1094), DEPARTMENT OF THE TREASURY(13cv1184), JACOB J. LEW, UNITED STATES DEPARTMENT OF THE TREASURY(13cv1421), UNITED STATES DEPARTMENT OF THE TREASURY(13cv1208). (Attachments: # 1 Exhibit Administrative Record part 1, # 2 Exhibit Administrative Record part 2, # 3 Exhibit Administrative Record part 3, # 4 Exhibit Administrative Record part 4, # 5 Exhibit Administrative Record part 5, # 6 Exhibit Administrative Record part 6, # 7 Exhibit Administrative Record part 7, # 8 Exhibit Administrative Record part 8, # 9 Exhibit Administrative Record part 9, # 10 Exhibit Administrative Record part 10, # 11 Exhibit Administrative Record part 11, # 12 Exhibit Administrative Record part 12, # 13 Exhibit Administrative Record part 13, # 14 Exhibit Administrative Record part 14)Associated Cases: 1:13-mc-01288-RLW, 1:13-cv-01094-RLW, 1:13-cv-01149-RLW, 1:13-cv-01169-RLW, 1:13-cv-01184-RLW, 1:13-cv-01208-RLW, 1:13-cv-01421-RLW, 1:13-cv-01443-RLW (McElvain, Joel) (Entered: 12/17/2013)
12/17/2013	7	NOTICE *OF FILING DOCUMENT COMPILATION REGARDING THIRD AMENDMENT TO SENIOR PREFERRED STOCK PURCHASE AGREEMENTS* by FEDERAL HOUSING FINANCE AGENCY, FEDERAL HOUSING FINANCE AGENCY(in its capacity as Conservator of the Federal National Mortgage Association and Federal Home Loan Mortgage Corporation), FEDERAL HOUSING FINANCE ADMINISTRATION, EDWARD DEMARCO, FEDERAL HOUSING FINANCE ADMINISTRATION (13cv1169), FEDERAL HOUSING FINANCE ADMINISTRATION (13cv1149), FEDERAL HOUSING FINANCE AGENCY(13cv1443), FEDERAL HOUSING FINANCE AGENCY(10cv1094), FEDERAL HOUSING FINANCE AGENCY(in its capacity as Conservator of the Federal National Mortgage Association and Federal Home Loan Mortgage Corporation ; 13cv1421), FEDERAL HOUSING FINANCE AGENCY(in its capacity as

		Conservator of the Federal National Mortgage Association ; 13cv1208), FEDERAL HOUSING FINANCE AGENCY(As Conservator Of Federal National Mortgage Association And Federal Home Loan Mortgage Corporation ; 13cv1184), EDWARD DEMARCO, FEDERAL HOUSING FINANCE AGENCY(in its capacity as Conservator of the Federal National Mortgage Association), FEDERAL HOUSING FINANCE AGENCY(As Conservator Of Federal National Mortgage Association And Federal Home Loan Mortgage Corporation) (Attachments: # 1 Index, # 2 Exhibit Part 1, # 3 Exhibit Part 2, # 4 Exhibit Part 3, # 5 Exhibit Part 4, # 6 Exhibit Part 5, # 7 Exhibit Part 6, # 8 Exhibit Part 7, # 9 Exhibit Part 8, # 10 Exhibit Part 9, # 11 Exhibit Part 10, # 12 Exhibit Part 11, # 13 Exhibit Part 12, # 14 Exhibit Part 13, # 15 Exhibit Part 14, # 16 Exhibit Part 15, # 17 Exhibit Part 16, # 18 Exhibit Part 17)Associated Cases: 1:13-mc-01288-RLW et al.(Varma, Asim) (Entered: 12/17/2013)
12/19/2013	8	ERRATA *with Respect to Administrative Record* by UNITED STATES DEPARTMENT OF THE TREASURY, DEPARTMENT OF THE TREASURY, JACOB J. LEW, DEPARTMENT OF THE TREASURY (13cv1094), DEPARTMENT OF THE TREASURY(13cv1184), JACOB J. LEW, UNITED STATES DEPARTMENT OF THE TREASURY(13cv1421), UNITED STATES DEPARTMENT OF THE TREASURY(13cv1208). (Attachments: # 1 Exhibit Freddie Mac 2010 Form 10-K (0640-1063), # 2 Exhibit Freddie Mac First Quarter 2011 Form 10-Q (1231-1461), # 3 Exhibit Freddie Mac Second Quarter 2011 Form 10-Q (1647-1892), # 4 Exhibit Freddie Mac Third Quarter 2011 Form 10-Q (2114-2357), # 5 Exhibit Freddie Mac 2011 Form 10-K (2765-3247), # 6 Exhibit Freddie Mac First Quarter 2012 Form 10-Q (3532-3774))Associated Cases: 1:13-mc-01288-RLW, 1:13-cv-01094-RLW, 1:13-cv-01149-RLW, 1:13-cv-01169-RLW, 1:13-cv-01184-RLW, 1:13-cv-01208-RLW, 1:13-cv-01421-RLW, 1:13-cv-01443-RLW(McElvain, Joel) (Entered: 12/19/2013)
12/27/2013	9	NOTICE *of Verification of American European Insurance Company* by JOSEPH CACCIAPELLE re 4 Amended Complaint (Zagar, Eric) (Entered: 12/27/2013)
12/27/2013	10	NOTICE *of Verification of 111 John Realty Corporation* by JOSEPH CACCIAPELLE re 4 Amended Complaint (Zagar, Eric) (Entered: 12/27/2013)
12/27/2013	11	NOTICE *of Verification of Marneu Holdings* by JOSEPH CACCIAPELLE re 4 Amended Complaint (Zagar, Eric) (Entered: 12/27/2013)
12/27/2013	12	NOTICE *of Verification of United Equities Commodities* by JOSEPH CACCIAPELLE re 4 Amended Complaint (Zagar, Eric) (Entered: 12/27/2013)
01/08/2014	13	Unopposed MOTION for Leave to File Excess Pages by UNITED STATES DEPARTMENT OF THE TREASURY, DEPARTMENT OF THE TREASURY, JACOB J. LEW, DEPARTMENT OF THE TREASURY (13cv1094), DEPARTMENT OF THE TREASURY(13cv1184), JACOB J. LEW, UNITED STATES DEPARTMENT OF THE TREASURY(13cv1421), UNITED STATES DEPARTMENT OF THE TREASURY(13cv1208) Associated Cases: 1:13-mc-01288-RLW et al.(McElvain, Joel) (Entered: 01/08/2014)

01/09/2014		MINUTE ORDER: Defendants 13 Unopposed MOTION for Leave to File Excess Pages is hereby GRANTED. Counsel for Defendants is admonished to comply with the local rules in the future and submit a proposed order with ALL motions pursuant to Local Rule 7(c). Signed by Judge Robert L. Wilkins on 1/9/2014. (tcb) (Entered: 01/09/2014)
01/09/2014	14	NOTICE *of Verification of Francis J. Dennis* by JOSEPH CACCIAPELLE re 4 Amended Complaint (Zagar, Eric) (Entered: 01/09/2014)
01/09/2014	15	NOTICE *of Verification of Michelle M. Miller* by JOSEPH CACCIAPELLE re 4 Amended Complaint (Zagar, Eric) (Entered: 01/09/2014)
01/09/2014	16	NOTICE *of Verification of Barry P. Borodkin* by JOSEPH CACCIAPELLE re 4 Amended Complaint (Zagar, Eric) (Entered: 01/09/2014)
01/17/2014	17	Corporate Disclosure Statement by FEDERAL HOME LOAN MORTGAGE CORPORATION, FEDERAL HOME LOAN MORTGAGE CORPORATION (13cv1421), FEDERAL HOME LOAN MORTGAGE CORPORATION (13cv1169), FEDERAL HOME LOAN MORTGAGE CORPORATION (13cv1149). Associated Cases: 1:13-mc-01288-RLW, 1:13-cv-01094-RLW, 1:13-cv-01149-RLW, 1:13-cv-01169-RLW, 1:13-cv-01184-RLW, 1:13-cv-01208-RLW, 1:13-cv-01421-RLW, 1:13-cv-01443-RLW(Rodriguez, Graciela) (Entered: 01/17/2014)
01/17/2014	18	LCvR 7.1 CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests *Corporate Disclosure Statement* by FEDERAL NATIONAL MORTGAGE ASSOCIATION(13cv1169) (Clement, Paul) (Entered: 01/17/2014)
01/17/2014	19	MOTION to Dismiss *or, in the Alternative, for Summary Judgment* by DEPARTMENT OF THE TREASURY(13cv1094), DEPARTMENT OF THE TREASURY(13cv1184), JACOB J. LEW, UNITED STATES DEPARTMENT OF THE TREASURY(13cv1421), UNITED STATES DEPARTMENT OF THE TREASURY(13cv1208) (Attachments: # 1 Memorandum in Support, # 2 Text of Proposed Order)(McElvain, Joel). Added MOTION for Summary Judgment on 1/21/2014 (znmw,). (Entered: 01/17/2014)
01/17/2014	20	MOTION to Dismiss *All Claims and, in the Alternative, for Summary Judgment as to Plaintiffs Arbitrary and Capricious Claims and Memorandum in Support* by EDWARD DEMARCO, FANNIE MAE/FREDDIE MAC SENIOR PREFERRED STOCK PURCHASE AGREEMENT CLASS ACTION LITIGATIONS, FEDERAL HOME LOAN MORTGAGE CORPORATION (13cv1421), FEDERAL HOME LOAN MORTGAGE CORPORATION (13cv1169), FEDERAL HOME LOAN MORTGAGE CORPORATION (13cv1149), FEDERAL HOUSING FINANCE ADMINISTRATION (13cv1169), FEDERAL HOUSING FINANCE ADMINISTRATION (13cv1149), FEDERAL HOUSING FINANCE AGENCY(13cv1443), FEDERAL HOUSING FINANCE AGENCY(10cv1094), FEDERAL HOUSING FINANCE AGENCY(in its capacity as Conservator of the Federal National Mortgage Association and Federal Home Loan Mortgage Corporation ; 13cv1421), FEDERAL HOUSING FINANCE AGENCY(in its capacity as Conservator of the Federal National Mortgage Association ; 13cv1208),

		FEDERAL HOUSING FINANCE AGENCY(As Conservator Of Federal National Mortgage Association And Federal Home Loan Mortgage Corporation ; 13cv1184), FEDERAL NATIONAL MORTGAGE ASSOCIATION(13cv1169), FEDERAL NATIONAL MORTGAGE ASSOCIATION(13cv1421), FEDERAL NATIONAL MORTGAGE ASSOCIATION(13cv1443), FEDERAL NATIONAL MORTGAGE ASSOCIATION(13cv1208), FEDERAL NATIONAL MORTGAGE ASSOCIATION(13cv1149) (Attachments: # 1 Text of Proposed Order)(Cayne, Howard). Added MOTION for Summary Judgment on 1/21/2014 (znmw,). (Entered: 01/17/2014)
01/17/2014	21	MOTION to Take Judicial Notice by EDWARD DEMARCO, FANNIE MAE/FREDDIE MAC SENIOR PREFERRED STOCK PURCHASE AGREEMENT CLASS ACTION LITIGATIONS, FEDERAL HOME LOAN MORTGAGE CORPORATION(13cv1421), FEDERAL HOME LOAN MORTGAGE CORPORATION(13cv1169), FEDERAL HOME LOAN MORTGAGE CORPORATION(13cv1149), FEDERAL HOUSING FINANCE ADMINISTRATION(13cv1169), FEDERAL HOUSING FINANCE ADMINISTRATION(13cv1149), FEDERAL HOUSING FINANCE AGENCY (13cv1443), FEDERAL HOUSING FINANCE AGENCY(10cv1094), FEDERAL HOUSING FINANCE AGENCY(in its capacity as Conservator of the Federal National Mortgage Association and Federal Home Loan Mortgage Corporation ; 13cv1421), FEDERAL HOUSING FINANCE AGENCY(in its capacity as Conservator of the Federal National Mortgage Association ; 13cv1208), FEDERAL HOUSING FINANCE AGENCY(As Conservator Of Federal National Mortgage Association And Federal Home Loan Mortgage Corporation ; 13cv1184), FEDERAL NATIONAL MORTGAGE ASSOCIATION(13cv1169), FEDERAL NATIONAL MORTGAGE ASSOCIATION(13cv1421), FEDERAL NATIONAL MORTGAGE ASSOCIATION(13cv1443), FEDERAL NATIONAL MORTGAGE ASSOCIATION(13cv1208), FEDERAL NATIONAL MORTGAGE ASSOCIATION(13cv1149) (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Text of Proposed Order)(Cayne, Howard) (Entered: 01/17/2014)
01/22/2014		Case reassigned by consent to Judge Royce C. Lamberth. Judge Robert L. Wilkins has been elevated to the U.S. Court of Appeals for DC and is no longer assigned to the case. (gt,) (Entered: 01/22/2014)
01/30/2014	22	STIPULATION *to Conform Briefing Schedule on Defendants' Motion for Judicial Notice to Briefing Schedule Established for Defendants' Dispositive Motions* by JOSEPH CACCIAPELLE. (Zagar, Eric) (Entered: 01/30/2014)
02/18/2014	23	NOTICE *of Joinder and Joinder to the Fairholme Funds Plaintiffs' Motion for Supplementation of the Administrative Records, for Limited Discovery, for Suspension of Briefing on Defendants' Dispositive Motions, and for a Status Conference* by JOSEPH CACCIAPELLE (Attachments: # 1 Exhibit A (Part 1), # 2 Exhibit A (Part 2), # 3 Exhibit A (Part 3))(Zagar, Eric) (Entered: 02/18/2014)
03/04/2014	24	

		RESPONSE re 23 Notice (Other), filed by DEPARTMENT OF THE TREASURY(13cv1094), DEPARTMENT OF THE TREASURY(13cv1184), JACOB J. LEW, UNITED STATES DEPARTMENT OF THE TREASURY (13cv1421), UNITED STATES DEPARTMENT OF THE TREASURY (13cv1208). (McElvain, Joel) (Entered: 03/04/2014)
03/04/2014	25	RESPONSE re 23 Notice (Other), filed by EDWARD DEMARCO, FEDERAL HOME LOAN MORTGAGE CORPORATION(13cv1421), FEDERAL HOME LOAN MORTGAGE CORPORATION(13cv1169), FEDERAL HOME LOAN MORTGAGE CORPORATION(13cv1149), FEDERAL HOUSING FINANCE ADMINISTRATION(13cv1169), FEDERAL HOUSING FINANCE ADMINISTRATION(13cv1149), FEDERAL HOUSING FINANCE AGENCY (13cv1443), FEDERAL HOUSING FINANCE AGENCY(10cv1094), FEDERAL HOUSING FINANCE AGENCY(in its capacity as Conservator of the Federal National Mortgage Association and Federal Home Loan Mortgage Corporation ; 13cv1421), FEDERAL HOUSING FINANCE AGENCY(in its capacity as Conservator of the Federal National Mortgage Association ; 13cv1208), FEDERAL HOUSING FINANCE AGENCY(As Conservator Of Federal National Mortgage Association And Federal Home Loan Mortgage Corporation ; 13cv1184), FEDERAL NATIONAL MORTGAGE ASSOCIATION(13cv1169), FEDERAL NATIONAL MORTGAGE ASSOCIATION(13cv1421), FEDERAL NATIONAL MORTGAGE ASSOCIATION(13cv1443), FEDERAL NATIONAL MORTGAGE ASSOCIATION(13cv1208), FEDERAL NATIONAL MORTGAGE ASSOCIATION(13cv1149). (Cayne, Howard) (Entered: 03/04/2014)
03/13/2014	26	MOTION for Extension of Time to *Consolidated Class Action and Derivative Plaintiffs' Motion for Enlargement of Time for Opposition to Motion to dismiss and Request for Expedited Decision* by JOSEPH CACCIAPELLE (Attachments: # 1 Proposed Order)(Zagar, Eric) (Entered: 03/13/2014)
03/14/2014	27	Memorandum in opposition to re 26 MOTION for Extension of Time to *Consolidated Class Action and Derivative Plaintiffs' Motion for Enlargement of Time for Opposition to Motion to dismiss and Request for Expedited Decision* filed by DEPARTMENT OF THE TREASURY(13cv1094), DEPARTMENT OF THE TREASURY(13cv1184), JACOB J. LEW, UNITED STATES DEPARTMENT OF THE TREASURY(13cv1421), UNITED STATES DEPARTMENT OF THE TREASURY(13cv1208). (McElvain, Joel) (Entered: 03/14/2014)
03/14/2014	28	Memorandum in opposition to re 26 MOTION for Extension of Time to *Consolidated Class Action and Derivative Plaintiffs' Motion for Enlargement of Time for Opposition to Motion to dismiss and Request for Expedited Decision* filed by EDWARD DEMARCO, FEDERAL HOME LOAN MORTGAGE CORPORATION(13cv1421), FEDERAL HOME LOAN MORTGAGE CORPORATION(13cv1169), FEDERAL HOME LOAN MORTGAGE CORPORATION(13cv1149), FEDERAL HOUSING FINANCE ADMINISTRATION(13cv1169), FEDERAL HOUSING FINANCE ADMINISTRATION(13cv1149), FEDERAL HOUSING FINANCE AGENCY (13cv1443), FEDERAL HOUSING FINANCE AGENCY(10cv1094), FEDERAL HOUSING FINANCE AGENCY(in its capacity as Conservator of

		the Federal National Mortgage Association and Federal Home Loan Mortgage Corporation ; 13cv1421), FEDERAL HOUSING FINANCE AGENCY(in its capacity as Conservator of the Federal National Mortgage Association ; 13cv1208), FEDERAL HOUSING FINANCE AGENCY(As Conservator Of Federal National Mortgage Association And Federal Home Loan Mortgage Corporation ; 13cv1184), FEDERAL NATIONAL MORTGAGE ASSOCIATION(13cv1169), FEDERAL NATIONAL MORTGAGE ASSOCIATION(13cv1421), FEDERAL NATIONAL MORTGAGE ASSOCIATION(13cv1443), FEDERAL NATIONAL MORTGAGE ASSOCIATION(13cv1208), FEDERAL NATIONAL MORTGAGE ASSOCIATION(13cv1149). (Cayne, Howard) (Entered: 03/14/2014)
03/14/2014	29	NOTICE *Consolidated Class Action and Derivative Plaintiffs' Notice of Joinder, Joinder and Reply Brief in Support of the Fairholme Plaintiffs' Motion for Supplementation of the Administrative Records, for Limited Discovery, for suspension of Briefing on Defendants' Dispositive Motions and for a Status Conference* by JOSEPH CACCIAPELLE (Attachments: # 1 Exhibit A)(Zagar, Eric) (Entered: 03/14/2014)
03/18/2014	30	MOTION for Leave to File Excess Pages *Consolidated Class Action and Derivative Plaintiffs' Unopposed Motion for Leave to Exceed Page Limitation on Omnibus Opposition to Defendants' Dispositive Motions* by JOSEPH CACCIAPELLE (Attachments: # 1 Text of Proposed Order)(Zagar, Eric) (Entered: 03/18/2014)
03/20/2014	31	MOTION for Leave to Appear Pro Hac Vice :Attorney Name- Michael J. Barry, :Firm- Grant & Eisenhofer P.A., :Address- 123 Justison Street, Wilmington, DE 19801. Phone No. - (302) 622-7000. Fax No. - (302) 622-7100 by 111 JOHN REALTY CORP., MARNEU HOLDINGS CO., UNITED EQUITIES COMMODITIES COMPANY, FRANCIS J. DENNIS (Attachments: # 1 Declaration of Michael J. Barry, # 2 Text of Proposed Order)Associated Cases: 1:13-mc-01288-RCL et al.(Jarvis, Geoffrey) (Entered: 03/20/2014)
03/20/2014	32	MOTION for Leave to Appear Pro Hac Vice :Attorney Name- David M. Haendler, :Firm- Grant & Eisenhofer P.A., :Address- 123 Justison Street, Wilmington, DE 19801. Phone No. - (302) 622-7000. Fax No. - (302) 622-7100 by 111 JOHN REALTY CORP., MARNEU HOLDINGS CO., UNITED EQUITIES COMMODITIES COMPANY, FRANCIS J. DENNIS (Attachments: # 1 Declaration of David M. Haendler, # 2 Text of Proposed Order)Associated Cases: 1:13-mc-01288-RCL et al.(Jarvis, Geoffrey) (Entered: 03/20/2014)
03/21/2014	33	Memorandum in opposition to re 20 MOTION to Dismiss *All Claims and, in the Alternative, for Summary Judgment as to Plaintiffs Arbitrary and Capricious Claims and Memorandum in Support* MOTION for Summary Judgment, 19 MOTION to Dismiss *or, in the Alternative, for Summary Judgment* MOTION for Summary Judgment *Consolidated Class Action and Derivative Plaintiffs' Omnibus Memorandum of Law in Opposition to Defendants' Motions to Dismiss the Consolidated Amended Class Action and Derivative Complaint, or in the Alternative, for Summary Judgment* filed by JOSEPH CACCIAPELLE.

		(Attachments: # 1 Declaration, # 2 Declaration, # 3 Declaration)(Zagar, Eric) (Entered: 03/21/2014)
03/21/2014	34	Memorandum in opposition to re 21 MOTION to Take Judicial Notice *Plaintiffs' Memorandum in Partial Opposition to Defendants' Motion to Take Judicial Notice* filed by JOSEPH CACCIAPELLE. (Attachments: # 1 Text of Proposed Order)(Zagar, Eric) (Entered: 03/21/2014)
03/24/2014		NOTICE OF ERROR re 33 Memorandum in Opposition; emailed to ezagar@ktmc.com, cc'd 46 associated attorneys -- The PDF file you docketed contained errors: 1. Invalid attorney signature, 2. DO NOT REFILE-ATTY'S PASSWORD/LOGIN SHOULD MATCH THE SIGNATURE PAGE OF THE PLEADING (jf,) (Entered: 03/24/2014)
03/24/2014		NOTICE OF ERROR re 34 Memorandum in Opposition; emailed to ezagar@ktmc.com, cc'd 46 associated attorneys -- The PDF file you docketed contained errors: 1. Invalid attorney signature, 2. DONOT REFILE (jf,) (Entered: 03/24/2014)
05/02/2014	35	JOINT STIPULATION REGARDING ENLARGEMENT OF PAGE LIMITS by JACOB J. LEW, UNITED STATES DEPARTMENT OF THE TREASURY. (rdj) (Entered: 05/05/2014)
05/02/2014	36	REPLY to opposition to motion re 20 MOTION to Dismiss *All Claims and, in the Alternative, for Summary Judgment as to Plaintiffs Arbitrary and Capricious Claims and Memorandum in Support* MOTION for Summary Judgment filed by FEDERAL HOME LOAN MORTGAGE CORPORATION, FEDERAL HOUSING FINANCE AGENCY. (rdj) (Entered: 05/05/2014)
05/02/2014	37	REPLY to opposition to motion re 21 MOTION to Take Judicial Notice filed by FEDERAL HOUSING FINANCE AGENCY. (rdj) (Entered: 05/05/2014)
05/05/2014	38	REPLY to opposition to motion re 19 MOTION to Dismiss *or, in the Alternative, for Summary Judgment* MOTION for Summary Judgment filed by DEPARTMENT OF THE TREASURY(13cv1094), DEPARTMENT OF THE TREASURY(13cv1184), JACOB J. LEW, UNITED STATES DEPARTMENT OF THE TREASURY(13cv1421), UNITED STATES DEPARTMENT OF THE TREASURY(13cv1208). (McElvain, Joel) (Entered: 05/05/2014)
07/30/2014	39	COMPLAINT against DEPARTMENT OF THE TREASURY(13cv1094), DEPARTMENT OF THE TREASURY(13cv1184), FEDERAL HOME LOAN MORTGAGE CORPORATION(13cv1421), FEDERAL HOME LOAN MORTGAGE CORPORATION(13cv1169), FEDERAL HOME LOAN MORTGAGE CORPORATION(13cv1149), FEDERAL HOUSING FINANCE AGENCY(13cv1443), FEDERAL HOUSING FINANCE AGENCY(10cv1094), FEDERAL HOUSING FINANCE AGENCY(in its capacity as Conservator of the Federal National Mortgage Association and Federal Home Loan Mortgage Corporation ; 13cv1421), FEDERAL HOUSING FINANCE AGENCY(in its capacity as Conservator of the Federal National Mortgage Association ; 13cv1208), FEDERAL HOUSING FINANCE AGENCY(As Conservator Of Federal National Mortgage Association And Federal Home Loan Mortgage Corporation ; 13cv1184), UNITED STATES DEPARTMENT OF THE

		TREASURY(13cv1421), UNITED STATES DEPARTMENT OF THE TREASURY(13cv1208) with Jury Demand (Fee Status:Filing Fee Waived) filed by JOSEPH CACCIAPELLE. (Attachments: # 1 Exhibits A-F)(Zagar, Eric) (Entered: 07/30/2014)
08/11/2014	40	ORDER denying, nunc pro tunc, 26 Motion by Consolidated Class Action and Derivative Plaintiffs for Enlargement of Time to File Opposition to Defendants' Motions to Dismiss 19 , 20 ; signed by Judge Royce C. Lamberth on 8/6/14. (kk) (Entered: 08/11/2014)
08/12/2014	41	ORDER granting (30) Motion for Leave to File Excess Pages in case 1:13-mc-01288-RCL, Signed by Judge Royce C. Lamberth on 8/7/2014. Associated Cases: 1:13-mc-01288-RCL, 1:13-cv-01094-RCL, 1:13-cv-01149-RCL, 1:13-cv-01169-RCL, 1:13-cv-01184-RCL, 1:13-cv-01208-RCL, 1:13-cv-01421-RCL, 1:13-cv-01443-RCL(hs) (Entered: 08/12/2014)
08/12/2014	42	ORDER; granting (32) Motion for Leave to Appear Pro Hac Vice in case 1:13-mc-01288-RCL, Signed by Judge Royce C. Lamberth on 8/7/2014. Associated Cases: 1:13-mc-01288-RCL, 1:13-cv-01094-RCL, 1:13-cv-01149-RCL, 1:13-cv-01169-RCL, 1:13-cv-01184-RCL, 1:13-cv-01208-RCL, 1:13-cv-01421-RCL, 1:13-cv-01443-RCL(hs) (Entered: 08/12/2014)
08/12/2014	43	ORDER; in case 1:13-cv-01094-RCL; granting (31) Motion for Leave to Appear Pro Hac Vice in case 1:13-mc-01288-RCL, Signed by Judge Royce C. Lamberth on 8/7/2014. Associated Cases: 1:13-mc-01288-RCL, 1:13-cv-01094-RCL, 1:13-cv-01149-RCL, 1:13-cv-01169-RCL, 1:13-cv-01184-RCL, 1:13-cv-01208-RCL, 1:13-cv-01421-RCL, 1:13-cv-01443-RCL(hs) (Entered: 08/12/2014)
08/26/2014	44	NOTICE OF SUPPLEMENTAL AUTHORITY by FEDERAL HOME LOAN MORTGAGE CORPORATION, FEDERAL HOUSING FINANCE AGENCY (in its capacity as Conservator of the Federal National Mortgage Association and Federal Home Loan Mortgage Corporation), FEDERAL NATIONAL MORTGAGE ASSOCIATION, EDWARD DEMARCO (Attachments: # 1 Exhibit A (S.D. Iowa Order))Associated Cases: 1:13-mc-01288-RCL et al. (Cayne, Howard) (Entered: 08/26/2014)
09/30/2014	45	ORDER on DEFENDANTS' MOTION FOR JUDICIAL NOTICE granting in part and denying in part (33) Motion to Take Judicial Notice in case 1:13-cv-01025-RCL; granting in part and denying in part (29) Motion to Take Judicial Notice in case 1:13-cv-01053-RCL; granting in part and denying in part (37) Motion to Take Judicial Notice in case 1:13-cv-01439-RCL; granting in part and denying in part (21) Motion to Take Judicial Notice in case 1:13-mc-01288-RCL. Signed by Judge Royce C. Lamberth on 9/30/2014. (tg,) (Entered: 09/30/2014)
09/30/2014	46	MEMORANDUM OPINION. Signed by Judge Royce C. Lamberth on 9/30/2014. (tg,) (Entered: 09/30/2014)
09/30/2014	47	ORDER GRANTING the defendants' motions to dismiss. Signed by Judge Royce C. Lamberth on 9/30/2014. (tg,) (Entered: 09/30/2014)
09/30/2014	48	ORDER denying motion, pursuant to the plaintiffs' notice of joinder 23 , for supplementation of the administrative record, limited discovery, suspension of

		briefing on the defendants' dispositive motions, and a status conference as moot due to the dismissal of this case pursuant to the Court's Order 47 issued this date. Signed by Judge Royce C. Lamberth on 9/30/2014(tg,) (Entered: 09/30/2014)
10/15/2014	49	NOTICE OF APPEAL TO DC CIRCUIT COURT re 46 , 47 & 48 by JOSEPH CACCIAPELLE. Filing fee $ 505, receipt number 0090-3871311. Fee Status: Fee Paid. Parties have been notified. (Zagar, Eric) Modified on 10/15/2014 to add linkage (rdj). (Entered: 10/15/2014)
10/15/2014	50	Transmission of the Notice of Appeal, Order Appealed, and Docket Sheet to US Court of Appeals. The Court of Appeals fee was paid this date re 49 Notice of Appeal to DC Circuit Court. (rdj) (Entered: 10/15/2014)
10/21/2014		USCA Case Number 14-5262 for 49 Notice of Appeal to DC Circuit Court filed by JOSEPH CACCIAPELLE. (kb) (Entered: 10/21/2014)

PACER Service Center			
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02/08/2016 10:05:39			
PACER Login:	gi0002:2554876:4036719	**Client Code:**	73817-00001
Description:	Docket Report	**Search Criteria:**	1:13-mc-01288-RCL
Billable Pages:	18	**Cost:**	1.80

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

PERRY CAPITAL LLC, for and on behalf of investment funds for which it acts as investment manager, 767 5th Avenue New York, New York 10153 Plaintiff, v. JACOB J. LEW, in his official capacity as the Secretary of the Department of the Treasury, 1500 Pennsylvania Avenue, N.W. Washington, D.C. 20220, EDWARD DeMARCO, in his official capacity as Acting Director of the Federal Housing Finance Agency, Constitution Center 400 7th Street, S.W. Washington, D.C. 20024, THE DEPARTMENT OF THE TREASURY, 1500 Pennsylvania Avenue, N.W. Washington, D.C. 20220, THE FEDERAL HOUSING FINANCE AGENCY, Constitution Center 400 7th Street, S.W. Washington, D.C. 20024, Defendants.	Civil Action No. 13-1025

**COMPLAINT AND PRAYER FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Perry Capital LLC ("Perry Capital"), for and on behalf of investment funds for which it acts as investment manager, files this complaint against Defendants Jacob J. Lew, in his official capacity as Secretary of the Department of the Treasury ("Treasury"); Edward DeMarco, in his official capacity as Acting Director of the Federal Housing Finance Agency ("FHFA"); Treasury; and the FHFA. The FHFA is the conservator for the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac") (collectively, the "Companies"). By this complaint, Perry Capital seeks to prevent Defendants from giving effect to or enforcing the so-called Third Amendment to preferred stock purchase agreements ("PSPAs") executed by Treasury and the FHFA, acting as conservator for the Companies. The Third Amendment fundamentally and unfairly alters the structure and nature of the securities Treasury purchased under the PSPAs, impermissibly destroys value in all of the Companies' privately held securities, and illegally begins to liquidate the Companies. This blatant overreach by the federal government to seize all of the Companies' profits at the expense of the Companies and all of their private investors is unlawful and must be stopped.

Perry Capital hereby alleges as follows:

I.
PRELIMINARY STATEMENT

1. This is an action under the Administrative Procedure Act, 5 U.S.C. §§ 551-559, 701-706 ("APA"), and the Housing and Economic Recovery Act of 2008, 12 U.S.C. §§ 1455, 1719, 4617 ("HERA"), challenging the action of Treasury and the FHFA to materially amend the PSPAs according to which Treasury purchased a new class of preferred stock in the Companies (the "Government Preferred Stock"), and to materially amend the stock certificates that created the Government Preferred Stock. The challenged amendments to the PSPAs and stock

certificates, which Treasury and the FHFA executed on August 17, 2012, are set forth in documents collectively known as the Third Amendment.

2. During the mortgage-related financial crisis that began in 2007, Congress created the FHFA to oversee the operations of the Companies and empowered the FHFA to serve as conservator to the Companies when necessary to preserve their financial health. When acting as conservator, the FHFA is obligated to manage the Companies with the goal of putting them in a sound and solvent financial condition while preserving and conserving their assets.

3. Congress also authorized Treasury to provide limited financial assistance to the Companies. Treasury was authorized to provide this assistance by purchasing securities issued by the Companies if it determined that such purchases would help stabilize financial markets, prevent disruptions in the mortgage markets, and protect taxpayers.

4. On September 7, 2008, the Director of the FHFA placed Fannie Mae and Freddie Mac into conservatorship, committing to "operate the [Companies] until they are stabilized." Press Release, FHFA, Statement of FHFA Director James B. Lockhart, at 6 (Sept. 7, 2008), *available at* http://www.fhfa.gov/webfiles/23/FHFAStatement9708final.pdf. Shortly thereafter, Treasury and the FHFA executed the PSPAs, according to which Treasury purchased 1 million shares of the Government Preferred Stock from each company, in exchange for a funding commitment that allowed each company to draw up to $100 billion from Treasury as needed to ensure that they maintained a net worth of at least zero. As relevant here, the Government Preferred Stock for each company has a liquidation preference equal to $1 billion plus the sum of all draws by each company against Treasury's funding commitment and is entitled to a cumulative dividend equal to ten percent of the outstanding liquidation preference. The PSPAs

also grant Treasury warrants to purchase up to 79.9% of each company's common stock at a nominal price.

5. Shortly after the commencement of the conservatorship, the Companies declared large non-cash losses, including write-downs of the value of significant tax assets—known as deferred tax assets—and large loss reserves, on their balance sheets. These accounting adjustments reflected exceedingly pessimistic views about the Companies' future financial prospects and temporarily decreased the Companies' operating capital and their net worth by hundreds of billions of dollars. Beginning in 2008, Treasury began purchasing Government Preferred Stock in large part to fill the holes in the Companies' balance sheets created by these accounting reserves.

6. By 2012, however, it had become clear that the Companies' financial condition had recovered to the point that they were achieving profitability and that their actual condition, in fact, was never as bad as had been originally feared. Among other things, between 2008 and 2012, the Companies' actual realized loan losses were far less—around $100 billion less—than their anticipated losses. Because of their improved financial condition, the Companies have been able to reverse the write-downs of their deferred tax assets and loss reserves that had impaired their balance sheets for years and their true financial strength was revealed.

7. The Companies posted sizable profits in the first two quarters of 2012 and announced that they expected to be profitable into the future. The prospect that the Companies could both redeem the Government Preferred Stock and provide value to holders of the Companies' other preferred stock and common stock (including Treasury) was—or should have been—obvious to both Treasury and the FHFA. Indeed, the stream of profits projected to continue in the coming years, coupled with the expected reversal of loss reserves and the write-

up in value of other assets, meant that the Companies' net worth was poised to increase by several hundred billion dollars.[1]

8. Instead of exercising its right to purchase up to 79.9% of the Companies' common stock or taking steps to enable the Companies to redeem the Government Preferred Stock , the FHFA and Treasury—two entities in the Executive Branch—maneuvered to ensure that Treasury would be the sole beneficiary of the Companies' improved financial position. The Third Amendment was their means to that end.

9. The Third Amendment fundamentally altered the dividend structure of the Government Preferred Stock. Under the original stock certificates, Treasury's dividend was paid quarterly in the amount equal to an annual ten percent of the Government Preferred Stock's outstanding liquidation preference. In the Third Amendment, the FHFA and Treasury amended the dividend provision to require that every dollar of each company's net worth above a certain capital reserve amount be given to Treasury as a dividend. The specified capital reserve amount steadily declines to zero in 2018. The Third Amendment also requires that the Companies liquidate their portfolio of mortgages faster than required under the original PSPAs.

10. Treasury's additional profits from the Third Amendment are enormous. On or about June 30, 2013, Fannie and Freddie collectively paid Treasury the largest dividend in history: $66.3 billion. By contrast, without the Third Amendment, Treasury would have received $4.7 billion.

[1] Indeed, by the end of 2012, Fannie Mae's profitability was such that it could not avoid writing-up its deferred tax assets. Under Generally Accepted Accounting Principles and the rules of the Securities and Exchange Commission, Fannie Mae's management had to recognize that its expected continued profitability meant that it was likely that it was going to be able to use its deferred tax assets. Notably, the original write-down of those assets is what caused Treasury to inject surplus funds into the company, and now under the Third Amendment, the write-up of those same assets has resulted in an immense infusion of cash to Treasury.

11. At the time of the Third Amendment, the liquidation preference for the Government Preferred Stock was approximately $189 billion, with approximately $117 billion attributable to Fannie Mae and $72 billion attributable to Freddie Mac. According to the Companies' financial statements, at the time of the Third Amendment, they had each paid dividends to Treasury equal to approximately 28% of the liquidation preference of their respective outstanding Government Preferred Stock (more than $25 billion by Fannie Mae and more than $20 billion by Freddie Mac).

12. As to be expected, the Companies' continued profitability has accelerated their payments to Treasury under the Third Amendment. In addition, Fannie Mae recently announced that it would write-up a portion of its deferred tax assets in the second quarter of 2013. As a result, Fannie Mae projected that by the end of the second quarter of 2013, it would have paid $95 billion in dividends to Treasury, almost 81% of the Government Preferred Stock's liquidation preference. Freddie Mac has not yet announced a similar write-up of its deferred tax assets. Nevertheless, it did state that by the end of the second quarter of 2013, it would have paid $36.5 billion in dividends to Treasury, or approximately 51% of the liquidation preference of the Government Preferred Stock it sold to Treasury. When it eventually does write-up its deferred tax assets, the Third Amendment will require Freddie Mac to transfer an additional $30 billion to Treasury. In fact, under current projections, the Companies will have fully reimbursed Treasury, with interest, by next year.

13. Under the Third Amendment, however, the amount of cash the Companies transfer to Treasury as a dividend does not reduce the amount of the Government Preferred Stock outstanding. Thus, regardless of how much money the Companies send to Treasury, all of the Government Preferred Stock will remain outstanding, and Treasury will continue to take

substantially all of the Companies' net worth, as long as they remain in business. Even before these most recent quarterly earnings reports showing record profits for the Companies, the President's proposed Fiscal Year 2014 budget estimated that by the end of the next 10 years, Treasury will have collected more than $238 billion from the Companies, approximately $50 billion more than it cost Treasury to purchase the Government Preferred Stock. *See* Office of Management and Budget, Analytical Perspectives: Budget of the U.S. Government 30, 383 (2013), *available at* http://www.whitehouse.gov/sites/default/files/omb/budget/fy2014/assets/spec.pdf. Given the timing of the release of the President's budget, it does not appear to include cash flow from the Companies' write-ups of the deferred tax assets, which would mean that the budget *understates* the cash flow by more than $80 billion. And, indeed, the Congressional Budget Office's May 2013 report, "Updated Budget Projections: Fiscal Years 2013 to 2023," shows that "certain accounting changes" are expected to add $95 billion in receipts to the Treasury in 2013.

14. The Third Amendment enriches the federal government through a self-dealing pact, and destroys tens of billions of value in the Companies' preferred stock that is, as a result of the PSPAs, now junior to the Government Preferred Stock (the "Private Sector Preferred Stock"). The Third Amendment also destroys value in the Companies' publicly held common stock. Fannie Mae and Freddie Mac sold the Private Sector Preferred Stock to private investors such as community banks and insurance companies before it sold the Government Preferred Stock to Treasury. Community banks, for example, invested large amounts in the Private Sector Preferred Stock in no small part because their regulators—which considered such investments to be low-risk—required banks to hold significantly lower reserves to back up investments in the Private Sector Preferred Stock, as compared to other investments.

15. As set forth more fully below, the funds managed by Perry Capital (the "Perry Funds") hold several series of Private Sector Preferred Stock. The Perry Funds have held Private Sector Preferred Stock since 2010 and purchased this stock in reliance on the terms of the Government Preferred Stock as it existed before the Third Amendment. The Private Sector Preferred Stock held by the Perry Funds is valuable for two reasons: First, it produces a non-cumulative annual dividend at a specified rate; second, it carries a liquidation preference—that is, upon liquidation, the holder of the stock is entitled to receive a defined amount per share, to the extent of available funds.

16. The Third Amendment drains all cash and other net worth from the Companies, leaving no funds to pay dividends on the Companies' Private Sector Preferred Stock or common stock or to satisfy the Private Sector Preferred Stock's liquidation preference. The Third Amendment thus deprives the Companies' Private Sector Preferred Stock and common stock of substantial present and future value.

17. After Fannie Mae and Freddie Mac transfer their net worth to Treasury, they will have no funds left over to pay dividends to holders of these securities. And as the FHFA recently acknowledged, the Third Amendment also deprives the Companies of funds to rebuild their capital reserves. *See* FHFA, *2012 Report to Congress*, June 13, 2013, at 13, *available at* http://www.fhfa.gov/webfiles/25320/FHFA2012_AnnualReport.pdf. Indeed, Treasury has explicitly stated that a primary purpose of the Third Amendment is to "expedite the wind down of Fannie Mae and Freddie Mac" as going concerns. *See* Press Release, Treasury, Treasury Department Announces Further Steps To Expedite Wind Down Of Fannie Mae And Freddie Mac (Aug. 17, 2012), *available at* http://www.treasury.gov/press-center/press-releases/Pages/tg1684.aspx. As Treasury explained, as a result of the Third Amendment, the

Companies "will be wound down and will not be allowed to retain profits, rebuild capital, [or] return to the market in their prior form." *Id.* Thus, upon liquidation the Companies cannot possibly have funds left over after paying their creditors and Treasury as the holder of the Government Preferred Stock to satisfy the Private Sector Preferred Stocks' liquidation preference. This is true no matter how much money the Companies pay to Treasury, or how much that sum exceeds Treasury's commitment to the Companies. As the FHFA's inspector general recently observed, the PSPAs mean that "preferred and common shareholders of [the Companies] . . . effectively lost their investments." FHFA Office of Inspector General, *Fannie Mae and Freddie Mac: Where The Taxpayers' Money Went*, at 25 (May 24, 2012), *available at* http://www.fhfaoig.gov/Content/Files/ FannieMaeandFreddieMac-WheretheTaxpayersMoneyWent.pdf.

18. Neither Treasury nor the FHFA had authority to enter into the Third Amendment. Even assuming such a one-sided agreement could ever be lawful, Treasury's temporary statutory authority to purchase securities issued by Fannie Mae and Freddie Mac expired at the end of 2009. The FHFA, as conservator of Fannie Mae and Freddie Mac, is statutorily required to operate the Companies so as to render them "sound and solvent" and to "conserve [their] assets and property." As a conservator, the FHFA lacks any authority to initiate the wind down of Fannie Mae and Freddie Mac.

19. Moreover, Treasury acted arbitrarily and capriciously in entering into the Third Amendment. Even when Treasury had authority to purchase the Companies' securities, it could not exercise its authority unless it made statutorily required determinations upon consideration of statutorily defined criteria. Treasury did not make a public record reflecting the required determinations or its consideration of the required factors before executing the Third

Amendment. Further, the Companies' financial positions at the time of the Third Amendment were such that the Third Amendment is not consistent with Treasury having considered the required factors or having made the necessary determinations in any reasoned manner. In fact, reports prepared for each company by the FHFA and delivered to Treasury before and immediately after the Third Amendment show that they did not need further funds from Treasury and were in fact capable of repaying Treasury. Treasury also failed to consider whether the Third Amendment was consistent with the duties it owes as the Companies' dominant shareholder to holders of the Companies' Private Sector Preferred Stock and common stock.

20. The FHFA also acted arbitrarily and capriciously in agreeing to the Third Amendment. The FHFA did not make any attempt to reconcile the Third Amendment, an explicitly acknowledged step towards liquidating Fannie Mae and Freddie Mac, with its obligation to preserve and protect the Companies' assets. In fact, the FHFA now acknowledges that the Third Amendment prohibits the Companies from building capital, which is inherently inconsistent with the FHFA's statutory duties as conservator. Indeed, the Companies' financial positions at the time of the Third Amendment were such that liquidating them could not be consistent with preserving and protecting the Companies' assets. Nor did the FHFA consider whether the Third Amendment is consistent with duties it owes to holders of the Companies' Private Sector Preferred Stock and common stock.

21. For the reasons set forth herein, the Court should declare the Third Amendment to be unlawful, set it aside, and enjoin the Defendants from acting according to its terms.

II.
JURISDICTION AND VENUE

22. This action arises under the APA, 5 U.S.C. §§ 551-559, 701-706, and HERA, 12 U.S.C. §§ 1455, 1719, 4617. The Court has subject-matter jurisdiction over this action under 28

U.S.C. § 1331. The Court is authorized to issue the non-monetary relief sought herein pursuant to 5 U.S.C. §§ 702, 705, and 706.

23. Plaintiff has standing to file this complaint. The Perry Funds own Private Sector Preferred Stock and common stock in both Fannie Mae and Freddie Mac. They have owned stock in the Companies since long before the Third Amendment and purchased this stock in reliance on the terms of the Government Preferred Stock as it existed before the Third Amendment. The Private Sector Preferred Stock owned by the Perry Funds has two principal features. First, it entitles the Perry Funds to a contractually specified, non-cumulative dividend from the Companies to the extent a dividend is declared for common or preferred stock of less than or equal seniority. Second, it entitles the Perry Funds to a priority claim to a contractually specified liquidation preference should the Companies liquidate. These entitlements are junior to Treasury's lawful rights under the PSPAs. Subject to a capital reserve requirement that is steadily phased out by 2018, the Third Amendment to the PSPAs sweeps all of Fannie Mae's and Freddie Mac's net worth to Treasury on a quarterly basis. By depriving the Companies of substantially every dollar of net worth, the Third Amendment prevents them from ever paying dividends on the Private Sector Preferred Stock and from rebuilding their capital to benefit holders of their common stock. As a result, the Third Amendment strips the Companies' Private Sector Preferred Stock and their common stock of substantially all value. Invalidation of the Third Amendment would redress this substantial harm to the Perry Funds.

24. Venue is proper in this Court under 28 U.S.C. § 1391(e)(1)(A) and (B), because this is an action against officers and agencies of the United States, and Defendants all reside in this judicial district; Secretary Lew and Acting Director DeMarco both perform their official

duties in this judicial district; and a substantial part of the events or omissions giving rise to this action occurred in this judicial district.

III.
PARTIES

25. Plaintiff Perry Capital LLC is an affiliate of Perry Corp., which is an investment advisor registered with the Securities and Exchange Commission under the Investment Advisor Act of 1940. Perry Capital primarily manages pooled investment vehicles, the Perry Funds, for the benefit of pension funds, university endowments, foundations, and other institutional and private investors. The Perry Funds invest in public equity, debt, real estate, and other markets, including private equity markets. Perry Capital is a limited liability corporation duly organized and existing under the laws of Delaware, and its principal place of business is 767 5th Avenue, New York, New York 10153.

26. Defendant Jacob J. Lew is the Secretary of the Department of the Treasury. His official address is 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220. He is being sued in his official capacity. In that capacity, Secretary Lew has overall responsibility for Treasury's management and operation. Secretary Lew, in his official capacity, is responsible for Treasury's conduct that is the subject of this complaint and for the related acts and omissions alleged herein.

27. Defendant Edward DeMarco is the Acting Director of the FHFA. His official address is Constitution Center, 400 7th Street, S.W., Washington, D.C. 20024. He is being sued in his official capacity. In that capacity, Acting Director DeMarco has overall responsibility for the operation and management of the FHFA. Acting Director DeMarco, in his official capacity, is responsible for the conduct of the FHFA that is the subject of this complaint and for the related acts and omissions alleged herein.

28. Defendant Department of the Treasury is, and was at all times relevant hereto, an agency of the United States government subject to the APA. *See* 5 U.S.C. §§ 101, 105, 551(1). The Department is located at 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220.

29. Defendant Federal Housing Finance Agency is, and was at all relevant times, an agency of the United States government subject to the APA. *See* 5 U.S.C. §§ 101, 105, 551(1). Congress created the FHFA on July 30, 2008 in HERA. The FHFA is located at Constitution Center, 400 7th Street, S.W., Washington, D.C. 20024.

IV.
FACTUAL ALLEGATIONS

30. Fannie Mae is a federally chartered private stockholder-owned corporation organized and existing under the Federal National Mortgage Act, created to provide supplemental liquidity to the mortgage market. Freddie Mac is a federally chartered private stockholder-owned corporation organized and existing under the Federal Home Loan Corporation Act, created to stabilize the nation's residential mortgage market and expand opportunities for homeownership and affordable rental housing. Both Fannie Mae and Freddie Mac are Government-Sponsored Enterprises, private corporations created by Congress with the goal of increasing liquidity in the mortgage market. The Companies endeavor to fulfill their goals by, among other things, purchasing mortgages originated by private banks, and bundling the mortgages into mortgage-related securities that can be sold to investors. By creating this secondary mortgage market, Fannie Mae and Freddie Mac increase liquidity for private banks, allowing them to make additional loans to individuals to purchase homes.

31. Notwithstanding their government pedigree, as of 2007, Fannie Mae and Freddie Mac were owned by private shareholders. Before 2007, the Companies were consistently

profitable. In fact, Fannie Mae had not reported a full-year loss since 1985, and Freddie Mac had not reported a loss since 1989.

32. In 2007, however, the nation's mortgage market began a precipitous decline as a faltering economy led to an increasing number of delinquent and defaulted mortgages. This decline had a particularly severe effect on the market's confidence in the financial health of Fannie Mae and Freddie Mac. At the time, numerous government officials sought to allay these concerns and affirm the continued financial strength of the Companies. James B. Lockhart, then-Director of the Office of Federal Housing Enterprise Oversight ("OFHEO") and later Director of the FHFA, said that the Companies were "adequately capitalized, holding capital well in excess of [regulatory requirements]" and had "large liquidity portfolios, access to the debt market and over $1.5 trillion in unpledged assets." Press Release, OFHEO, Statement of OFHEO Director James B. Lockhart (July 10, 2008), *available at* http://www.fhfa.gov/webfiles/1503/71008statement.pdf.

33. Nevertheless, given the importance of housing to the U.S. economy and the need to provide confidence to the market, Congress intervened by passing HERA. HERA created the FHFA, which took over regulatory responsibility for the Companies from OFHEO. HERA authorized the FHFA to place the Companies in conservatorship or receivership under certain statutorily defined circumstances.

34. Soon after HERA's enactment, the FHFA placed the Companies into conservatorship. As the conservator for Fannie Mae and Freddie Mac, the FHFA became responsible for "preserv[ing] and conserv[ing] [their] assets and property" and managing them so as to restore them to a "sound and solvent condition." 12 U.S.C. § 4617(b)(2)(D). The FHFA committed to "operate the Companies until they are stabilized." Press Release, FHFA, Statement

of FHFA Director James B. Lockhart, at 6 (Sept. 7, 2008), *available at* http://www.fhfa.gov/webfiles/23/FHFAStatement9708final.pdf. Acting Director DeMarco confirmed this operating framework, stating that the "statutory purpose of conservatorship is to preserve and conserve each company's assets and put them in a sound and solvent condition . . . to help restore confidence in the [C]ompanies, enhance their capacity to fulfill their mission, and [to] mitigate the systemic risk that contributed directly to instability in the financial markets." Statement of Edward J. DeMarco, Acting Director, FHFA, Before the U.S. House of Representatives Subcomm. on Capital Markets, Insurance, and Government-Sponsored Enterprises, at 2 (Sept. 15, 2010), *available at* http://www.fhfa.gov/webfiles/16726/DeMarcoTestimony15Sept2010final.pdf.

35. HERA also authorized Treasury to strengthen the Companies' balance sheets by purchasing their securities, within set time limits and consistent with certain statutory requirements. From the time of HERA's enactment in 2008 through the end of 2009, Congress authorized Treasury to "purchase any obligations and other securities issued by the [Companies] . . . on such terms and conditions as the Secretary may determine and in such amounts as the Secretary may determine." 12 U.S.C. §§ 1455(*l*)(1)(A), 1719(g)(1)(A). In order to exercise that authority, HERA required the Secretary to determine that purchasing the Companies' securities was "necessary to . . . provide stability to the financial markets; prevent disruptions in the availability of mortgage finance; and protect the taxpayer." 12 U.S.C. §§ 1455(*l*)(1)(B), 1719(g)(1)(B). And in making those determinations, the Secretary was required to consider several factors:

> (i) [t]he need for preference or priorities regarding payments to the Government; (ii) [l]imits on maturity or disposition of obligations or securities to be purchased; (iii) [t]he [Companies'] plan[s] for the orderly resumption of private market funding or capital market access; (iv) [t]he probability of the [Companies]

> fulfilling the terms of any such obligation or other security, including repayment; (v) [t]he need to maintain the [Companies'] status as . . . private shareholder-owned compan[ies]; [and] (vi) [r]estrictions on the use of [the Companies'] resources, including limitations on the payment of dividends and executive compensation or any such other terms and conditions as appropriate for those purposes.

Id. §§ 1455(*l*)(1)(C), 1719(g)(1)(C).

36. Using its temporary authority under HERA, Treasury entered into the PSPAs with the FHFA, which acted on behalf of both Companies. The PSPAs are identical in all material respects. Under the PSPAs, Treasury purchased 1 million shares of Government Preferred Stock from each of the Companies in exchange for allowing them to draw up to $100 billion each from Treasury. The Government Preferred Stock has a liquidation preference equal to $1 billion plus the sum of all draws by each company against Treasury's funding commitment, and is entitled to a cumulative dividend equal to ten percent of the outstanding liquidation preference. If the Companies pay a dividend, the PSPAs require payment in full to Treasury of dividends declared, but not paid, for prior dividend periods, before any privately held securities may receive a dividend. Indeed, the PSPAs explicitly prohibit the payment of any dividend to any shareholder other than Treasury without Treasury's consent. Further, if the Companies liquidate, Treasury must recover the full liquidation value of its shares before any other shareholder may recover anything. The PSPAs also grants Treasury warrants to purchase up to 79.9% of the Companies' common stock at a nominal price.

37. Treasury's statutory authority to purchase the Companies' securities, however, expired at the end of 2009. To enable Treasury to provide liquidity to the Companies beyond 2009, Treasury and the FHFA amended the PSPAs twice before the end of 2009. First, in May 2009, Treasury agreed to expand its funding commitment from $100 billion per company to $200 billion per company. Then, on December 24, 2009, just before its temporary authority

under HERA expired, Treasury agreed to a funding commitment that would be sufficient to enable the Companies to satisfy their capitalization requirements for 2010, 2011, and 2012 and to a funding commitment in subsequent years up to a limit determined by an agreed-upon formula.

38. Both Companies have issued several series of Private Sector Preferred Stock that are, as a result of the PSPAs, subordinate to the Government Preferred Stock. This stock, which was sold prior to the issuance of the Government Preferred Stock, is held by private investors such as community banks, insurance companies, and investors like the Perry Funds. As of March 31, 2013, the Companies' outstanding Private Sector Preferred Stock had an aggregate liquidation preference of $33 billion. Each class of Private Sector Preferred Stock has its own contractual dividend rate and liquidation value. The Perry Funds own multiple series of Private Sector Preferred Stock issued by the Companies; the Perry Funds began purchasing these shares in reliance on the terms of the Government Preferred Stock before the Third Amendment altered those terms.

39. Before the FHFA placed the Companies into conservatorship, Treasury and other federal agencies encouraged private investors to purchase Private Sector Preferred Stock. In fact, before the conservatorship, banking regulators believed that investments in the Companies were extraordinarily safe. As a result, they encouraged banks to invest in the Companies' preferred stock by allowing banks to carry it on their balance sheets at a 20 percent risk weighting (versus a risk weighting of 100 percent for other companies' preferred stock). The federal regulatory regime thus encouraged banks to own the Private Sector Preferred Stock.

40. When the Companies entered conservatorship, the FHFA suspended the payment of dividends on all of the Private Sector Preferred Stock and the PSPAs explicitly prohibit the

payment of any such dividends without Treasury's consent. Holders of the Companies' Private Sector Preferred Stock have not received any dividends on their investment since 2008.

41. Once in conservatorship, the Companies incurred substantial impairments to their balance sheets. The Companies, under the direction of the FHFA, expected to incur substantial loan losses in the coming years and did not expect to be profitable. Thus, the Companies booked substantial reserves—recorded loan losses before actually incurring them—and under applicable accounting standards, eliminated the value of non-cash deferred tax assets from their balance sheets.

42. These impairments set off a harmful feedback loop that required the Companies to draw increasing amounts against Treasury's funding commitment. Because of the accounting adjustments, the Companies had less capital and therefore needed capital from Treasury to operate. And because of their depleted operating capital, the Companies also sometimes lacked the funds necessary to pay Treasury the quarterly dividends due under the PSPAs. This required the Companies to draw additional funds from Treasury's funding commitment in order to pay the dividends. All of these draws increased the amount of Treasury's aggregate liquidation preference, and thus the amount of dividends payable to Treasury. Under the PSPAs, as amended, Treasury infused approximately $187 billion into the Companies and received approximately $55 billion in return in the form of dividends and other fees between 2008 and 2012.

43. During this timeframe, the FHFA continued to manage the Companies in conservatorship. HERA empowered the FHFA to force the Companies into receivership and to liquidate their assets under certain circumstances, 12 U.S.C. § 4617(b)(2)(E), but the FHFA apparently never considered that as a viable option, *see* FHFA, *A Strategic Plan For Enterprise*

Conservatorships: The Next Chapter In A Story That Needs An Ending, at 9 (Feb. 21, 2012), *available at* http://www.fhfa.gov/webfiles/23344/StrategicPlanConservatorshipsFINAL.pdf (asserting that "[w]ithout action by Congress, FHFA must continue to look to the existing statutory provisions that guide *the conservatorships*" (emphasis added)).

44. In 2012, it became clear that the Companies' financial position was not as bad as had been feared in 2008. Among other things, their actual loan losses were far less than their anticipated losses. For example, between the beginning of 2007 and the second quarter of 2012, the Companies had placed more than $234 billion in reserve to absorb anticipated loan losses. But over that same time period, the Companies had realized loan losses of just over $125 billion. In other words, the Companies had overstated their projected loan losses by $109 billion which was artificially weighing down their net worth.

45. In addition, in the first two quarters of 2012, the Companies posted sizable profits totaling more than $10 billion. The Companies' 10-Qs disclosed that they expected to be consistently profitable for the foreseeable future. These projected future profits meant that the Companies would be able to remove the valuation allowance against their deferred tax assets, worth approximately $100 billion, in future years.

46. Together, these profits and facts regarding the Companies' balance sheets showed that the Companies could both position themselves to redeem the Government Preferred Stock and provide a financial return to holders of their Private Sector Preferred Stock and their common stock.

47. By 2012, the fact that the Companies were returning to financial health and would soon be able to position themselves to redeem the Government Preferred Stock was—or at least should have been—obvious to Treasury and the FHFA. But instead of taking steps to aid that

process, Treasury and the FHFA entered into the Third Amendment, which ensured that Treasury would be the only beneficiary of the Companies' profitability and that the Companies would be wound down.

48. Under the Third Amendment, rather than paying Treasury a ten percent dividend, the Companies are required to pay every dollar of their quarterly net worth (above a nominal capital reserve amount that steadily declines until it is eliminated in 2018) to Treasury as a dividend. In Treasury's words, under the Third Amendment, it is owed a full sweep of "every dollar of profit that each firm earns going forward." *See* Press Release, Treasury, Treasury Department Announces Further Steps To Expedite Wind Down Of Fannie Mae And Freddie Mac (Aug. 17, 2012), *available at* http://www.treasury.gov/press-center/press-releases/Pages/tg1684.aspx.

49. The dividends that will be paid under the Third Amendment are expected to result in a torrent of cash to Treasury. In 2012, the Companies made combined profits of more than $28 billion. In the first quarter of 2013, they posted combined profits of approximately $15 billion. Because of its profitability, Fannie Mae was able to add approximately $51 billion to its net worth by recapturing some of the deferred tax assets it had written off in prior years. Freddie Mac is expected to recognize deferred tax assets worth approximately $30 billion in the near future, possibly as soon as this quarter. In fact, at the end of the second quarter of 2013, the Companies collectively paid $66.3 billion under the Third Amendment. Such large payments were not unexpected; shortly after the execution of the Third Amendment, the FHFA's Inspector General recognized that the new arrangement could result in "an extraordinary payment to Treasury." FHFA Office of Inspector General, *Analysis of the 2012 Amendments to the Government Stock Purchase Agreements*, at 15 (Mar. 20, 2013).

50. Treasury expects to recoup every dollar of the $187 billion it infused into the Companies within the next year. Indeed, over the next ten years, Treasury expects to collect $50 billion more from the Companies than it advanced to them.

51. The dividend under the Government Preferred Stock must be paid to Treasury in cash, even though the net worth of the Companies may include non-cash assets, such as the deferred tax assets. As a result, the Companies have had to sell non-liquid assets or issue debt to pay the dividend, which has had the foreseeable effect of preventing them from maximizing the value of their assets. Further, the Companies can never accumulate capital under the Third Amendment and can never redeem the Government Preferred Stock. The Companies' obligations to Treasury are thus converted into a sort of magic ATM: So long as the Companies remain in operation, all of their net worth will be transferred to Treasury but the outstanding balance of the Government Preferred Stock will remain $189 billion. Under the Third Amendment, none of the Companies' assets can be used to provide value to holders of their Private Sector Preferred Stock or common stock.

52. Treasury announced the Third Amendment on August 17, 2012, less than two weeks after the Companies announced their substantial profits for the second quarter of that year. Treasury's primary justification for the Third Amendment was that it would "help expedite the wind down of Fannie Mae and Freddie Mac, make sure that every dollar of earnings each firm generates is used to benefit taxpayers, and support the continued flow of mortgage credit during a responsible transition to a reformed housing finance market." *See* Press Release, Treasury, Treasury Department Announces Further Steps To Expedite Wind Down Of Fannie Mae And Freddie Mac (Aug. 17, 2012), *available at* http://www.treasury.gov/press-center/press-releases/Pages/tg1684.aspx. The FHFA paradoxically stated that the Third Amendment was part

of the process of both "building for the future" and "gradually contracting [the Companies'] operations." Press Release, FHFA, Statement of FHFA Acting Director Edward J. DeMarco On Changes To Fannie Mae And Freddie Mac Preferred Stock Purchase Agreements (Aug. 17, 2012), *available at* http://www.fhfa.gov/webfiles/24203/FINAL_FHFA_PSPA_8172012.pdf.

53. Neither Treasury nor the FHFA made any public record of their decisionmaking processes in agreeing to the Third Amendment.

54. Thus, there is no public record that Treasury made the determinations or considered the factors required by HERA before executing the Third Amendment. In any event, Treasury's description of the Third Amendment as assisting an expedited winding down of the Companies' operations demonstrates that the Third Amendment is wholly inconsistent with consideration of required statutory factors, such as "the need to maintain the [Companies'] status as . . . private shareholder-owned compan[ies]" and the Companies' plans "for the orderly resumption of private market funding or capital market access." *See* 12 U.S.C. §§ 1455(*l*)(1)(C), 1719(g)(1)(C). There is also no evidence that Treasury considered alternatives to the Third Amendment that would have been both consistent with its statutory obligations and less harmful to holders of the Companies' Private Sector Preferred Stock and common stock, including refinancing the Government Preferred Stock or allowing the Companies to resume paying dividends to holders of their Private Sector Stock and common stock.

55. There is also no public record that the FHFA considered whether the Third Amendment is consistent with its statutory obligations as the Companies' conservator. Treasury's stated purpose of winding down the Companies, which necessarily involves dissipating their assets and property, is incompatible on its face with FHFA's charge to put the Companies back into "a sound and solvent condition" and to "conserve [their] assets and

property." Acting Director DeMarco's statement that the Third Amendment reflects the FHFA's goal of "gradually contracting [the Companies'] operations" is also inconsistent with that obligation. Press Release, FHFA, *Statement of FHFA Acting Director Edward J. DeMarco On Changes To Fannie Mae And Freddie Mac Preferred Stock Purchase Agreements* (Aug. 17, 2012), *available at* http://www.fhfa.gov/webfiles/24203/FINAL_FHFA_PSPA_8172012.pdf.; *see also* Statement of Edward J. DeMarco, Acting Director, FHFA, Before the U.S. Senate Comm. on Banking and Urban Affairs 3 (Apr. 18, 2013) (explaining that the Third Amendment reinforces "the notion that the Companies will not be building capital as a potential step to regaining their former corporate status"); FHFA, *2012 Report to Congress*, June 13, 2013, at 13, *available at* http://www.fhfa.gov/webfiles/25320/FHFA2012_AnnualReport.pdf (stating that the FHFA's focus is on preparing the housing industry for a future "without Fannie Mae and Freddie Mac").

56. Further, there is no evidence that the FHFA considered alternatives to the Third Amendment that would have been both consistent with its statutory obligations and less harmful to holders of the Companies' Private Sector Preferred Stock and common stock, including refinancing the Government Preferred Stock or allowing the Companies to resume paying dividends to holders of their Private Sector Stock and common stock.

57. Finally, there is no public record that either government agency—Treasury or the FHFA—considered whether the Third Amendment is consistent with their duties to holders of the Companies' Private Sector Preferred Stock and common stock.

V.
CLAIMS FOR RELIEF

COUNT I

Violation Of The Administrative Procedure Act: Treasury's Conduct Exceeds Its Statutory Authority Under The Housing And Economic Recovery Act

58. Perry Capital incorporates by reference the allegations of the preceding paragraphs.

59. The APA empowers the Court to "hold unlawful and set aside agency action, findings, and conclusions" that are "in excess of statutory jurisdiction, authority, or limitations" or that are "without observance of procedure required by law." 5 U.S.C. § 706(2)(C), (D).

60. HERA limits Treasury's authority to make financial investments in the Companies. For example, Treasury's authority under HERA to purchase the Companies' securities and to modify the terms and conditions of those securities expired on December 31, 2009. 12 U.S.C. §§ 1455(*l*)(4), 1719(g)(4).

61. The Third Amendment, which was executed on August 17, 2012, created new securities, and Treasury's purchase of those securities violated that clearly demarcated limit on its authority.

62. Under the original PSPAs, Treasury purchased equity interests that entitled it to Government Preferred Stock with certain characteristics: a liquidation preference equal to the Companies' draws against Treasury's funding commitment and an annual dividend worth ten percent of the aggregate liquidation preference. These interests were embodied by stock certificates issued by the Companies. The PSPAs also grant Treasury warrants to purchase up to 79.9% of the Companies' common stock at a nominal price. The Third Amendment altered the underlying stock certificates to create a new security that entitles Treasury to a complete sweep

of all of the Companies' net worth every quarter for as long as they remain in operation and that extinguishes all other equity rights.

63. The Third Amendment thus effected a wholesale change to the nature of Treasury's securities after its authority to purchase new securities expired. Notably, Treasury could have exercised its warrants to purchase 79.9% of the Companies' common stock under the existing terms of the PSPAs. Doing so would have enabled both Treasury and private investors to share in the Companies' financial gains; instead, Treasury executed the Third Amendment, creating a new equity interest that seizes all of the Companies' gains for itself.

64. Treasury also exceeded its authority by amending the PSPAs without making certain statutorily required findings or considering statutorily required factors. Before exercising its temporary authority to purchase securities, HERA requires Treasury to "determine that such actions are necessary to . . . (i) provide stability to the financial markets; (ii) prevent disruptions in the availability of mortgage finance; and (iii) protect the taxpayer." 12 U.S.C. § 1719(g)(1)(B). In making the statutorily required determinations, HERA requires Treasury to consider such factors as "the [Companies'] plan[s] for the orderly resumption of private market funding or capital market access" and "the need to maintain the [Companies'] status as . . . private shareholder-owned compan[ies]," among other factors. 12 U.S.C. § 1719(g)(1)(C).

65. These statutory criteria apply to amendments of the PSPAs, in addition to the original execution of those agreements. Otherwise, Treasury could fundamentally alter its investments in the Companies at any time, including after its investment authority has expired, without making the required determinations or considering the necessary factors. This would turn HERA's grant of temporary authority to Treasury to purchase the Companies' securities under certain conditions into an unconstrained, permanent authority.

66. As far as the public record discloses, Treasury has not made any of the required determinations or considered any of the necessary factors. It therefore exceeded its statutory authority.

67. In any event, the Third Amendment is not compatible with due consideration of the factors Treasury must consider before purchasing the Companies' securities or amending its agreements to purchase such securities. The Third Amendment destroys value in all privately held securities, demonstrating that it is wholly incompatible with "the need to maintain the [Companies'] status as . . . private shareholder-owned compan[ies]" and with the "orderly resumption of private market funding or capital market access."

68. Treasury's conduct in entering into the Third Amendment was therefore "in excess of statutory . . . authority" and "without observance of procedure required by law," and Perry Capital is therefore entitled to relief against Treasury pursuant to 5 U.S.C. §§ 702, 706(2)(C), (D).

COUNT II

**Violation Of The Administrative Procedure Act:
Treasury's Conduct Was Arbitrary And Capricious**

69. Perry Capital incorporates by reference the allegations of the preceding paragraphs.

70. The APA empowers the Court to "hold unlawful and set aside agency action, findings, and conclusions" that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). This means, among other things, that agency action is unlawful unless it is the product of "reasoned decisionmaking." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 52 (1983). Decisionmaking that relies on

inadequate evidence or that results in inconsistent or contradictory conclusions cannot satisfy that standard.

71. Before Treasury exercises its temporary authority to purchase the Companies' securities, HERA requires Treasury to determine that the financial support is necessary to "provide stability to the financial markets," "prevent disruptions in the availability of mortgage finance," and "protect the taxpayer." 12 U.S.C. §§ 1455(*l*)(1)(B)(i)-(iii), 1719(g)(1)(B)(i)-(iii). In making these determinations, HERA further requires Treasury to "take into consideration" several factors, including the "plan for the orderly resumption of private market funding or capital market access," and the "need to maintain [the] status [of Fannie and Freddie] as . . . private shareholder-owned compan[ies]." *Id.* §§ 1455(*l*)(1)(C)(iii), (v), 1719(g)(1)(c)(iii), (v).

72. These statutory criteria apply to all amendments of the PSPAs. Otherwise, Treasury could fundamentally alter its investments in the Companies at any time, including after its investment authority has expired, without making the required determinations or considering the necessary factors. This would turn HERA's grant of limited, temporary authority to Treasury, to purchase the Companies' securities under certain conditions, into an unconstrained and permanent authority.

73. There is no public record that Treasury made the required determinations or considered the necessary factors before agreeing to the Third Amendment. Thus, Treasury has failed to explain how its conduct is consistent with its statutory obligations. Indeed, the available evidence reveals that it was not. Further, Treasury also has not explained whether it considered alternatives to the Third Amendment that would have been both consistent with its statutory obligations and less harmful to private investors in the Companies, including refinancing the Government Preferred Stock or allowing the Companies to resume paying dividends to holders

of their Private Sector Stock and common stock. Treasury has thus arbitrarily and capriciously failed to provide a reasoned explanation for its conduct, which results in the government's appropriation of tens of billions in private shareholder value.

74. Treasury also acted in an arbitrary and capricious manner by failing to consider whether the Third Amendment is consistent with the fiduciary duties it owes as the Companies' dominant shareholder to holders of the Companies' Private Sector Preferred Stock and common stock.

75. Under Delaware law, which governs shareholders' relationship with Fannie Mae, and Virginia law, which governs shareholders' relationship with Freddie Mac, a corporation's dominant shareholders owe fiduciary duties to minority shareholders.

76. Treasury is the dominant shareholder and de facto controlling entity of the Companies: Treasury is the Companies' only viable source of capital, and it must give its permission before the Companies issue debt or equity senior to the Government Preferred Stock.

77. The Third Amendment expropriates the value from holders of the Private Sector Preferred Stock for the sole benefit of the Companies' dominant shareholder. In fact, Treasury admits that the Third Amendment's purpose is to wind down the Companies' operations. Treasury's actions in preventing any dividends or value from reaching holders of Private Sector Preferred Stock, combined with Treasury's intent to liquidate the Companies, substantially diminishes the value of the Private Sector Preferred Stock.

78. Treasury's conduct in entering into the Third Amendment was arbitrary and capricious, and Perry Capital is therefore entitled to relief under 5 U.S.C. §§ 702, 706(2)(A).

COUNT III

Violation Of The Administrative Procedure Act: The FHFA's Conduct Exceeds Its Statutory Authority Under The Housing And Economic Recovery Act

79. Perry Capital incorporates by reference the allegations of the preceding paragraphs.

80. The APA empowers the Court to "hold unlawful and set aside agency action, findings, and conclusions" that are "in excess of statutory jurisdiction, authority, or limitations" or that are "without observance of procedure required by law." 5 U.S.C. § 706(2)(C), (D).

81. The FHFA's authority as the Companies' conservator is strictly limited by HERA. When acting as a conservator, HERA requires the FHFA to take steps to put the Companies in "a sound and solvent condition" and to work to "conserve [their] assets and property." 12 U.S.C. § 4617(b)(2)(D).

82. The FHFA, as the Companies' conservator, is without authority to wind up the Companies' operations. FHFA may only undertake such actions in its capacity as the Companies' receiver, but the FHFA has declined to put the Companies into receivership.

83. As Treasury has acknowledged, the Third Amendment is designed to wind down the Companies' operations. The Third Amendment intentionally impairs the Companies' ability to operate as going concerns, preventing them from ever rebuilding capital, achieving financial health, or returning to private ownership. In fact, the Third Amendment requires the Companies to accelerate the dissolution of their holdings.

84. The dissolution of the Companies is in direct contravention of HERA's statutory command that the FHFA "conserve [their] property and assets" and undertake those actions necessary to place the Companies in "a sound and solvent condition." 12 U.S.C. § 4617(b)(2)(D).

85. Further, under HERA, even when acting as a receiver, the FHFA must wind down the Companies in accordance with specific claims-determination procedures. Among other things, HERA requires the FHFA to "promptly publish a notice to the creditors of the regulated entity to present their claims," provide creditors with no fewer than ninety days in which to file a claim, and "establish such alternative dispute resolution processes as may be appropriate for the resolution of claims." 12 U.S.C. § 4617(b)(3)(B)(i), (b)(7)(A).

86. The FHFA's decision, as a conservator, to transfer all of the Companies' net worth to Treasury is an end-run around the procedural requirements HERA imposes on the FHFA. The Third Amendment allows Treasury to be paid amounts that exceed the value of its claims against the Companies, while making it impossible to satisfy claims of holders of the Companies' Private Sector Preferred Stock and common stock. In short, the Third Amendment effectively nullifies the claims of holders of the Companies' Private Sector Preferred Stock and common stock and precludes such holders from availing themselves of statutory protections to contest that nullification.

87. The FHFA's conduct in entering into the Third Amendment was therefore "in excess of statutory . . . authority" and "without observance of procedure required by law," and Perry Capital is therefore entitled to relief against Treasury pursuant to 5 U.S.C. §§ 702, 706(2)(C), (D).

COUNT IV

**Violation Of The Administrative Procedure Act:
The FHFA's Conduct Was Arbitrary And Capricious**

88. Perry Capital incorporates by reference the allegations of the preceding paragraphs.

89. The APA empowers the Court to "hold unlawful and set aside agency action, findings, and conclusions" that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). Agency action is arbitrary and capricious if it is not the product of "reasoned decisionmaking." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 52 (1983). This means, among other things, that an agency must provide an adequate evidentiary basis for its action, consider all important aspects of the problem before it, and rely upon consistent, logical reasoning in reaching its decision.

90. In entering into the Third Amendment, the FHFA acted in an arbitrary and capricious manner. The FHFA failed to engage in a reasoned decisionmaking process; to consider important aspects of the problem it believed it faced; to provide an adequate explanation for its decision; to consider alternatives; or to offer a reasoned justification of the Third Amendment.

91. The FHFA has not offered any legitimate justification for the Third Amendment, which it has acknowledged prohibits the Companies from building capital and which Treasury has further acknowledged expedites their dissolution. The FHFA has not explained how the Third Amendment is consistent with its statutory obligation to "conserve [the Companies'] assets and property" and to return the Companies to "a sound and solvent condition." 12 U.S.C. § 4617(b)(2)(D). The FHFA also has not explained whether it considered alternatives to the Third Amendment that would have been both consistent with its statutory obligations and less harmful to holders of the Companies' Private Sector Preferred Stock and common stock, including refinancing the Government Preferred Stock or allowing the Companies to resume paying dividends to holders of their Private Sector Stock and common stock.

92. Moreover, the Private Sector Preferred Stock, such as that held by the Perry Funds, was issued under a regime that gave its holders the opportunity to receive a stream of dividend payments and certain protections in the event of liquidation. The Third Amendment, however, creates an entirely new regime that deprives holders of the Private Sector Preferred Stock and common stock of any ability to realize the benefits of their bargains, no matter how well the Companies perform in the market or under what conditions they may eventually liquidate.

93. The FHFA had an obligation to consider whether the Third Amendment was consistent with the duties it owes to holders of the Companies' Private Sector Preferred Stock and common stock. The FHFA failed to do so. The FHFA therefore failed to consider an important aspect of the issue addressed by its action, rendering the Third Amendment arbitrary and capricious.

94. The FHFA's conduct in entering into the Third Amendment was arbitrary and capricious, and Perry Capital is therefore entitled to relief under 5 U.S.C. §§ 702, 706(2)(C).

PRAYER FOR RELIEF

95. WHEREFORE, Plaintiff prays for an order and judgment:

a. Declaring that the Third Amendment, and its adoption, are not in accordance with HERA within the meaning of 5 U.S.C. § 706(2)(C); and that Treasury and the FHFA acted arbitrarily and capriciously within the meaning of 5 U.S.C. § 706(2)(A) by executing the Third Amendment;

b. Vacating and setting aside the Third Amendment, including its provisions that sweep the full amount of the Companies' net worth to Treasury, that prevent redemption of the Government Preferred Stock, and that accelerate the Companies' dissolution;

c. Enjoining Treasury and its officers, employees, and agents from implementing, applying, or taking any action whatsoever pursuant to the Third Amendment;

d. Enjoining the FHFA and its officers, employees, and agents from implementing, applying, or taking any action whatsoever pursuant to the Third Amendment;

e. Awarding Perry Capital its reasonable costs, including attorneys' fees, incurred in bringing this action; and

f. Granting such other and further relief as this Court deems just and proper.

Respectfully submitted,

Dated: July 7, 2013

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* Application for admission to be submitted

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

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Civil Action No. 13-1053

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PREFERRED EMPLOYERS INSURANCE COMPANY,
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San Diego, CA 92108

Plaintiffs,

v.

THE FEDERAL HOUSING FINANCE AGENCY, in its capacity as Conservator of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation,
Constitution Center
400 7th Street, S.W.
Washington, D.C. 20024

EDWARD DeMARCO, in his official capacity as Acting Director of the Federal Housing Finance Agency,
Constitution Center
400 7th Street, S.W.
Washington, D.C. 20024

THE DEPARTMENT OF THE TREASURY,
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND DAMAGES

Fairholme Funds, Inc., on behalf of its series The Fairholme Fund, and The Fairholme Fund, a series of Fairholme Funds, Inc. ("Fairholme"), as well as Berkley Insurance Company, Acadia Insurance Company, Admiral Indemnity Company, Admiral Insurance Company, Berkley Regional Insurance Company, Carolina Casualty Insurance Company, Midwest Employers Casualty Insurance Company, Nautilus Insurance Company, Preferred Employers

Insurance Company (collectively, "Plaintiffs"), by and through the undersigned attorneys, file this Complaint against Defendants Federal Housing Finance Agency ("FHFA"), in its capacity as conservator of the Federal National Mortgage Association ("Fannie") and the Federal Home Loan Mortgage Corporation ("Freddie") (collectively, the "Companies"); Edward DeMarco, in his official capacity as the Acting Director of FHFA; and the Department of the Treasury ("Treasury"). Plaintiffs seek declaratory and injunctive relief to prevent Defendants from giving effect to the so-called "Net Worth Sweep" purportedly agreed to between FHFA, as conservator, and Treasury in August 2012. Plaintiffs also seek damages for breach of contract and breach of the implied covenant of good faith and fair dealing. The Net Worth Sweep—which effectively nationalized the privately owned Companies four years after the financial crisis when they had become profitable—is beyond the statutory authority of both FHFA as "conservator" and Treasury as a "temporary" investor. Furthermore, by entering the Net Worth Sweep FHFA nullified Plaintiffs' contractual rights and breached its fiduciary duty to Plaintiffs and other Fannie and Freddie preferred shareholders. Plaintiffs hereby allege as follows:

I.
INTRODUCTION

1. In 2008, Fannie and Freddie were two of the largest privately owned financial institutions in the world. The Companies owned and guaranteed trillions of dollars of assets, mostly mortgages or mortgage-backed securities. The Companies operated for profit. Their debt and equity securities were privately owned and publicly traded.

2. In addition to debt and common stock, the Companies issued non-cumulative preferred stock ("Preferred Stock"). The Preferred Stock was purchased for value by private investors, including community banks, mutual funds, insurance companies, pension funds, and countless individuals. The proceeds of the Preferred Stock were used by the Companies for

general corporate purposes, repurchases of other preferred and common stock, as well as to purchase and guarantee mortgages and mortgage-backed securities. The Preferred Stock was perceived to be a conservative investment paying a modest but reliable rate of return and carrying a very high credit rating. Unlike the common stock of the Companies, the Preferred Stock had the essential characteristics of a fixed income security and did not generally participate in the earnings of the Companies.

3. Fannie and Freddie had been consistently profitable for decades prior to 2008. However, in the mortgage-related financial crisis of 2008, the Companies faced a steep reduction in the book value of their assets and a loss of investor confidence in the mortgage market broadly. In reaction to the crisis, Congress enacted the Housing and Economic Recovery Act of 2008 ("HERA"). Only months later and pursuant to HERA, FHFA placed the Companies into conservatorship with the consent of Fannie and Freddie, and Treasury exercised its temporary authority to provide them with capital. FHFA vowed at the time that the conservatorship was temporary; it was to be terminated as soon as the Companies were stabilized and could be returned to normal business operations. The public was entitled to rely on these official statements of the purposes of the conservatorship, and public trading in Fannie's and Freddie's stock was permitted to, and did, continue.

4. When they agreed to conservatorship, the boards of Fannie and Freddie ceded control of the assets and powers of the Companies to FHFA as conservator. Fannie and Freddie each continue to have "boards of directors" in name, but these boards only report to the conservator and have duties only to the conservator. Thus, the conservator has ultimate responsibility for, and sole control of, the affairs of Fannie and Freddie so long as the conservatorship continues.

5. Immediately after the Companies were placed in conservatorship, Treasury exercised its temporary authority under HERA to enter into agreements with FHFA to purchase securities of Fannie and Freddie ("Purchase Agreements"). Under these Purchase Agreements, Treasury would invest in a newly created class of securities in the Companies, known as Senior Preferred Stock ("Government Stock"), as and when necessary for the Companies to maintain a positive net worth. In return for its commitment to purchase Government Stock, Treasury received $1 billion of Government Stock in each Company as a commitment fee and warrants to acquire 79.9% of the common stock of the Companies at a nominal price. This Government Stock ranked senior to all other preferred stock and was entitled to a cumulative annual dividend, paid quarterly, equal to 10% of the "outstanding liquidation preference," which was simply the sum of the $1 billion commitment fee plus the total amount of Government Stock outstanding. The warrants gave Treasury an "upside" return—beyond the already-significant 10% coupon on its Government Stock—in the event that the Companies recovered and returned to profitability.

6. The Companies wrote down assets significantly during the financial crisis. They sold additional Government Stock to Treasury to remedy the resulting book losses. By June 2012, Treasury had invested approximately $187 billion in Government Stock of the Companies: $161 billion of this amount was primarily attributable to accounting losses (*e.g.*, excess provisioning for estimated losses, fair value losses on their derivative securities, and other than temporary impairments on their investments), and the remaining $26 billion was needed to pay Treasury the 10% coupon on its outstanding amount of Government Stock.

7. Treasury made its investment in the Companies pursuant to temporary authority established under Section 1117 of HERA. This authority expired on December 31, 2009.

Treasury had made two substantive amendments to the Government Stock documents prior to the expiration of its authority.

8. By the second quarter of 2012, the housing market was already recovering and both Fannie and Freddie had returned to profitability. By that time, the Companies were demonstrably solvent and able to pay the 10% dividend on the Government Stock from their available cash. And once the 10% cumulative dividend on the Government Stock was paid in full, Treasury would also be entitled to dividends with respect to its ownership of 79.9% of the Companies' common stock (assuming exercise of Treasury's warrants), so long as dividends were also paid in full on the Preferred Stock held by private investors.

9. But Treasury was not content with its entitlement to 79.9% of the profits of the Companies going forward, subject to the Companies' fulfillment of their contractual obligations to their preferred shareholders. It wanted to cut out the preferred shareholders entirely, and it wanted *all* of the profits. Accordingly, just ten days after the Companies announced earnings for the second quarter of 2012, FHFA and Treasury unilaterally changed the rules. They announced the Net Worth Sweep, implemented by a "Third Amendment" to the Government Stock documents. The Net Worth Sweep was simple. It changed the 10% coupon due on Treasury's Government Stock to a dividend of **<u>100</u>% of all current and future profits of the Companies, forever**. By changing the dividend on its Government Stock in this manner, FHFA actually created, and Treasury purchased, an entirely new security.

10. The result of the Net Worth Sweep was to circumvent the rules of priority and to expropriate for the Government the value of the Preferred Stock and common stock held by private investors. Treasury itself said that the Net Worth Sweep was intended to ensure that "every dollar of earnings that Fannie Mae and Freddie Mac generate will benefit taxpayers."

Press Release, U.S. Department of the Treasury, Treasury Department Announces Further Steps to Expedite Wind Down of Fannie Mae and Freddie Mac (Aug. 17, 2012). The Companies received no investment by Treasury or other meaningful value in return for the Net Worth Sweep.

11. In short, Treasury and FHFA effectively nationalized two of the nation's largest financial institutions, while they were under the protection of FHFA as *conservator*.

12. The profits paid to Treasury under the Net Worth Sweep are enormous. On or about June 30, 2013, Fannie and Freddie collectively paid Treasury the largest dividend in history: $66.3 billion. By contrast, without the Net Worth Sweep, Treasury would be entitled to receive $4.7 billion, reflecting the original 10% coupon rate on its Government Stock. Treasury and FHFA each contend that the extra $61.6 billion is a windfall "dividend" on Treasury's Government Stock, rather than a return of capital invested. Accordingly, the liquidation preference of the Government Stock is not reduced and remains at $189 billion (the sum of the commitment fees plus the total amount of capital provided by the Treasury). As a result of the Net Worth Sweep, Treasury's annualized rate of return on its Government Stock for the applicable quarter is not 10%, but 140%. Furthermore, if the Net Worth Sweep is allowed to stand, it is anticipated that the Companies will be required to make similarly large dividend payments in subsequent quarters.

13. By purporting to enter into the Net Worth Sweep, both Treasury and FHFA have violated their governing statutes and regulations. Indeed, by yielding to Treasury's direction to expropriate the entire net worth of the Companies for the benefit of the Federal Government, FHFA acted in direct contravention of its charge as conservator to take those actions "necessary to put the [Companies] in a sound and solvent condition" and "appropriate to carry on the

business of the [Companies] and preserve and conserve [their] assets and property." 12 U.S.C. § 4617(b)(2)(D). And Treasury, for its part, acted without authority by effectively acquiring new securities in Fannie and Freddie through the Net Worth Sweep more than two years after the expiration of its temporary authorization to purchase the Companies' securities. This suit is brought to require Defendants to abide by the law and to enjoin their adherence to all applicable statutory requirements.

14. The conservatorship of Fannie and Freddie achieved the purpose of restoring the Companies to financial health. The capital provided by Treasury reassured investors in Fannie and Freddie debt instruments, and the mortgage origination market continued to function throughout the financial crisis. The housing market is recovering, and the Companies have been restored to stable profitability. The original Purchase Agreements provided needed capital to Fannie and Freddie in a transaction that honored, to an extent, the property rights of the Preferred Stock. But neither FHFA nor Treasury had authority to enter into the Net Worth Sweep, which nullified Plaintiffs' contractual rights and breached fiduciary duties to Plaintiffs and other Fannie and Freddie preferred shareholders. Furthermore, by entering into the Net Worth Sweep, FHFA nullified Plaintiffs' contractual rights and breached its fiduciary duty to Plaintiffs as well as other Fannie and Freddie preferred shareholders. The Net Worth Sweep must be set aside.

II.
JURISDICTION AND VENUE

15. Counts I-IV of this action arise under the Administrative Procedures Act ("APA"), 5 U.S.C. §§ 551-706, and/or the Housing and Economic Recovery Act of 2008 ("HERA"), PUB. L. NO. 110-289, 122 Stat. 2654 (2008) (codified at 12 U.S.C. §§ 1455, 1719, 4617). The Court has subject-matter jurisdiction over these claims under 28 U.S.C. § 1331. The Court is authorized to issue the non-monetary relief sought with respect to these claims pursuant

to 5 U.S.C. §§ 702, 705, and 706. The Court has subject matter jurisdiction over Counts V-VII under 28 U.S.C. §1367.

16. The Court also has subject matter jurisdiction over Counts V-VII under 12 U.S.C. §§ 1452(c), 1723a(a), and 4617(b)(2)(A).

17. Venue is proper in this Court under 28 U.S.C. § 1391(e)(1)(A) and (B), because this is an action against officers and agencies of the United States, and Defendants all reside in this judicial district; Acting Director DeMarco performs his official duties in this judicial district; and a substantial part of the events or omissions giving rise to this action occurred in this judicial district.

III.
PARTIES

18. Plaintiff Fairholme is a mutual fund with over 171,000 shareholders of all economic backgrounds with an average account size of less than $43,000. Fairholme's investment objective is long-term growth of capital for its shareholders. Fairholme owns Preferred Stock in each of Fannie and Freddie, as identified below. Fairholme is entitled to a contractually specified, non-cumulative dividend from the Companies in preference to dividends on common stock. Ownership of the Preferred Stock also entitles Fairholme to a contractually specified liquidation preference. The Preferred Stock is junior to Treasury's Government Stock. If valid, the Net Worth Sweep expropriates the value of Fairholme's Preferred Stock. Fairholme is a series of Fairholme Funds, Inc., a Maryland corporation headquartered in Florida. Fairholme's principal place of business is 4400 Biscayne Boulevard, Suite 900, Miami, Florida 33137.

19. W.R. Berkley Corporation owns directly or indirectly the following plaintiffs: Berkley Insurance Company, Acadia Insurance Company, Admiral Indemnity Company,

Admiral Insurance Company, Berkley Regional Insurance Company, Carolina Casualty Insurance Company, Midwest Employers Casualty Insurance Company, Nautilus Insurance Company, Preferred Employers Insurance Company (collectively, the "Berkley Plaintiffs"). The Berkley Plaintiffs are insurance companies.

20. Plaintiff Berkley Insurance Company is a Delaware corporation headquartered in Greenwich, Connecticut.

21. Plaintiff Acadia Insurance Company is a New Hampshire corporation headquartered in Westbrook, Maine.

22. Plaintiff Admiral Indemnity Company is a Delaware corporation headquartered in Hackensack, New Jersey.

23. Plaintiff Admiral Insurance Company is a Delaware corporation headquartered in Mount Laurel, New Jersey.

24. Plaintiff Berkley Regional Insurance Company is a Delaware Corporation headquartered in Greenwich, Connecticut.

25. Plaintiff Carolina Casualty Insurance Company is an Iowa corporation headquartered in Jacksonville, Florida.

26. Plaintiff Midwest Employers Casualty Insurance Company is a Delaware corporation headquartered in Chesterfield, Missouri.

27. Plaintiff Nautilus Insurance Company is an Arizona corporation headquartered in Scottsdale, Arizona.

28. Plaintiff Preferred Employers Insurance Company is a California Corporation headquartered in San Diego, California.

29. Defendant FHFA is, and was at all relevant times, an independent agency of the United States government subject to the APA. *See* 5 U.S.C. § 551(1). FHFA was created on July 30, 2008, pursuant to HERA. FHFA is located at Constitution Center, 400 7th Street, S.W., Washington, D.C. 20024.

30. Defendant Edward DeMarco is the Acting Director of FHFA. His official address is Constitution Center, 400 7th Street, S.W., Washington, D.C. 20024. He is being sued in his official capacity. In that capacity, Acting Director DeMarco has overall responsibility for the operation and management of FHFA. Acting Director DeMarco, in his official capacity, is therefore responsible for the conduct of FHFA that is the subject of this Complaint and for the related acts and omissions alleged herein.

31. Defendant Department of the Treasury is, and was at all times relevant hereto, an executive agency of the United States government subject to the APA. *See* 5 U.S.C. § 551(1). Treasury is located at 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220.

IV. FACTUAL ALLEGATIONS

Fannie and Freddie

32. Fannie is a stockholder-owned corporation organized and existing under the Federal National Mortgage Act. Freddie is a stockholder-owned corporation organized and existing under the Federal Home Loan Corporation Act. The Companies conduct a for-profit business by, among other things, purchasing and guaranteeing mortgages originated by private banks and bundling the mortgages into mortgage-related securities that can be sold to investors.

33. Fannie and Freddie are owned by private shareholders and their securities are publicly traded. Fannie was chartered by Congress in 1938 and originally operated as an agency of the federal government. In 1968, Congress reorganized Fannie into a for-profit corporation

owned by private shareholders. Freddie was established by Congress in 1970 as a wholly-owned subsidiary of the Federal Home Loan Bank System. In 1989, Congress reorganized Freddie into a for-profit corporation owned by private shareholders. As of March 31, 2013, Fannie and Freddie collectively had $5.3 trillion in total capital. Like other private corporations, Fannie and Freddie are, among other things, subject to applicable contract law and applicable law governing duties owed to shareholders.

34. Before being placed into conservatorship, both Fannie and Freddie had issued several series of Preferred Stock. Holders of Preferred Stock are contractually entitled to non-cumulative dividends when declared by the Companies and are also contractually entitled to a liquidation preference should the Companies liquidate. The several series of Preferred Stock of the Companies are in parity with each other with respect to dividend payments and liquidation preference, but they have priority over the Companies' common stock for these purposes. Fannie and Freddie are contractually prohibited from unilaterally changing the terms of the Companies' Preferred Stock to materially and adversely affect the rights of preferred shareholders. As of March 31, 2013, the Companies had outstanding Preferred Stock with an aggregate liquidation preference of $33 billion.

35. Fairholme's holdings include multiple series of Preferred Stock issued by the Companies. In particular, Fairholme's holdings of Preferred Stock are as follows:

Fairholme Holdings of Fannie Preferred Stock

Series	Dividend Rate	Redemption Value per Share
S	7.750%	$25.00
R	7.625%	$25.00
Q	6.750%	$25.00
P	4.500%	$25.00
O	7.000%	$50.00
G	0.070%	$50.00

Fairholme Holdings of Freddie Preferred Stock

Series	Dividend Rate	Redemption Value per Share
Z	7.875%	$25.00
Y	6.550%	$25.00
W	5.660%	$25.00
V	5.570%	$25.00
U	5.900%	$25.00
M	0.350%	$50.00
L	2.620%	$50.00
H	5.100%	$50.00
F	5.000%	$50.00
B	0.9250%	$50.00

36. At all times relevant hereto, shares in the S series of Freddie preferred stock and shares in the O series of Fannie preferred stock have been owned either by the Berkley Plaintiffs or by Berkley Insurance Company. The shares of Fannie and Freddie preferred stock were

initially acquired by the Berkley Plaintiffs, but the shares were later transferred to Berkeley Insurance Company.

37. Prior to 2007, Fannie and Freddie were consistently profitable. In fact, Fannie had not reported a full-year loss since 1985 and Freddie had never reported a full-year loss since becoming owned by private shareholders. In addition, both Companies regularly declared and paid dividends on each series of their respective Preferred Stock.

38. Beginning in late 2006, and accelerating in 2008, the nation's housing market and mortgage banking industry suffered significant book losses and a substantial decline in value. The housing crisis had a significant negative effect on the Companies' balance sheets, and from 2007 through 2011 both Fannie and Freddie experienced net losses. Given their expectation of incurring significant losses in the coming years along with diminished prospects of profitability, the Companies booked substantial reserves—recorded losses before actually incurring losses—and eliminated the value of certain non-cash assets, known as deferred tax assets, from their balance sheets. Because of these adjustments pursuant to Generally Accepted Accounting Principles ("GAAP"), the Companies had less operating capital available. Fannie's reported annual losses peaked in 2009 at $72 billion and Freddie's annual losses peaked in 2008 at $50 billion.

39. As the housing and financial crisis deepened, Congress responded in part by enacting HERA. As relevant here, HERA created FHFA (which succeeded to the regulatory authority over Fannie and Freddie previously held by the Office of Federal Housing Enterprise Oversight) and authorized FHFA, under certain statutorily prescribed and circumscribed conditions, to place those Companies into conservatorship or receivership.

Fannie and Freddie Are Placed into Conservatorship

40. On September 6, 2008, FHFA placed Fannie and Freddie into conservatorship pursuant to the authority and requirements of HERA. As then-FHFA Director Lockhart explained, conservatorship "is a statutory process designed to stabilize a troubled institution with the objective of returning the entities to normal business operations." Statement of James B. Lockhart, Director, FHFA, at 5-6 (Sept. 7, 2008).

41. According to Section 1145 of HERA, "[t]he Agency may, as conservator, take such action as may be—(i) necessary to put the regulated entity in a sound and solvent condition, and (ii) appropriate to carry on the business of the regulated entity and preserve and conserve the assets and property of the regulated entity." 12 U.S.C. § 4617(b)(2)(D).

42. Conservatorship is a status distinct from receivership, with very different purposes, responsibilities, and restrictions. When acting as a receiver, but not when acting as a conservator, FHFA is authorized and obliged to "place the regulated entity in liquidation and proceed to realize upon the assets of the regulated entity." *Id*. § 4617(b)(2)(E). In other words, receivership is aimed at winding down an entity's affairs and liquidating its assets, while conservatorship aims to return it to normal operation.

43. In promulgating regulations governing its operations as conservator or receiver of the Companies, FHFA specifically acknowledged the distinctions in its statutory responsibilities as conservator and as receiver: "A conservator's goal is to continue the operations of a regulated entity, rehabilitate it and return it to a safe, sound and solvent condition." Conservatorship and Receivership, 76 Fed. Reg. 35,724, 35,730 (June 20, 2011). In contrast, where FHFA acts as a receiver, the regulation specifically provides that "[t]he Agency, as receiver, *shall* place the regulated entity in liquidation . . . ." 12 C.F.R. § 1237.3(b) (emphasis added). The regulation

also provides that in liquidating a company's assets, "priority as between holders of . . . different classes [of stock] should be determined by the capital plans or other underlying corporate instruments," such that preferred stock will have a liquidation preference over common stock. 76 Fed. Reg. at 35,730; *see* 12 C.F.R. § 1237.9(a)(4).

44. In announcing the conservatorship, Director Lockhart stated that "FHFA will act as the conservator to operate [Fannie and Freddie] until they are stabilized." Statement of Lockhart at 6. Director Lockhart also announced that under the conservatorship "the common and all preferred stocks [of the Companies] will continue to remain outstanding." *Id.* at 8. FHFA emphasized that the conservatorship was temporary: "Upon the Director's determination that the Conservator's plan to restore the [Companies] to a safe and solvent condition has been completed successfully, the Director will issue an order terminating the conservatorship." FHFA Fact Sheet, Questions and Answers on Conservatorship. The public was entitled to rely on these official statements of the purposes of the conservatorship, and public trading in Fannie's and Freddie's stock was permitted to, and did, continue.

FHFA and Treasury Enter into the Purchase Agreements

45. On September 7, 2008, Treasury and FHFA, acting in its capacity as conservator of Fannie and Freddie, entered into the Purchase Agreements.

46. In entering into the Purchase Agreements, Treasury exercised its temporary authority under HERA to purchase securities issued by the Companies. *See* 12 U.S.C. §§ 1455(*l*), 1719(g). In order to exercise that authority, the Secretary was required to determine that purchasing the Companies' securities was "necessary . . . to provide stability to the financial markets; . . . prevent disruptions in the availability of mortgage finance; and . . . protect the

taxpayer." 12 U.S.C. §§ 1455(*l*)(1)(B), 1719(g)(1)(B). In making those determinations, the Secretary was required to consider several factors:

> (i) The need for preferences or priorities regarding payments to the Government.
> (ii) Limits on maturity or disposition of obligations or securities to be purchased.
> (iii) *The [Companies'] plan[s] for the orderly resumption of private market funding or capital market access.*
> (iv) The probability of the [Companies] fulfilling the terms of any such obligation or other security, including repayment.
> (v) *The need to maintain the [Companies'] status as . . . private shareholder-owned compan[ies].*
> (vi) Restrictions on the use of [the Companies'] resources, including limitations on the payment of dividends and executive compensation and any such other terms and conditions as appropriate for those purposes.

Id. §§ 1455(*l*)(1)(C), 1719(g)(1)(C) (emphasis added).

47. Treasury's authority under HERA to purchase the Companies' securities expired on December 31, 2009. *See id.* §§ 1455(*l*)(4), 1719(g)(4).

48. Treasury's Purchase Agreements with Fannie and Freddie are materially identical. Under the original, unamended agreements Treasury committed to provide up to $100 billion to each Company to ensure that it maintained a positive net worth. In particular, for quarters in which either Company's liabilities exceed its assets under GAAP, the Purchase Agreements authorize Fannie and Freddie to draw upon Treasury's commitment in an amount equal to the difference between its liabilities and assets.

49. In return for its funding commitment, Treasury received 1 million shares of Government Stock in each Company and a warrant to purchase 79.9% of the common stock of each Company at a nominal price. Exercising these warrants would entitle Treasury to up to 79.9% of all future profits of the Companies, subject only to the Companies' obligation to satisfy their prior dividend obligations with respect to the Preferred Stock.

50. Treasury's Government Stock in each Company had an initial liquidation preference of $1 billion. This liquidation preference increases by one dollar for each dollar the Companies receive from Treasury pursuant to the Purchase Agreements. In the event the Companies liquidate, Treasury is entitled to recover the full liquidation value of its shares before any other shareholder may recover anything.

51. In addition to the liquidation preference, the original, unamended Purchase Agreements provided for Treasury to receive a cumulative dividend equal to 10% of the value of the outstanding liquidation preference. (The dividend rate could increase to 12% if the company failed to pay dividends in cash in a timely manner.)

52. The Purchase Agreements prohibit Fannie and Freddie from declaring and paying dividends on any securities junior to Treasury's Government Stock unless full cumulative dividends have been paid to Treasury on its Government Stock for the then-current and all past dividend periods.

Treasury and FHFA Amend the Purchase Agreements
<u>To Increase Treasury's Funding Commitment</u>

53. On May 6, 2009, Treasury and FHFA amended the terms of the Purchase Agreements to increase Treasury's funding commitment to both Fannie and Freddie. In particular, under the amendment Treasury's total commitment to each Company increased from $100 billion to $200 billion.

54. On December 24, 2009—one week before Treasury's temporary authority under HERA expired—FHFA and Treasury again amended the terms of Treasury's funding commitment. Instead of setting that commitment at a specific dollar amount, the second amendment established a formula to allow Treasury's total commitment to each Company to

exceed (but not fall below) $200 billion depending upon any deficiencies experienced in 2010, 2011, and 2012, and any surplus existing as of December 31, 2012.

55. Treasury's authority under HERA then expired on December 31, 2009.

<u>The Companies Return to Profitability and Stability</u>

56. Beginning in the third quarter of 2008, the balance sheets of Fannie and Freddie reflected large non-cash losses, including write-downs of the value of significant tax assets and the establishment of large loan loss reserves, based on exceedingly pessimistic views of the Companies' future financial prospects. These non-cash losses temporarily decreased the Companies' operating capital and their net worth by hundreds of billions of dollars. To date, the Companies have drawn a total of $187 billion from Treasury, in large part to fill the holes in the Companies' balance sheets created by these non-cash losses. Including Treasury's initial $1 billion liquidation preference in each Company, Treasury's liquidation preference for its Government Stock amounts to approximately $117 billion for Fannie and approximately $72 billion for Freddie. Approximately $26 billion of these combined amounts were required simply to pay the 10% dividend payments owed to Treasury; the rest were primarily made to account for changes in the valuation estimates of assets and liabilities.

57. By 2012, the housing market was already recovering and both Fannie and Freddie had returned to profitability. It quickly became clear that the Companies' previously anticipated losses far exceeded their actual losses. Indeed, the Companies had provisioned more than $225 billion over the previous four years to absorb anticipated losses. Only half of those reserves may now be needed. These excess loss reserves artificially depressed the Companies' net worth. Upon reversal of these loss reserves, Fannie's and Freddie's net worth will increase accordingly and, under the Net Worth Sweep, that increase will be swept to Treasury. Fannie has not drawn

on Treasury's commitment since the fourth quarter of 2011, and Freddie has not drawn on Treasury's commitment since the first quarter of 2012. In fact, in the first two quarters of 2012, the Companies posted sizable profits totaling more than $11 billion.

58. As Fannie explained last year:

> [w]e experienced a significant improvement in our financial results for the second quarter and first half of 2012 compared with the second quarter and first half of 2011. . . . [W]e saw improvement in the housing market in the first half of 2012. In addition, we have seen further improvement in the performance of our book of business, including lower delinquency rates and higher re-performance rates for our modified loans.

Fannie Mae, Second Quarter Report (Form 10-Q) at 2 (Aug. 8, 2012). FHFA's Office of Inspector General similarly recognized that by early August 2012 "Fannie and Freddie were experiencing a turnaround in their profitability. Due to rising house prices and reductions in credit losses, in early August 2012 the Companies reported significant income for the second quarter 2012 . . . and neither required a draw from Treasury under the [Purchase Agreements]." FHFA, Office of Inspector General, Analysis of the 2012 Amendments to the Government Stock Purchase Agreements at 11 (Mar. 20, 2013) ("FHFA Inspector General Report").

59. Together, the Companies' return to profitability and the stable recovery of the housing market showed that the Companies could in time redeem Treasury's Government Stock and provide a return on investment to owners of their Preferred Stock.

60. Fannie and Freddie are now immensely profitable. Fannie's reported net income of $17.2 billion in 2012 was by far the largest in the Company's history. And Fannie's $8.1 billion pre-tax income for the first quarter of 2013 was the largest quarterly pre-tax income in the Company's history. Fannie's net income for the first quarter of 2013 was $58.7 billion, and it ended the quarter with a net worth of $62.4 billion. Fannie has reported that "we expect our annual earnings to remain strong over the next few years" and that "[w]e expect to remain

profitable for the foreseeable future." Fannie Mae, First Quarter Report (Form 10-Q) at 1, 2 (Mar. 31, 2013).

61. Fannie's $58.7 billion net income for the first quarter of 2013 reflects the release of $50.6 billion of the company's deferred tax assets valuation allowance. The release of this valuation allowance underscores Fannie's financial strength, as it demonstrates Fannie's expectation that it will generate sizable taxable income moving forward. A deferred tax asset is an asset that may be used to offset future tax liability. If a company determines that it is unlikely that some or all of a deferred tax asset will be used, the company must establish a "valuation allowance" in the amount that is unlikely to be used. In other words, a company cannot record a deferred tax asset as an asset if it is unlikely to be used to offset future taxable profits. Fannie relied on the following evidence of future profitability in support of its release of the $50.6 billion valuation allowance:

- "our profitability in 2012 and the first quarter of 2013 and our expectations regarding the sustainability of these profits;
- our three-year cumulative income position as of March 31, 2013;
- the strong credit profile of the loans we have acquired since 2009;
- the significant size of our guaranty book of business and our contractual rights for future revenue from this book of business;
- our taxable income for 2012 and our expectations regarding the likelihood of future taxable income; and
- that our net operating loss carryforwards will not expire until 2030 through 2031 and we expect to utilize all of these carryforwards within the next few years."

Fannie Mae, First Quarter Report (Form 10-Q) at 15 (May 9, 2013).

62. Like Fannie, Freddie has also returned to stable profitability. Freddie reported net income of $11 billion and $5.1 billion in other comprehensive income in 2012. And the Company reported total income for the first quarter of 2013 of $7 billion, consisting of $4.6

billion of net income and $2.4 billion of other comprehensive income. Freddie's net worth on March 31, 2013, was approximately $10 billion.

63. In sum, "[m]uch has changed since 2008. The housing market is improving, house prices are rising, and guarantee fees have been increased, all resulting in greater profitability at Fannie Mae and Freddie Mac." FHFA Inspector General Report at 16; *see also* FHFA, REP. TO CONGRESS iii (2012) ("the overall improvement in the housing market, improved quality of new loans guaranteed, and increased guarantee fee pricing, along with income from the retained portfolio have resulted in improved financial results"). And as FHFA and its Acting Director have recognized, "[t]he conservatorships of Fannie Mae and Freddie Mac, . . . combined with U.S. Treasury financial support and management actions, have stabilized" the Companies, FHFA, 2012 REP. at ii, and "it is clear they are each beginning to show regular, strong profitability," Edward J. DeMarco, Acting Director, FHFA, Remarks as Prepared for Delivery at Fed. Reserve Bank of Chicago's 49th Annual Conference on Bank Structure and Competition 2 (May 9, 2013).

FHFA and Treasury Amend the Purchase Agreements
<u>To Expropriate the Companies' Net Worth</u>

64. On August 17, 2012, within days after the Companies had announced their return to profitability and just as it was becoming clear that they had the earnings power to redeem Treasury's Government Stock and exit conservatorship, FHFA and Treasury amended the Purchase Agreements for a third time. Again, at the time that this Net Worth Sweep was "under consideration, Fannie Mae and Freddie Mac were experiencing a turnaround in their profitability. Due to rising house prices and reductions in credit losses, in early August 2012 the [Companies] reported significant income for the second quarter 2012 . . . and neither required a draw from Treasury under the [Purchase Agreements]." FHFA Inspector General Report at 11. But rather

than fulfilling its statutory responsibility as conservator to return the Companies to sound and solvent business operations and, ultimately, to private control, FHFA entered into the Net Worth Sweep with Treasury, which expropriates all of the Companies' profits and begins the process of winding down the Companies.

65. As Treasury stated when the Net Worth Sweep was announced, the dividend sweep of all of the Companies' net worth will require that "every dollar of earnings that Fannie Mae and Freddie Mac generate will be used to benefit taxpayers." Press Release, U.S. Dep't of the Treasury, Treasury Department Announces Further Steps to Expedite Wind Down of Fannie Mae and Freddie Mac (Aug. 17, 2012). The Net Worth Sweep, in short, effectively nationalized the Companies and confiscated the existing and potential value of all privately held equity interests, including the Preferred Stock held by Plaintiffs.

66. In particular, the Net Worth Sweep altered the dividend payment on Treasury's Government Stock: instead of a quarterly payment of 10% on the total amount of Treasury's liquidation preference, the Net Worth Sweep entitles Treasury to a quarterly payment of *all—100%*—of the Companies' net worth. Thus, any increase in net worth flowing from net income or other comprehensive income will be swept by Treasury. Beginning January 1, 2013, the Companies must pay Treasury a quarterly dividend equal to their *entire net worth*, minus a capital reserve amount that starts at $3 billion and decreases to $0 by January 1, 2018. The Net Worth Sweep also accelerates the rate at which the Companies must shrink their mortgage asset holdings down to $250 billion each, from 10% per year to 15% per year.

67. As noted above, FHFA agreed to sweep all of the Companies' profits to Treasury at the very moment that the Companies had returned to stable profitability, as demonstrated in the table below. At a dividend rate of 10%, Treasury's approximately $189 billion in

outstanding Government Stock earn annual dividends of some $18.9 billion, payable in quarterly installments of approximately $4.7 billion. Thus, in any quarter in which the Companies' combined profits exceed $4.7 billion (or more precisely, any quarter in which Fannie or Freddie's profits exceed the dividend owed on their Government Stock), that value would redound to the benefit of the private shareholders but for the Net Worth Sweep.

Net Income for Fannie and Freddie
(in billions)

		Fannie	Freddie	Combined
2011	Q1	**($6.5)**	**$0.7**	**($5.8)**
	Q2	**($2.9)**	**($2.1)**	**($5.0)**
	Q3	**($5.1)**	**($4.4)**	**($9.5)**
	Q4	**($2.5)**	**$0.6**	**($1.9)**
2012	Q1	**$2.7**	**$0.6**	**$3.3**
	Q2	**$5.1**	**$3.0**	**$8.1**
	Q3	**$1.8**	**$2.9**	**$4.7**
	Q4	**$7.6**	**$4.5**	**$12.1**
2013	Q1	**$58.7**	**$4.6**	**$63.3**

68. On August 7 and 8, 2012, the Companies reported results for the second quarter for 2012, showing collective profits of more than $8 billion. Ten days later, Treasury and FHFA announced the Net Worth Sweep, acknowledging that its avowed purpose was to ensure that none of the Companies' profits would redound to the benefit of the private shareholders. Indeed, the President and CEO of Fannie confirmed the obvious in October of 2012 when he stated: "The company is no longer run for the benefit of private shareholders." Timothy J. Mayopoulos, President and CEO, Fannie Mae, Remarks Prepared for Delivery at MBA Annual Conference (Oct. 22, 2012).

69. The Net Worth Sweep is squarely contrary to FHFA's statutory responsibilities as conservator of Fannie and Freddie. Again, as conservator FHFA is obligated to "take such action as may be—(i) necessary to put the regulated entity in a sound and solvent condition; and (ii) appropriate to carry on the business of the regulated entity and preserve and conserve the assets and property of the regulated entity." 12 U.S.C. § 4617(b)(2)(D). As FHFA itself has acknowledged, the agency "has a statutory charge to work to restore a regulated entity in conservatorship to a sound and solvent condition . . . ." 76 Fed. Reg. at 35,727. Accordingly, "allowing capital distributions to deplete the entity's conservatorship assets would be inconsistent with the agency's statutory goals, as they would result in removing capital at a time when the Conservator is charged with rehabilitating the regulated entity." *Id.* The Net Worth Sweep's quarterly sweep of all net profits thus plainly harms, rather than promotes, the soundness and solvency of the Companies by effectively prohibiting them from rebuilding their capital. Nor can distributing the entire net worth of the Companies to Treasury be reconciled with FHFA's statutory obligation to preserve and conserve their assets and property. Indeed, Fannie has identified the dividend obligations imposed by the Net Worth Sweep as posing a "specific risk to [its] business" by prohibiting it from "build[ing] capital reserves." FANNIE MAE, UNIVERSAL DEBT FACILITY, OFFERING CIRCULAR (May 14, 2013).

70. Furthermore, on information and belief, FHFA agreed to the Net Worth Sweep only at the insistence and under the direction and supervision of Treasury. Treasury, however, lacks the authority to impose such direction and supervision, and FHFA lacks the authority to submit to it. Indeed, HERA expressly provides that "[w]hen acting as conservator, . . . [FHFA] shall not be subject to the direction or supervision of any other agency of the United States . . . ." 12 U.S.C. § 4617(a)(7).

71. Statements by both FHFA and Treasury provide further confirmation that the Net Worth Sweep violates FHFA's statutory restrictions as conservator. Treasury, for example, said the Net Worth Sweep would "expedite the wind down of Fannie Mae and Freddie Mac," and it emphasized that the "quarterly sweep of every dollar of profit that each firm earns going forward" would make "sure that every dollar of earnings that Fannie Mae and Freddie Mac generate will be used to benefit taxpayers." Press Release, U.S. Dep't of the Treasury, Treasury Department Announces Further Steps to Expedite Wind Down of Fannie Mae and Freddie Mac (Aug. 17, 2012). Indeed, Treasury emphasized that the Net Worth Sweep would ensure that the Companies "will be wound down and will not be allowed to retain profits, rebuild capital, and return to the market in their prior form." *Id*.

72. Likewise, FHFA Acting Director Edward DeMarco stated that the Net Worth Sweep reflected the agency's goal of "gradually contracting [the Companies'] operations." Edward J. DeMarco, Acting Director, FHFA, Statement on Changes to Fannie Mae and Freddie Mac Preferred Stock Purchase Agreements. Acting Director DeMarco later informed a Senate Committee that the "recent changes to the [Purchase Agreements], replacing the 10 percent dividend with a net worth sweep, reinforce the notion that the [Companies] will not be building capital as a potential step to regaining their former corporate status." Edward J. DeMarco, Acting Director, FHFA, Statement Before the U.S. S. Comm. on Banking & Urban Affairs 3 (Apr. 18, 2013). Likewise, in its 2012 report to Congress, FHFA explained that it had begun "prioritizing [its] actions to move the housing industry to a new state, one without Fannie Mae and Freddie Mac." FHFA, 2012 REP. at 13. Thus, according to FHFA, the Net Worth Sweep "ensures all the [Companies'] earnings are used to benefit taxpayers" and "reinforces the fact that the [Companies] will not be building capital." *Id.* at 1, 13.

73. The dramatically negative impact of the Net Worth Sweep on the Companies' balance sheets is demonstrated by Fannie's results in the first quarter of this year. As explained above, at the end of the first quarter Fannie's net worth stood at $62.4 billion. Under the prior versions of the Purchase Agreement, Fannie would have been obligated to pay Treasury a dividend of only $2.9 billion, and the balance—$59.5 billion—would have been credited to its capital. The Net Worth Sweep, however, required Fannie to pay Treasury $59.4 billion. This windfall was not unanticipated. Indeed, FHFA's Office of Inspector General recognized that, as a result of the Net Worth Sweep, reversal of the Companies' deferred tax assets valuation allowances could result in "an extraordinary payment to Treasury." FHFA Inspector General Report at 15.

74. FHFA has announced that, during the conservatorship, existing statutory and FHFA-directed regulatory capital requirements will not be binding on the Companies. And at the end of 2012, Fannie had a deficit of core capital in relation to statutory minimum capital of $141.2 billion. This deficit decreased to $88.3 billion by the end of the first quarter of 2013. When adjusted for the $59.4 billion dividend payment to Treasury, however, Fannie's core capital deficit jumped back up to $147.7 billion. Thus, because of the Net Worth Sweep, Fannie is now in a ***worse*** position with respect to its core capital than it was before the record-breaking profitability it achieved in the first quarter of this year.

75. Furthermore, Fannie is required to pay Treasury its dividend in cash, even though its net worth includes changes in both cash and non-cash assets. In the first quarter of this year, for example, over $50 billion of Fannie's profitability resulted from the release of the Company's deferred tax assets valuation allowance—the same non-cash asset that previously created massive paper losses for the Company. As a result, Fannie was required to "fund [its]

second quarter dividend payment of $59.4 billion primarily through the issuance of debt securities." Fannie, 2013 First Quarter Report, at 42.

76. Borrowing money to pay a dividend on a paper profit is the very antithesis of operating the Companies in a safe and sound manner and restoring them to financial health, as FHFA is statutorily required to do when it is acting as conservator.

77. The Net Worth Sweep has become a major revenue source for the Government at the expense of Plaintiffs and other holders of Preferred Stock. As reported in *Politico* on May 9, 2013,

> Lawmakers on the Senate Banking and House Financial Services committees have said the new profits should not delay reform further, but with the budget already tight, keeping the continued flow of cash in place could be tempting.
>
> "Washington could quickly get addicted to the revenue from Fannie and Freddie," Guggenheim Partners analyst Jaret Seiberg said in a note to clients.

The article explained:

> As of June 30, Fannie will have paid Treasury $95 billion in dividend payments under its conservatorship agreement while Treasury will still hold $117 billion in preferred shares in the company.
>
> . . . .
>
> A Treasury Department official confirmed that the funds returned by Fannie and Freddie will be deposited into the general fund and will be factored into how long the department can continue to pay the government's bills before running up against the debt ceiling.
>
> The $59 billion Fannie will send, combined with the $7 billion Freddie said it would pay the Treasury by June 30, would likely push back the date when the government will breach the debt ceiling until October, if it is not raised before then, the Bipartisan Policy Center said today.

78. Neither Treasury nor FHFA made any public record of their decision-making processes in agreeing to the Net Worth Sweep.

79. As previously noted, Treasury's temporary statutory authority to purchase the securities of the Companies was conditioned on its consideration of certain statutory factors, including "the need to maintain the [Companies'] status as . . . private shareholder-owned compan[ies]" and the Companies' plans "for the orderly resumption of private market funding or capital market access." *See* 12 U.S.C. §§ 1455(*l*)(1)(C), 1719(g)(1)(C). There is no public record that Treasury considered these factors before executing the Net Worth Sweep. Indeed, the terms of the Net Worth Sweep requiring the quarterly net worth sweep and the winding down of the Companies' operations are wholly inconsistent with these factors. There is also no evidence that Treasury considered alternatives to the Net Worth Sweep that would have been both consistent with its statutory obligations and less harmful to private investors.

80. Nor is there any public record that FHFA considered whether the Net Worth Sweep is consistent with its statutory obligations as conservator of the Companies. Treasury's stated purpose of winding down the Companies, which necessarily involves liquidating their assets and property, is incompatible on its face with FHFA's charge to put the Companies back into "a sound and solvent condition" and to "conserve [their] assets and property." There is also no evidence that FHFA considered alternatives to the Net Worth Sweep that would have been both consistent with its statutory obligations and less harmful to holders of Preferred Stock and other equity interests.

81. Finally, there is no public record that either government agency—Treasury or FHFA—considered whether the Net Worth Sweep is consistent with the contractual and

fiduciary duties to holders of the Preferred Stock and other equity interests. And the Net Worth Sweep is wholly inconsistent with those duties.

Dividend Payments Under the Purchase Agreements

82. Fannie has received approximately $116 billion from Treasury under the Purchase Agreements. Fannie has paid Treasury a total of $95 billion in purported dividends under the Purchase Agreements—or approximately 82% of Treasury's investment. Freddie has received approximately $71 billion from Treasury under the Purchase Agreements. Freddie has paid Treasury a total of $36.6 billion in purported dividends—or approximately 52% of Treasury's investment. Yet, because these purported dividend payments do not operate to redeem any of Treasury's Government Stock, the liquidation preference of Treasury's Government Stock in the Companies remains at approximately $189 billion (due to the Companies' draws and the $1 billion initial valuation of Treasury's Government Stock in each)—and given the Net Worth Sweep, it will remain at that amount regardless of how much the Companies pay to Treasury in dividends going forward.

83. According to Fitch Ratings, "the cumulative dividends paid by Fannie could exceed the $117 billion in [Temporary] Stock owned by the Treasury by late this year or early 2014, based on the current earnings run-rate." *Fannie's Earnings, Dividend to Complicate GSE Reform*, FITCH WIRE, May 10, 2013. Fitch also expects Freddie to follow Fannie's example and reverse its deferred tax asset allowance in the coming quarters. The sizeable dividend that likely will be triggered by this event will result in both Fannie and Freddie having "paid cumulative dividends representing over 80% of the Treasury's investment." In sum, the point where "taxpayers are effectively made whole on their investment in [the Companies is] now in sight."

V.

CLAIMS FOR RELIEF

COUNT I

FHFA's Conduct Exceeds Its Statutory Authority

84. Plaintiffs incorporate by reference the allegations of the preceding paragraphs.

85. The APA empowers the Court to "hold unlawful and set aside agency action, findings, and conclusions" that are "in excess of statutory jurisdiction, authority, or limitations" or that are "without observance of procedure required by law." 5 U.S.C. § 706(2)(C), (D).

86. In any event, and in addition to the limitations established under the APA, FHFA's authority as conservator of the Companies is strictly limited by statute. *See* 12 U.S.C. § 4617(b)(2)(D).

87. As conservator, FHFA is without authority to wind down the Companies. Only a receiver for the Companies can undertake such actions, as FHFA acknowledges. FHFA has not been appointed as receiver.

88. As Treasury has acknowledged, the Net Worth Sweep is designed to wind down the Companies' operations. The Net Worth Sweep intentionally impairs the Companies' ability to operate as going concerns, requiring them to pay *all* of their net earnings to Treasury and thus preventing them from ever rebuilding capital and returning to private control. In fact, the Net Worth Sweep requires the Companies to accelerate the dissolution of their holdings.

89. The Net Worth Sweep is thus in direct contravention of the statutory command that FHFA as conservator must undertake those actions "necessary to put the [Companies] in a sound and solvent condition" and "appropriate to carry on the business of the [Companies] and preserve and conserve [their] assets and property." 12 U.S.C. § 4617(b)(2)(D). Indeed, rather than seeking to put the Companies in a "sound and solvent" condition and to preserve and

conserve the Companies' assets and property, FHFA has expropriated the Companies' entire net worth for the benefit of the Federal Government, to the detriment of the Companies and holders of Preferred Stock such as the Berkley Plaintiffs.

90. Further, even when acting as a receiver, FHFA is required to wind down the Companies in accordance with specific claims-determination procedures. Among other things, FHFA must "promptly publish a notice to the creditors of the regulated entity to present their claims," provide creditors with no fewer than ninety days in which to file a claim, and "establish such alternative dispute resolution processes as may be appropriate for the resolution of claims." 12 U.S.C. § 4617(b)(3)(B)(i), (b)(7)(A)(i).

91. FHFA's decision, as conservator, to transfer all of the Companies' net worth to Treasury is an end-run around these procedural requirements. The Net Worth Sweep allows Treasury to be paid amounts that far exceed the value of its claims against the Companies, and create an extraordinary windfall profit, while making it impossible to satisfy claims of holders of the Preferred Stock and other equity interests. In short, the Net Worth Sweep effectively nullifies the claims of the holders of the Preferred Stock and precludes such holders from availing themselves of statutory protections to contest that nullification.

92. On information and belief, FHFA agreed to the Net Worth Sweep only at the insistence and under the direction and supervision of Treasury. But because HERA mandates that FHFA perform its duties as conservator independent of the "direction or supervision of any other agency," 12 U.S.C. § 4617(a)(7), FHFA was not authorized to subject itself to Treasury's will.

93. FHFA's conduct in entering into the Net Worth Sweep was therefore outside of FHFA's authority under HERA and "in excess of statutory . . . authority" and "without

observance of procedure required by law," and Plaintiffs are therefore entitled to relief against FHFA pursuant to 5 U.S.C. §§ 702, 706(2)(C), (D).

COUNT II

Violation of the Administrative Procedure Act:
FHFA's Conduct Was Arbitrary and Capricious

94. Plaintiffs incorporate by reference the allegations of the preceding paragraphs.

95. The APA empowers the Court to "hold unlawful and set aside agency action, findings, and conclusions" that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). Agency action is "arbitrary" or "capricious" if it is not the product of "reasoned decisionmaking." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 52 (1983). This means, among other things, that an agency must provide an adequate evidentiary basis for its action, consider all important aspects of the problem before it, and rely upon consistent, logical reasoning in reaching its decision.

96. In entering into the Net Worth Sweep when both Companies were profitable and otherwise able to pay the 10% dividend on Treasury's Government Stock, FHFA acted in an arbitrary and capricious manner. There is no public record evidence that FHFA engaged in a reasoned decision-making process or considered important aspects of the problem it believed it faced. Nor did it establish an evidentiary basis nor provide an adequate explanation for its decision. And FHFA could not have provided an adequate explanation for entering the Net Worth Sweep, for that Amendment is wholly antithetical to FHFA's responsibilities as conservator of the Companies.

97. FHFA has not offered any legitimate reasoned justification for the Net Worth Sweep, which Treasury has acknowledged is designed to begin the winding down of the Companies. FHFA has not explained how the Net Worth Sweep is consistent with its statutory

obligation to "conserve [the Companies'] assets and property" and to return the Companies to "a sound and solvent condition," 12 U.S.C. § 4617(b)(2)(D), or even whether it considered these factors. FHFA also has not explained whether it considered alternatives to the Net Worth Sweep that would have been both consistent with its statutory obligations and less harmful to private investors in the Companies.

98. The holders of the Preferred Stock invested substantial sums for the right to dividends and liquidation preferences should market conditions make such payments possible. By sweeping all of the Companies' net worth to Treasury in quarterly dividend payments, the Net Worth Sweep makes it impossible for holders of the Preferred Stock to realize the benefit of that bargain, no matter how well the Companies perform in the market or how much their assets may be worth in liquidation. FHFA had an obligation to consider whether the Net Worth Sweep was consistent with duties it owes to the Companies' Preferred Stockholders. FHFA failed to do so. FHFA therefore failed to consider an important aspect of the issue addressed by its action, rendering the Net Worth Sweep arbitrary and capricious.

99. FHFA's conduct in entering into the Net Worth Sweep was arbitrary and capricious, and Plaintiffs are therefore entitled to relief under 5 U.S.C. §§ 702, 706(2)(C).

COUNT III

Treasury's Conduct Exceeded Its Statutory Authority

100. Plaintiffs incorporate by reference the allegations of the preceding paragraphs.

101. The APA empowers the Court to "hold unlawful and set aside agency action, findings, and conclusions" that are "in excess of statutory jurisdiction, authority, or limitations" or that are "without observance of procedure required by law." 5 U.S.C. § 706(2)(C), (D).

102. Treasury's statutory authority to purchase securities issued by the Companies expired on December 31, 2009. 12 U.S.C. §§ 1455(*l*)(4), 1719(g)(4).

103. The Net Worth Sweep, which was executed on August 17, 2012, contravenes this unambiguous limit on Treasury's authority.

104. The Net Worth Sweep created an entirely new security. Under the original Purchase Agreements, Treasury purchased Government Stock that entitled it to a 10% quarterly dividend on an amount equal to the aggregate liquidation preference of the Government Stock. The Government Stock was a fixed income security not otherwise entitled to participate in the earnings of the Companies. By contrast, the Net Worth Sweep entitles Treasury to a quarterly distribution of *all* of the Companies' net worth for as long as they remain in operation. The Net Worth Sweep thus effected a wholesale change to the nature of Treasury's securities after its statutory authority to purchase new securities had expired, and converted Treasury's Government Stock into new securities that nationalize the Companies and entitle Treasury to 100% of their net worth as if Treasury were the outright owner. Treasury cannot evade this clear statutory restriction on its authority to purchase securities of the Companies by the simple expedient of calling these new securities an "amendment" to the old securities.

105. In addition, before exercising its temporary authority to purchase securities, Treasury is required to "determine that such actions are necessary to . . . (i) provide stability to the financial markets; (ii) prevent disruptions in the availability of mortgage finance; and (iii) protect the taxpayer." 12 U.S.C. § 1719(g)(1)(B). In making the statutorily required determinations, Treasury must consider such factors as "the [Companies'] plan[s] for the orderly resumption of private market funding or capital market access" and "the need to maintain the [Companies'] status as . . . private shareholder-owned compan[ies]," among other factors. *Id.* § 1719(g)(1)(C)(iii), (v).

106. These statutory criteria must apply to any and all "amendments" to the Purchase Agreements. Were it otherwise, Treasury could fundamentally alter its investments in the Companies at any time, including after its investment authority has expired, without making the required determinations or considering the necessary factors. This would turn Treasury's limited, temporary grant of authority to purchase the Companies' securities under certain conditions, into an unconstrained and permanent authority and subvert the statutory limitations imposed by Congress.

107. As far as the public record discloses, Treasury has not made any of the required determinations or considered any of the necessary factors. It therefore exceeded its statutory authority.

108. In any event, the Net Worth Sweep is beyond Treasury's authority because it is not compatible with due consideration of the factors Treasury must consider before purchasing the Companies' securities or amending its agreements to purchase such securities. The Net Worth Sweep destroys the value of the Preferred Stock and all other equity security interests in the Companies. The Net Worth Sweep is therefore wholly incompatible with "the need to maintain the [Companies'] status as . . . private shareholder-owned compan[ies]" and with the "orderly resumption of private market funding or capital market access."

109. On information and belief, FHFA agreed to the Net Worth Sweep only at the insistence and under the direction and supervision of Treasury. But because HERA mandates that FHFA "shall not be subject to the direction or supervision of any other agency" when performing its duties as conservator for the Companies, 12 U.S.C. § 4617(a)(7), Treasury acted in excess of its authority in imposing its will on FHFA.

110. Treasury's conduct in entering into the Net Worth Sweep was therefore outside of Treasury's authority under HERA and "in excess of statutory . . . authority" and "without observance of procedure required by law," and Plaintiffs are therefore entitled to relief against Treasury pursuant to 5 U.S.C. §§ 702, 706(2)(C), (D).

COUNT IV

Violation of the Administrative Procedure Act:
Treasury's Conduct Was Arbitrary and Capricious

111. Plaintiffs incorporate by reference the allegations of the preceding paragraphs.

112. The APA empowers the Court to "hold unlawful and set aside agency action, findings, and conclusions" that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). This means, among other things, that agency action is unlawful unless it is the product of "reasoned decisionmaking." *Motor Vehicle Mfrs. Ass'n*, 463 U.S. at 52. Decisionmaking that relies on inadequate evidence or that results in inconsistent or contradictory conclusions cannot satisfy that standard.

113. Before Treasury exercises its temporary authority to purchase the Companies' securities, it is required to determine that the financial support is necessary to "provide stability to the financial markets," "prevent disruptions in the availability of mortgage finance," and "protect the taxpayer." 12 U.S.C. §§ 1455(*l*)(1)(B), 1719(g)(1)(B). In making these determinations, Treasury is further required to "take into consideration" several factors, including the "plan for the orderly resumption of private market funding or capital market access," and the "need to maintain [the] status [of Fannie and Freddie] as . . . private shareholder-owned compan[ies]." *Id.* §§ 1455(*l*)(1)(C); 1719(g)(1)(C).

114. These statutory criteria plainly apply to any and all "amendments" of the Purchase Agreements. Were it otherwise, Treasury could fundamentally alter its investments in the

Companies at any time, including after its investment authority has expired, without making the required determinations or considering the necessary factors. This would turn Treasury's limited, temporary grant of authority to purchase the Companies' securities under certain conditions, into an unconstrained and permanent authority and subvert the statutory limitations imposed by Congress.

115. There is no evidence in the public record that Treasury made the required determinations or considered the necessary factors before agreeing to the Net Worth Sweep. Indeed, the available evidence reveals that none of the necessary conditions was satisfied. Further, Treasury also has not explained whether it considered alternatives to the Net Worth Sweep that would have been both consistent with its statutory obligations and less harmful to junior investors in the Companies. Treasury has thus arbitrarily and capriciously failed to provide a reasoned explanation for its conduct, which results in the Government's expropriation of all private shareholder value in the Companies' Preferred Stock and other equity securities.

116. Treasury also acted in an arbitrary and capricious manner by failing to consider whether the Net Worth Sweep is consistent with its fiduciary duties to holders of the Preferred Stock as the Companies' dominant shareholder.

117. Under applicable state law governing shareholders' relationship with Fannie and with Freddie, a corporation's dominant shareholders owe fiduciary duties to minority shareholders.

118. Treasury is the dominant shareholder and de facto controlling entity of the Companies. For example, Treasury serves as the Companies' only permitted source of capital and must give permission to the Companies before they can issue other equity securities.

Treasury also is able to influence or control the actions of FHFA as conservator and the length and nature of the conservatorship.

119. The Net Worth Sweep effectively transfers the value of the Preferred Stock and other equity securities from their private holders to the Companies' dominant shareholder. And as Treasury admits, the Net Worth Sweep's purpose is to wind down the Companies' operations. Treasury's actions in preventing any dividends or value from reaching holders of Preferred Stock, combined with Treasury's intent to liquidate the Companies, render the Preferred Stock devoid of any value or prospect of return.

120. Treasury's conduct in entering into the Net Worth Sweep was arbitrary and capricious, and Plaintiffs are therefore entitled to relief under 5 U.S.C. §§ 702, 706(2)(A).

COUNT V

Breach of Contract Against FHFA as Conservator of Fannie and Freddie

121. Plaintiffs incorporate by reference the allegations of the preceding paragraphs.

122. As holders of Preferred Stock in Fannie and Freddie, Plaintiffs have certain contractual rights. In particular, Plaintiffs are entitled to a contractually specified, non-cumulative dividend and to a contractually specified liquidation preference.

123. By entering the Net Worth Sweep, FHFA, as conservator for Fannie and Freddie, breached Fannie's and Freddie's obligations to Plaintiffs by nullifying entirely the contractual rights of holders of the Companies' Preferred Stock. Thus, in addition to exceeding its authority as conservator under HERA, FHFA's agreement to the Net Worth Sweep breached or repudiated Fannie's and Freddie's contracts with Plaintiffs and other holders of the Companies' Preferred Stock.

124. Again, the Net Worth Sweep replaced the 10% dividend on Treasury's Government Stock with a perpetual requirement that the Companies pay their entire net worth to Treasury. Amounts in excess of the 10% dividend on the Government Stock would otherwise be available to pay dividends on the Preferred Stock. The Net Worth Sweep thus strips the Companies of their ability to generate and retain funds to distribute as dividends to holders of Preferred Stock.

125. By essentially expropriating the entirety of the Companies' net worth for the Government, the Net Worth Sweep also nullified entirely the contractual right of preferred shareholders to receive a liquidation preference upon the dissolution, liquidation, or winding up of Fannie and Freddie.

126. Fannie and Freddie—and thus FHFA when acting as conservator for the Companies—are contractually prohibited from unilaterally changing the terms of the Companies' Preferred Stock to materially and adversely affect Plaintiffs' rights as a preferred shareholders. The Net Worth Sweep violates this prohibition by effectively eliminating the dividend and liquidation preference rights associated with Plaintiffs' Preferred Stock.

127. No provision of Plaintiffs' contracts with Fannie and Freddie reserves the Companies any right to *repudiate* or *nullify entirely* the Companies' contractual obligations to Plaintiffs and other holders of the Companies' Preferred Stock by granting rights to another class of the Companies' stock.

128. Thus, by entering the Net Worth Sweep, FHFA both exceeded its statutory authority under HERA and breached Fannie's and Freddie's contracts with holders of Preferred Stock.

COUNT VI

Breach of Implied Covenant of Good Faith and Fair Dealing Against FHFA as Conservator of Fannie and Freddie

129. Plaintiffs incorporate by reference the allegations of the preceding paragraphs.

130. Implicit in every contract is a covenant of good faith and fair dealing. The implied covenant requires a party in a contractual relationship to refrain from arbitrary or unreasonable conduct which has the effect of preventing the other party to the contract from receiving the fruits of the bargain.

131. As holders of Preferred Stock in Fannie and Freddie, Plaintiffs have certain contractual rights. In particular, Plaintiffs are entitled to a contractually specified, non-cumulative dividend from the Companies and to a contractually specified liquidation preference

132. FHFA's agreement to the Net Worth Sweep has arbitrarily and unreasonably prevented Plaintiffs and other holders of the Companies' Preferred Stock from receiving any of the fruits of their bargain. Again, the Net Worth Sweep replaced the 10% dividend on Treasury's Government Stock with a perpetual requirement that the Companies pay their entire net worth to Treasury. The Net Worth Sweep thus strips the Companies of their ability to generate and retain funds to distribute as dividends to holders of Preferred Stock.

133. By essentially expropriating the entirety of the Companies' net worth for the Government, the Net Worth Sweep also nullified entirely the contractual right of preferred shareholders to receive a liquidation preference upon the dissolution, liquidation, or winding up of Fannie and Freddie.

134. No provision of Plaintiffs' contracts with Fannie and Freddie reserves the Companies any right to *repudiate* or *nullify entirely* the Companies' contractual obligations to

Plaintiffs and other holders of the Companies' Preferred Stock by granting rights to another class of the Companies' stock.

135. In sum, by destroying the rights of holders of the Companies' Preferred Stock, the Net Worth Sweep repudiates and nullifies entirely the scope, purpose, and terms of the contracts governing the relationships between Fannie and Freddie and their preferred shareholders. Thus, by entering the Net Worth Sweep, FHFA both exceeded its statutory authority under HERA and breached the implied covenant of good faith and fair dealing.

COUNT VII

Breach of Fiduciary Duty Against FHFA as Conservator of Fannie and Freddie: Claim for Equitable and Declaratory Relief

136. Plaintiffs incorporate by reference the allegations of the preceding paragraphs.

137. By imposing a conservatorship over Fannie and Freddie, FHFA assumed control of the operations of those institutions.

138. By taking control over the operations of Fannie and Freddie, FHFA assumed a fiduciary duty, including a duty of loyalty, to Fannie's and Freddie's shareholders, including holders of Preferred Stock.

139. FHFA used its control over Fannie and Freddie to agree to and implement the Net Worth Sweep, which replaced the 10% dividend on Treasury's Government Stock with a perpetual requirement that the Companies pay their entire net worth to Treasury.

140. As an agency of the Federal Government, FHFA was interested in, and benefited from, the Net Worth Sweep, which conferred an exclusive benefit upon the Federal Government by essentially expropriating for the Government the entirety of Fannie's and Freddie's net worth.

141. FHFA had a manifest conflict of interest with respect to the Net Worth Sweep, and that transaction constituted self-dealing.

142. The Net Worth Sweep, which essentially eliminated the dividend and liquidation preference rights associated with Plaintiffs' Preferred Stock, was neither entirely nor intrinsically fair.

143. The Net Worth Sweep constituted waste, gross and palpable overreaching, and a gross abuse of discretion.

144. The Net Worth Sweep did not further any valid business purpose or reasonable business objective of Fannie and Freddie, did not reflect FHFA's good faith business judgment of what was in the best interest of Fannie and Freddie, and was unfair to those institutions and their preferred shareholders.

145. Thus, by entering the Net Worth Sweep, FHFA both exceeded its statutory authority under HERA and violated its fiduciary duty to Plaintiffs and the other holders of Preferred Stock.

PRAYER FOR RELIEF

146. WHEREFORE, Plaintiffs pray for an order and judgment:

a. Declaring that the Net Worth Sweep, and its adoption, are not in accordance with and violate HERA within the meaning of 5 U.S.C. § 706(2)(C), and that FHFA and Treasury acted arbitrarily and capriciously within the meaning of 5 U.S.C. § 706(2)(A) by executing the Net Worth Sweep;

b. Declaring that, by entering the Net Worth Sweep, FHFA breached Fannie's and Freddie's contracts with Plaintiffs and the covenant of good faith and fair dealing implicit in those contracts;

c. Declaring that, by entering the Net Worth Sweep, FHFA violated its fiduciary duty to Plaintiffs.

d. Vacating and setting aside the Net Worth Sweep, including its provision sweeping all of the Companies' net worth to Treasury every quarter;

e. Enjoining Treasury and its officers, employees, and agents to return to FHFA as conservator of the Companies all dividend payments made pursuant to the Net Worth Sweep or, alternatively, recharacterizing a portion of such payments as partial redemption of Treasury's Government Stock rather than mere dividends;

f. Enjoining FHFA and its officers, employees, and agents from implementing, applying, or taking any action whatsoever pursuant to the Net Worth Sweep;

g. Enjoining Treasury and its officers, employees, and agents from implementing, applying, or taking any action whatsoever pursuant to the Net Worth Sweep;

h. Awarding Plaintiffs damages resulting from FHFA's breach of contract and breach of the implied covenant of good faith and fair dealing;

i. Awarding Plaintiffs their reasonable costs, including attorneys' fees, incurred in bringing this action; and

j. Granting such other and further relief as this Court deems just and proper.

Date: July 10, 2013

Respectfully submitted,

s/ Charles J. Cooper
Charles J. Cooper (Bar No. 248070)
ccooper@cooperkirk.com
Vincent J. Colatriano (Bar No. 429562)
David H. Thompson (Bar No. 450503)
Peter A. Patterson (Bar No. 998668)*
COOPER & KIRK, PLLC
1523 New Hampshire Avenue, N.W.
Washington, D.C. 20036
(202) 220-9600
(202) 220-9601 (fax)
**Pro hac vice* application forthcoming

CIVIL COVER SHEET

JS-44 (Rev. 3/13 DC)

I. (a) PLAINTIFFS

FAIRHOLME FUNDS, INC., on behalf of its series THE FAIRHOLME FUND, et al.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF 88888
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

The Federal Housing Finance Agency, et al.

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT 11001
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Charles J. Cooper, Vincent J. Colatriano, David H. Thompson, Peter A. Patterson, Cooper & Kirk, PLLC
1523 New Hampshire Avenue, NW
Washington, D.C. 20036, (202) 220-9600

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION
(PLACE AN x IN ONE BOX ONLY)

- ○ 1 U.S. Government Plaintiff
- ○ 3 Federal Question (U.S. Government Not a Party)
- ◉ 2 U.S. Government Defendant
- ○ 4 Diversity (Indicate Citizenship of Parties in item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) **FOR DIVERSITY CASES ONLY!**

	PTF	DFT		PTF	DFT
Citizen of this State	○ 1	○ 1	Incorporated or Principal Place of Business in This State	○ 4	○ 4
Citizen of Another State	○ 2	○ 2	Incorporated and Principal Place of Business in Another State	○ 5	○ 5
Citizen or Subject of a Foreign Country	○ 3	○ 3	Foreign Nation	○ 6	○ 6

IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

○ **A. *Antitrust***

- ☐ **410 Antitrust**

○ **B. *Personal Injury/ Malpractice***

- ☐ **310 Airplane**
- ☐ **315 Airplane Product Liability**
- ☐ **320 Assault, Libel & Slander**
- ☐ **330 Federal Employers Liability**
- ☐ **340 Marine**
- ☐ **345 Marine Product Liability**
- ☐ **350 Motor Vehicle**
- ☐ **355 Motor Vehicle Product Liability**
- ☐ **360 Other Personal Injury**
- ☐ **362 Medical Malpractice**
- ☐ **365 Product Liability**
- ☐ **367 Health Care/Pharmaceutical Personal Injury Product Liability**
- ☐ **368 Asbestos Product Liability**

◉ **C. *Administrative Agency Review***

- ☐ **151 Medicare Act**

Social Security
- ☐ **861 HIA (1395ff)**
- ☐ **862 Black Lung (923)**
- ☐ **863 DIWC/DIWW (405(g))**
- ☐ **864 SSID Title XVI**
- ☐ **865 RSI (405(g))**

Other Statutes
- ☐ **891 Agricultural Acts**
- ☐ **893 Environmental Matters**
- ☒ **890 Other Statutory Actions (If Administrative Agency is Involved)**

○ **D. *Temporary Restraining Order/Preliminary Injunction***

Any nature of suit from any category may be selected for this category of case assignment.

(If Antitrust, then A governs)

○ **E. *General Civil (Other)*** **OR** ○ **F. *Pro Se General Civil***

Real Property
- ☐ **210 Land Condemnation**
- ☐ **220 Foreclosure**
- ☐ **230 Rent, Lease & Ejectment**
- ☐ **240 Torts to Land**
- ☐ **245 Tort Product Liability**
- ☐ **290 All Other Real Property**

Personal Property
- ☐ **370 Other Fraud**
- ☐ **371 Truth in Lending**
- ☐ **380 Other Personal Property Damage**
- ☐ **385 Property Damage Product Liability**

Bankruptcy
- ☐ **422 Appeal 27 USC 158**
- ☐ **423 Withdrawal 28 USC 157**

Prisoner Petitions
- ☐ **535 Death Penalty**
- ☐ **540 Mandamus & Other**
- ☐ **550 Civil Rights**
- ☐ **555 Prison Conditions**
- ☐ **560 Civil Detainee – Conditions of Confinement**

Property Rights
- ☐ **820 Copyrights**
- ☐ **830 Patent**
- ☐ **840 Trademark**

Federal Tax Suits
- ☐ **870 Taxes (US plaintiff or defendant)**
- ☐ **871 IRS-Third Party 26 USC 7609**

Forfeiture/Penalty
- ☐ **625 Drug Related Seizure of Property 21 USC 881**
- ☐ **690 Other**

Other Statutes
- ☐ **375 False Claims Act**
- ☐ **400 State Reapportionment**
- ☐ **430 Banks & Banking**
- ☐ **450 Commerce/ICC Rates/etc.**
- ☐ **460 Deportation**
- ☐ **462 Naturalization Application**
- ☐ **465 Other Immigration Actions**
- ☐ **470 Racketeer Influenced & Corrupt Organization**

- ☐ **480 Consumer Credit**
- ☐ **490 Cable/Satellite TV**
- ☐ **850 Securities/Commodities/ Exchange**
- ☐ **896 Arbitration**
- ☐ **899 Administrative Procedure Act/Review or Appeal of Agency Decision**
- ☐ **950 Constitutionality of State Statutes**
- ☐ **890 Other Statutory Actions (if not administrative agency review or Privacy Act)**

○ G. *Habeas Corpus/ 2255* ☐ 530 Habeas Corpus – General ☐ 510 Motion/Vacate Sentence ☐ 463 Habeas Corpus – Alien Detainee	○ H. *Employment Discrimination* ☐ 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)*	○ I. *FOIA/Privacy Act* ☐ 895 Freedom of Information Act ☐ 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	○ J. *Student Loan* ☐ 152 Recovery of Defaulted Student Loan (excluding veterans)
○ K. *Labor/ERISA (non-employment)* ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Mgmt. Relations ☐ 740 Labor Railway Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Empl. Ret. Inc. Security Act	○ L. *Other Civil Rights (non-employment)* ☐ 441 Voting (if not Voting Rights Act) ☐ 443 Housing/Accommodations ☐ 440 Other Civil Rights ☐ 445 Americans w/Disabilities – Employment ☐ 446 Americans w/Disabilities – Other ☐ 448 Education	○ M. *Contract* ☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholder's Suits ☐ 190 Other Contracts ☐ 195 Contract Product Liability ☐ 196 Franchise	○ N. *Three-Judge Court* ☐ 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN

⦿ 1 Original Proceeding ○ 2 Remand from State Court ○ 3 Remanded from Appellate Court ○ 4 Reinstated or Reopened ○ 5 Transferred from another district (specify) ○ 6 Multi-district Litigation ○ 7 Appeal to District Judge from Mag. Judge

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)
5 U.S.C. sections 551-706; HERA of 2008, 12 U.S.C. sections 1455, 1719, 4617 and state common law

VII. REQUESTED IN COMPLAINT CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND $** **JURY DEMAND:** Check YES only if demanded in complaint YES ☐ NO [X]

VIII. RELATED CASE(S) IF ANY (See instruction) YES [X] NO ☐ If yes, please complete related case form

DATE: July 10, 2013 **SIGNATURE OF ATTORNEY OF RECORD** Charles J. Cooper / By David H. Thompson

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.

III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.

IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.

VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.

VIII. RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

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

FAIRHOLME FUNDS, INC., on behalf of its series The Fairholme Fund, *et al*.

Plaintiffs,

v.

THE FEDERAL HOUSING FINANCE AGENCY, *et al.*

Defendants.

Civil Action No. 13-1053

RULE 7.1 DISCLOSURE STATEMENT

I, the undersigned, counsel of record for Plaintiffs, certify that to the best of my knowledge and belief, the following:

Below are parent companies, subsidiaries, or affiliates of Fairholme Funds, Inc. which have any outstanding securities in the hands of the public.

- The Fairholme Fund
- The Fairholme Focused Income Fund
- The Fairholme Allocation Fund
- The St. Joe Company

Below are parent companies, subsidiaries, or affiliates of The Fairholme Fund, a series of Fairholme Funds, Inc., which have any outstanding securities in the hands of the public.

- Fairholme Funds, Inc.
- The Fairholme Focused Income Fund
- The Fairholme Allocation Fund
- The St. Joe Company

And below are parent companies, subsidiaries, or affiliates of Berkley Insurance Company, Acadia Insurance Company, Admiral Indemnity Company, Admiral Insurance Company, Berkley Regional Insurance Company, Carolina Casualty Insurance Company, Midwest Employers Casualty Insurance Company, Nautilus Insurance Company, and Preferred Employers Insurance Company which have any outstanding securities in the hands of the public:

- W.R. Berkley Corporation

These representations are made in order that the judges of this court may determine the need for recusal.

Date: July 10, 2013

Respectfully submitted,

s/ Charles J. Cooper
Charles J. Cooper (Bar No. 248070)
ccooper@cooperkirk.com
Vincent J. Colatriano (Bar No. 429562)
David H. Thompson (Bar No. 450503)
Peter A. Patterson (Bar No. 998668)*
COOPER & KIRK, PLLC
1523 New Hampshire Avenue, N.W.
Washington, D.C. 20036
(202) 220-9600
(202) 220-9601 (fax)
**Pro hac vice* application forthcoming

AO 440 (Rev. 12/09; DC 03/10) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

Fairholme Funds Inc., on behalf of its series The Fairholme Funds, et al. *Plaintiff* v. The Federal Housing Finance Agency, et al. *Defendant*	)))))))	Civil Action No. 13-1053

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* United States Attorney's Office
District of Columbia
555 Fourth Street, N.W.
Washington, DC 20530

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Charles J. Cooper
Cooper & Kirk, PLLC
1523 New Hampshire Avenue, N.W.
Washington, D.C. 20036

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: ____________________

____
Signature of Clerk or Deputy Clerk

Civil Action No. 13-1053

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* ______________________
was received by me on *(date)* ______________ .

❒ I personally served the summons on the individual at *(place)* ______________________
______________________ on *(date)* ______________ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* ______________
______________________ , a person of suitable age and discretion who resides there,
on *(date)* ______________ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* ______________________ , who is
designated by law to accept service of process on behalf of *(name of organization)* ______________
______________________ on *(date)* ______________ ; or

❒ I returned the summons unexecuted because ______________________ ; or

❒ Other *(specify)*:
.

My fees are $ __________ for travel and $ __________ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: ______________

____
Server's signature

____
Printed name and title

____
Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 12/09; DC 03/10) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

Fairholme Funds, Inc., on behalf of its series The Fairholme Funds, et al.
Plaintiff

v.

The Federal Housing Finance Agency, et al.
Defendant

Civil Action No. 13-1053

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Edward DeMarco, in his official capacity as Acting Director of the Federal Housing Finance Agency
Constitution Center
400 7th Street, S.W.
Washington, D.C. 20024

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Charles J. Cooper
Cooper & Kirk, PLLC
1523 New Hampshire Avenue, N.W.
Washington, D.C. 20036

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: ____________________

____
Signature of Clerk or Deputy Clerk

Civil Action No. 13-1053

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* ______________________

was received by me on *(date)* ______________ .

❒ I personally served the summons on the individual at *(place)* ______________________

______________________ on *(date)* ______________ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* ______________

______________________ , a person of suitable age and discretion who resides there,

on *(date)* ______________ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* ______________________ , who is

designated by law to accept service of process on behalf of *(name of organization)* ______________

______________________ on *(date)* ______________ ; or

❒ I returned the summons unexecuted because ______________________ ; or

❒ Other *(specify)*:

.

My fees are $ ________ for travel and $ ________ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: ______________

____
Server's signature

____
Printed name and title

____
Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 12/09; DC 03/10) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

Fairholme Funds, Inc., on behalf of its series The Fairholme Fund, et al.

Plaintiff

v.

The Federal Housing Finance Agency, et al.

Defendant

Civil Action No. 13-1053

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* United States Attorney General
Department of Justice
950 Pennsylvania Ave, N.W.
Washington, D.C. 20530

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Charles J. Cooper
Cooper & Kirk, PLLC
1523 New Hampshire Avenue, N.W.
Washington, D.C. 20036

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: ____________________

____
Signature of Clerk or Deputy Clerk

Civil Action No. 13-1053

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* ______________________
was received by me on *(date)* ______________ .

❒ I personally served the summons on the individual at *(place)* ______________________
______________________ on *(date)* ______________ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* ______________
______________________ , a person of suitable age and discretion who resides there,
on *(date)* ______________ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* ______________________ , who is
designated by law to accept service of process on behalf of *(name of organization)* ______________
______________________ on *(date)* ______________ ; or

❒ I returned the summons unexecuted because ______________________ ; or

❒ Other *(specify)*:

.

My fees are $ ________ for travel and $ ________ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: ______________

____
Server's signature

____
Printed name and title

____
Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 12/09; DC 03/10) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

Fairholme Funds, Inc., on behalf of its series The Fairholme Fund, et al. *Plaintiff* v. The Federal Housing Finance Agency, et al. *Defendant*	)))))))	Civil Action No. 13-1053

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* The Federal Housing Finance Agency, in its capacity as Conservator of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation
Constitution Center
400 7th Street, S.W.
Washington, D.C. 20024

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Charles J. Cooper
Cooper & Kirk, PLLC
1523 New Hampshire Avenue, N.W.
Washington, D.C. 20036

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: ____________________

____
Signature of Clerk or Deputy Clerk

Civil Action No. 13-1053

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* ______________________
was received by me on *(date)* ______________ .

❒ I personally served the summons on the individual at *(place)* ______________________
______________________ on *(date)* ______________ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* ______________
______________________ , a person of suitable age and discretion who resides there,
on *(date)* ______________ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* ______________________ , who is
designated by law to accept service of process on behalf of *(name of organization)* ______________
______________________ on *(date)* ______________ ; or

❒ I returned the summons unexecuted because ______________________ ; or

❒ Other *(specify)*:

.

My fees are $ ________ for travel and $ ________ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: ______________

____
Server's signature

____
Printed name and title

____
Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 12/09; DC 03/10) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

Fairholme Funds, Inc., on behalf of its series The Fairholme Fund, et al.

Plaintiff

v.

The Federal Housing Finance Agency, et al.

Defendant

Civil Action No. 13-1053

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* The Department of Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Charles J. Cooper
Cooper & Kirk, PLLC
1523 New Hampshire Avenue, N.W.
Washington, D.C. 20036

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: ________________

____
Signature of Clerk or Deputy Clerk

Civil Action No. 13-1053

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* ______________________

was received by me on *(date)* ______________ .

❒ I personally served the summons on the individual at *(place)* ______________________

______________________ on *(date)* ______________ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* ______________

______________________ , a person of suitable age and discretion who resides there,

on *(date)* ______________ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* ______________________ , who is

designated by law to accept service of process on behalf of *(name of organization)* ______________

______________________ on *(date)* ______________ ; or

❒ I returned the summons unexecuted because ______________________ ; or

❒ Other *(specify)*:

.

My fees are $ ________ for travel and $ ________ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: ______________ ______________________

Server's signature

____

Printed name and title

____

Server's address

Additional information regarding attempted service, etc:

CLERK=S OFFICE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CO-932
Rev. 4/96

NOTICE OF DESIGNATION OF RELATED CIVIL CASES PENDING
IN THIS OR ANY OTHER UNITED STATES COURT

Civil Action No. 13-1053
(To be supplied by the Clerk)

NOTICE TO PARTIES:

Pursuant to Rule 40.5(b)(2), you are required to prepare and submit this form at the time of filing any civil action which is related to any pending cases or which involves the same parties and relates to the same subject matter of any dismissed related cases. This form must be prepared in sufficient quantity to provide one copy for the Clerk=s records, one copy for the Judge to whom the cases is assigned and one copy for each defendant, so that you must prepare 3 copies for a one defendant case, 4 copies for a two defendant case, etc.

NOTICE TO DEFENDANT:

Rule 40.5(b)(2) of this Court requires that you serve upon the plaintiff and file with your first responsive pleading or motion any objection you have to the related case designation.

NOTICE TO ALL COUNSEL

Rule 40.5(b)(3) of this Court requires that as soon as an attorney for a party becomes aware of the existence of a related case or cases, such attorney shall immediately notify, in writing, the Judges on whose calendars the cases appear and shall serve such notice on counsel for all other parties.

The plaintiff, defendant or counsel must complete the following:

I. RELATIONSHIP OF NEW CASE TO PENDING RELATED CASE(S).

A new case is deemed related to a case pending in this or another U.S. Court if the new case: [Check appropriate box(e=s) below.]

- [X] (a) relates to common property
- [X] (b) involves common issues of fact
- [X] (c) grows out of the same event or transaction
- [ ] (d) involves the validity or infringement of the same patent
- [ ] (e) is filed by the same pro se litigant

2. RELATIONSHIP OF NEW CASE TO DISMISSED RELATED CASE(ES)

A new case is deemed related to a case dismissed, with or without prejudice, in this or any other U.S. Court, if the new case involves the same parties and same subject matter.

Check box if new case is related to a dismissed case: [ ]

3. NAME THE UNITED STATES COURT IN WHICH THE RELATED CASE IS FILED (IF OTHER THAN THIS COURT):

Related case in this Court, see below, and in the US Court of Federal Claims, see attached.

4. CAPTION AND CASE NUMBER OF RELATED CASE(E=S). IF MORE ROOM IS NEED PLEASE USE OTHER SIDE.

Perry Capital, LLC v. **Jacob J. Lew, et al.** C.A. No. **13-1025**

July 10, 2013
DATE

Signature of Plaintiff /Defendant (or counsel)

NOTICE OF DESIGNATION OF RELATED CIVIL CASES PENDING
IN THIS OR ANY OTHER UNITED STATES COURT
(Continued)

- United States Court of Federal Claims
  Washington Federal, et al. v. The United States of America C.A. No. 13-385

- United States Court of Federal Claims
  Fairholme Funds, Inc., et al. v. The United States of America C.A. No. 13-465

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

ARROWOOD INDEMNITY COMPANY
3600 Arco Corporate Drive
Charlotte, North Carolina 28273,

ARROWOOD SURPLUS LINES
INSURANCE COMPANY
3600 Arco Corporate Drive
Charlotte, North Carolina 28273,

and

FINANCIAL STRUCTURES LIMITED
44 Church Street
Hamilton HM12, Bermuda,

Plaintiffs,

v.

FEDERAL NATIONAL
MORTGAGE ASSOCIATION
3900 Wisconsin Avenue, N.W.
Washington, D.C. 20016,

FEDERAL HOME LOAN
MORTGAGE CORPORATION
8200 Jones Branch Drive
McLean, Virginia 22102,

FEDERAL HOUSING FINANCE AGENCY
as Conservator of
Federal National Mortgage Association and
Federal Home Loan Mortgage Corporation
400 Seventh Street, S.W.
Washington, D.C. 20024

THE DEPARTMENT OF THE TREASURY
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220,

Case No. _______________

COMPLAINT

JURY TRIAL DEMANDED

(caption continued on following page)

EDWARD DeMARCO,
in his official capacity as
Acting Director of
Federal Housing Finance Agency
400 Seventh Street, S.W.
Washington, D.C. 20024,

and

JACOB J. LEW,
in his official capacity as
Secretary of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220,

Defendants.

Plaintiffs Arrowood Indemnity Company, Arrowood Surplus Lines Insurance Company, and Financial Structures Limited (collectively, "Plaintiffs" or the "Arrowood Parties"), by the undersigned attorneys, respectfully submit this Complaint against defendants Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Finance Agency, as Conservator of Federal National Mortgage Association and Federal Home Loan Mortgage Corporation, the Department of the Treasury, Edward DeMarco, in his official capacity as Acting Director of the Federal Housing Finance Agency, and Jacob J. Lew, in his official capacity as Secretary of the Treasury.

NATURE AND SUMMARY OF THE ACTION

1. This is an action brought by the Arrowood Parties as holders of Junior Preferred Stock (as defined below) issued by Federal National Mortgage Association ("Fannie Mae" or "Fannie") and Federal Home Loan Mortgage Corporation ("Freddie Mac" or "Freddie"),

a. against Fannie Mae, Freddie Mac, and Federal Housing Finance Agency ("FHFA"), as conservator ("Conservator") for both Fannie and Freddie, seeking damages for breach of contract and breach of the implied covenant of good faith and fair dealing; and

b. against the Department of the Treasury ("Treasury"), Jacob J. Lew in his official capacity as Secretary of the Treasury, FHFA, and Edward DeMarco in his official capacity as Acting Director of FHFA, for declaratory and injunctive relief under the Administrative Procedure Act, 5 U.S.C. §§ 551-559, 701-706 ("APA"), and the Housing and Economic Recovery Act of 2008, 12 U.S.C. §§ 1455, 1719, 4617 ("HERA").

2. In September of 2008, the United States Government (the "Government"), acting through the FHFA, placed Fannie Mae and Freddie Mac into conservatorship, putting them under the control of the FHFA, which is an agency of the Government. However, by placing Fannie and Freddie into conservatorship, and *not* into receivership, the FHFA committed to the continued operation of Fannie and Freddie, rather than their liquidation (as would have occurred under receivership). Moreover, while Fannie and Freddie were fully controlled by FHFA during the conservatorship, they continued to exist as independent corporate entities, each with its own board of directors, and the FHFA made clear that the common and preferred stock in Fannie and Freddie would remain outstanding. Indeed, the whole point of conservatorship (as opposed to receivership and liquidation) was and is to restore Fannie and Freddie to a stable and secure position, so that the conservatorship can end and Fannie and Freddie can be returned to normal business operations. At the time of the conservatorship, that is how the FHFA described the goal of the conservatorship, and that is why the FHFA stated that common and preferred stock would remain outstanding. Thus, the stock of Fannie and Freddie has continued to be publicly traded since the conservatorship, and Fannie and Freddie have continued to make SEC filings, even as they have remained under the full control of the FHFA.

3. In connection with the conservatorships, the Government (specifically, Treasury) entered into substantially identical Preferred Stock Purchase Agreements (the "Agreements") with each of Fannie Mae and Freddie Mac. Under these Agreements, Treasury acquired from each company preferred stock (the "Senior Preferred Stock") that (i) is senior in priority to all

other series of Fannie Mae and Freddie Mac preferred stock (all such other series of Fannie and Freddie preferred stock thus became and shall be referred to as the "Junior Preferred Stock"), (ii) was given an initial face value of $1 billion, but also provided that this face value would be increased by any amount Treasury invested in or advanced to Fannie Mae or Freddie Mac, (iii) would receive preferential liquidation rights (*i.e.*, would receive face value, as increased by any Treasury investments or advances, as a liquidation preference prior to anything going to the holders of Junior Preferred Stock or Common Stock), and (iv) would earn an annual dividend of 10% of the face value (as such value is increased by any Treasury investments or advances). In addition, each of the Agreements provided Treasury with warrants that could be exercised at any time to allow Treasury to acquire 79.9% of the Common Stock of Fannie and Freddie, respectively, for a nominal price.

4. Between the start of the conservatorship in September 2008 through the beginning of 2012, the Government advanced Fannie Mae and Freddie Mac more than $188 billion—most of which was advanced to cover accounting losses reflecting excessive write-downs of assets that were worth far more than their written down amounts. These advances increased the face value of the Senior Preferred Stock held by the Government to approximately $189 billion, entitling the Government to an annual dividend of approximately $19 billion, which translates to a quarterly dividend of just under $5 billion.

5. By 2012, the housing market was well on its way to recovery and Fannie Mae and Freddie Mac had become profitable again, reporting increasing profits through 2011 and 2012. Indeed, by the second quarter of 2012, Fannie and Freddie made a combined quarterly profit of approximately $8.3 billion. This was the first quarter for which Fannie and Freddie reported a combined quarterly profit that exceeded the (just under) $5 billion quarterly dividend payable to

Treasury on its Senior Preferred Stock. Thus, by no later than the end of the second quarter of 2012, Fannie and Freddie were each generating sufficient profits to pay a dividend to the holders of its Junior Preferred Stock or to begin redeeming its Senior Preferred Stock (and thus to reduce its future dividend obligation on the Senior Preferred Stock) or to accumulate net worth so that, in the event of any liquidation, dissolution, or winding up of Fannie or Freddie, there would be funds available to pay holders of its Junior Preferred Stock. Because there was ample cause to expect that those profits were likely to grow substantially (as they in fact have done during the past year), the Junior Preferred Stock had a value as of August 2012 not less than its par value. Nevertheless, rather than respecting the contractual and property rights of the Arrowood Parties and other holders of the Junior Preferred Stock, the Government took steps in August 2012 to eliminate the rights of the holders of Junior Preferred Stock to ever receive any distribution of value from Fannie or Freddie, and thus took steps to take, for the benefit of the Government, the entire value of the Junior Preferred Stock, and thus damage holders of the Junior Preferred Stock, including the Arrowood Parties, in at least that amount.

6. Specifically, on August 17, 2012, Fannie Mae and Freddie Mac, through their Conservator FHFA, entered into a Third Amendment (the "Third Amendment") to their Agreements with Treasury to provide that beginning on January 1, 2013, Fannie Mae and Freddie Mac would pay the Government dividends equal to their entire net worth (the "Net Worth Sweep"), leaving Fannie Mae and Freddie Mac with no funds to redeem the Government's Senior Preferred Stock or to distribute to the holders of Junior Preferred Stock, whether by dividend, redemption, or in a liquidation. Indeed, since the Government's Preferred Stock Purchase Agreements provided that in the event of a liquidation of Fannie or Freddie, the Government would receive a liquidation preference that included the amount of any prior unpaid

dividend, the Net Worth Sweep guaranteed that even if Fannie or Freddie were liquidated (which is not the purpose of the conservatorship, and which the FHFA has never announced plans to do) the Government (*i.e.*, Treasury) would receive the full amount of the institutions' net worth in that liquidation.

7. The August 2012 action, which Fannie, Freddie, and the Government effectuated without seeking or obtaining the consent of the Arrowood Parties and the other Junior Preferred Stockholders as required by the terms of the Junior Preferred Stock, eliminated the valuable contractual rights owned by the holders of Junior Preferred Stock, including the Arrowood Parties. Specifically, the rights of the Arrowood Parties that were nullified by the Government's action included the rights:

a. to receive dividend payments from Fannie Mae and Freddie Mac. Dividends were owed to the Junior Preferred Stockholders to the extent Fannie and Freddie had profits in excess of the amount required to pay dividends to the Government on its Senior Preferred Stock. In such a scenario, no dividends could be paid to holders of Common Stock, without first paying dividends to the Junior Preferred Stockholders. As of the second quarter of 2012, ensuing quarters to the date of this filing, and for most if not all quarters for the foreseeable future, Fannie and Freddie's profits in fact exceeded such amounts;

b. to receive a liquidation distribution upon dissolution, liquidation, or winding up of Fannie Mae and Freddie Mac, which while junior to the Senior Preferred Stock was still worth billions of dollars, given Fannie and Freddie's return to profitability and the rebound in the housing market; and

c. to otherwise participate in the profits of Fannie and Freddie, whether through dividends, redemptions, liquidation, or otherwise; and

d. to vote on any changes to the Junior Preferred Stock that were materially adverse to the Junior Preferred Stockholders.

8. The Arrowood Parties paid valuable consideration to acquire these rights, and in doing so helped provide financial support for Fannie and Freddie by contributing to a viable market for Fannie and Freddie's issued securities. Indeed, the contractual rights owned by the

holders of Junior Preferred Stock were worth billions of dollars prior to being eliminated in August 2012.

9. Fannie and Freddie breached their contracts with the Arrowood Parties and breached the covenant of good faith and fair dealing inherent in those contracts by eliminating the contractual rights of the Junior Preferred Stockholders, including the Arrowood Parties, without their consent. By causing these breaches through its conduct as Conservator, FHFA is also liable for Fannie and Freddie's breach of contract and breach of the implied covenant of good faith and fair dealing.

10. The current projections for Fannie and Freddie's continued profitability show that over approximately the next year, Fannie and Freddie will be able to repay to Treasury 100% of the money they received from Treasury, plus the required 10% annual dividend. That means that but for the Net Worth Sweep, Fannie and Freddie would be in position to pay billions of dollars in profits to the holders of Junior Preferred Stock for years to come. Instead, because of the Net Worth Sweep, Treasury will now receive tens of billions of dollars (if not hundreds of billions of dollars) in excess of the amount it was entitled to receive under the original Agreements, and the Junior Preferred Stockholders will receive nothing.

11. On September 18, 2013, the Arrowood Parties filed a complaint in the United States Court of Federal Claims ("CFC Complaint") seeking just compensation from the United States, under the Fifth Amendment to the United States Constitution, for the appropriation of their property rights caused by the August 2012 Third Amendment.

12. The Arrowood Parties do not seek a double recovery, but they do seek to ensure that they receive the compensation they are owed, either as just compensation paid by the Government for its appropriation of their private property, or as breach of contract damages paid

by Fannie, Freddie, and/or FHFA, or alternatively injunctive relief vacating and setting aside the Third Amendment and the Net Worth Sweep, and thus restoring the Arrowood Parties' property and contractual rights to them (with damages limited to any injury not redressed through injunctive relief). Moreover, to the extent the Government seeks to defend the CFC Complaint by claiming that the FHFA was not acting as an arm of the Government when it agreed to the Third Amendment, then it must concede that FHFA, Fannie, and Freddie can be sued as non-governmental entities in this case. By contrast, to the extent the defendants in this case assert immunity based on the FHFA's status as a government agency, that will confirm that the Third Amendment was the unilateral act of the Government, and thereby confirm the allegations of the CFC Complaint.

JURISDICTION AND VENUE

13. This action arises under the APA, 5 U.S.C. §§ 551-559, 701-706, and HERA, 12 U.S.C. §§ 1455, 1719, 4617. The Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331. The Court is authorized to issue the non-monetary relief sought herein pursuant to 5 U.S.C. §§ 702, 705, and 706. The Court also has supplemental jurisdiction over the state law claims asserted herein pursuant to 28 U.S.C. § 1367(a).

14. Venue is proper in this district because a substantial portion of the transactions and wrongs complained of herein, including the defendants' primary participation in the wrongful acts detailed herein, occurred in this district. One or more of the defendants either resides in or maintains executive offices in this district, and defendants have engaged in numerous activities and conducted business here, which had an effect in this district.

THE PARTIES

15. Plaintiff Arrowood Indemnity Company ("Arrowood Indemnity") is a Delaware corporation with its principal place of business at 3600 Arco Corporate Drive, Charlotte, North

Carolina 28273. Arrowood Indemnity owns the following shares of Fannie Mae Junior Preferred Stock and Freddie Mac Junior Preferred Stock, all of which were acquired prior to September 6, 2008, and have been continuously owned by Arrowood Indemnity since the date of acquisition, and are still owned by Arrowood Indemnity, other than 2000 shares of Fannie Mae Junior Preferred Stock which were sold in 2013 and then repurchased later in 2013:

Entity	CUSIP	Coupon Rate	Series	Shares	Par Value Per Share	Aggregate Par Value
Fannie Mae	313586844	5.125%	L	38,800	$ 50.00	$ 1,940,000
Fannie Mae	313586877	5.375%	I	78,000	$ 50.00	$ 3,900,000
Fannie Mae	313586885	5.81%	H	147,400	$ 50.00	$ 7,370,000
Freddie Mac	313400855	5.10%	H	160,000	$ 50.00	$ 8,000,000
Freddie Mac	313400731	5.70%	R	100,000	$ 50.00	$ 5,000,000
Freddie Mac	313400772	5.81%	O	119,750	$ 50.00	$ 5,987,500
Freddie Mac	313400749	6.00%	P	60,000	$ 50.00	$ 3,000,000
			Total	703,950		$ 35,197,500

16. Plaintiff Arrowood Surplus Lines Insurance Company ("Arrowood Surplus Lines") is a Delaware corporation with its principal place of business at 3600 Arco Corporate Drive, Charlotte, North Carolina 28273. Arrowood Surplus Lines owns the following shares of Fannie Mae Junior Preferred Stock and Freddie Mac Junior Preferred Stock, all of which were acquired prior to September 6, 2008, have been continuously owned by Arrowood Surplus Lines since the date of acquisition, and are still owned by Arrowood Surplus Lines:

Entity	CUSIP	Coupon Rate	Series	Shares	Par Value Per Share	Aggregate Par Value
Fannie Mae	313586877	5.375%	I	22,000	$ 50.00	$ 1,100,000
Freddie Mac	313400772	5.81%	O	40,000	$ 50.00	$ 2,000,000
Freddie Mac	313400749	6.00%	P	40,000	$ 50.00	$ 2,000,000
			Total	102,000		$ 5,100,000

17. Plaintiff Financial Structures Limited ("Financial Structures") is an insurance company organized under the laws of Bermuda, with an office at 44 Church Street, Hamilton HM12, Bermuda. Financial Structures owns the following shares of Freddie Mac Junior Preferred Stock, all of which were acquired prior to September 6, 2008, have been continuously owned by Financial Structures since the date of acquisition, and are still owned by Financial Structures:

Entity	CUSIP	Coupon Rate	Series	Shares	Par Value Per Share	Aggregate Par Value
Freddie Mac	313400772	5.81%	O	40,000	$ 50.00	$ 2,000,000
			Total	40,000		$ 2,000,000

18. Arrowood Surplus Lines is a wholly-owned subsidiary of Arrowood Indemnity. Arrowood Indemnity and Financial Structures are each indirect wholly-owned subsidiaries of Arrowpoint Capital Corp., a Delaware corporation.

19. Arrowood Indemnity and Arrowood Surplus Lines are insurance companies that are now in "run-off" under the jurisdiction of the Commissioner of Insurance of the State of Delaware. Financial Structures is also an insurance company in run-off. As insurance companies in run-off, the Arrowood Parties do not issue any new insurance policies, and have an obligation to manage their businesses, and conservatively invest their assets, so that funds will be available to fulfill their obligations to existing policyholders. Each of the Arrowood Parties regarded its

investments in the Junior Preferred Stock of Fannie Mae and Freddie Mac to be conservative investments.

20. Defendant Fannie Mae is a federally chartered Government-Sponsored Enterprise ("GSE") with its principal executive offices located at 3900 Wisconsin Avenue, NW, Washington, D.C. 20016.

21. Defendant Freddie Mac is a federally chartered GSE with its principal executive offices located at 8200 Jones Branch Drive, McLean, Virginia 22102.

22. Defendant FHFA, as Conservator of Fannie Mae and Freddie Mac, is a Government agency with its headquarters located at 400 Seventh Street, SW, Washington, D.C. 20024.

23. Defendant Treasury is a Government agency with its headquarters located at 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220.

24. Defendant Edward DeMarco is the Acting Director of the FHFA. His official address is Constitution Center, 400 Seventh Street, S.W., Washington, D.C. 20024. He is being sued in his official capacity. In that capacity, Acting Director DeMarco has overall responsibility for the operation and management of the FHFA, including its conduct as Conservator. Acting Director DeMarco, in his official capacity, is responsible for the conduct of the FHFA (including that which took place prior to his assuming that office) that is the subject of this complaint and for the related acts and omissions alleged herein.

25. Defendant Jacob J. Lew is Secretary of the Treasury. His official address is 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220. He is being sued in his official capacity. In that capacity, Secretary Lew has overall responsibility for Treasury's management and operation. Secretary Lew, in his official capacity, is responsible for Treasury's conduct

(including that which took place prior to his assuming that office) that is the subject of this complaint and for the related acts and omissions alleged herein.

FACTUAL ALLEGATIONS

Background of Fannie Mae, Freddie Mac, and Their Preferred Stock

26. Fannie Mae was created by federal statute in 1938, at the request of President Franklin Delano Roosevelt, in an effort to provide a much needed supply of capital to the nation's home mortgage industry. Initially, it was authorized to purchase only those mortgages which were insured by the Federal Housing Administration ("FHA"). For the first thirty years of its existence, Fannie Mae existed and was operated by the Federal Government.

27. In 1968, Fannie Mae was privatized pursuant to the Housing and Urban Development Act of 1968. That Act effectively partitioned the Federal National Mortgage Association into two separate and distinct entities: the reconstituted Fannie Mae and the Government National Mortgage Association ("Ginnie Mae"). Fannie Mae was reorganized as a Government-sponsored private corporation and was to serve the self-supporting secondary mortgage market. It was also authorized to purchase mortgages beyond merely FHA-insured mortgages. The other entity, Ginnie Mae, continued as a Federal Agency and was responsible for the then-existing special assistance programs.

28. From 1968 until the events described in this Complaint, Fannie Mae has been publicly traded on the New York Stock Exchange and therefore owned by private shareholders, and has obtained funding from private capital on a self-sustaining basis.

29. In the Emergency Home Finance Act of 1970, Congress created Freddie Mac and authorized it to create a secondary market for conventional mortgages. According to its Form 10-K for the fiscal year ended December 31, 2012, filed with the Securities and Exchange

Commission ("SEC") on February 28, 2013, Freddie Mac's "public mission [is] to provide liquidity, stability, and affordability to the U.S. housing market."

30. In 1992, Congress passed the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (the "Safety and Soundness Act"). The Safety and Soundness Act created the Office of Federal Housing Enterprise Oversight ("OFHEO") as the new regulator for Fannie Mae and Freddie Mac, imposed minimum capital requirements on Fannie Mae and Freddie Mac, and provided OFHEO with the authority to impose a conservatorship in the event that Fannie Mae or Freddie Mac became critically undercapitalized, as defined by the statute.

31. In July of 2008, Congress enacted HERA. HERA created the FHFA as the successor to OFHEO, and provided the FHFA with expanded regulatory powers over Fannie Mae and Freddie Mac. In addition, HERA authorized the FHFA to order either Fannie or Freddie into receivership, as well as providing greater guidance regarding the statutory basis for appointing a conservator for either of the GSEs.

32. Although they are chartered by Congress and have a public mission, prior to September 6, 2008, Fannie Mae and Freddie Mac were non-governmental, publicly traded corporations owned by their stockholders. Prior to September 6, 2008, both Fannie Mae and Freddie Mac raised substantial amounts of capital from private investors in order to fund their operations. As shown below, one of the ways both Fannie Mae and Freddie Mac raised capital was by issuing preferred stock.

33. Prior to September 6, 2008, Fannie Mae had issued several series of preferred stock with various dividend rates and stated values, including:

a. Series D 5.25% Non-Cumulative Preferred Stock with a stated value of $50 per share;

b. Series E 5.1% Non-Cumulative Preferred Stock with a stated value of $50 per share;

c. Series F Variable Rate Non-Cumulative Preferred Stock with a stated value of $50 per share;

d. Series G Variable Rate Non-Cumulative Preferred Stock with a stated value of $50 per share;

e. Series H 5.81% Non-Cumulative Preferred Stock with a stated value of $50 per share;

f. Series I 5.375% Non-Cumulative Preferred Stock with a stated value of $50 per share;

g. Series L 5.125% Non-Cumulative Preferred Stock with a stated value of $50 per share;

h. Series M 4.75% Non-Cumulative Preferred Stock with a stated value of $50 per share;

i. Series N 5.5% Non-Cumulative Preferred Stock with a stated value of $50 per share;

j. Series O Variable Rate Non-Cumulative Preferred Stock with a stated value of $50 per share;

k. Series P Variable Rate Non-Cumulative Preferred Stock with a stated value of $25 per share;

l. Series Q 6.75% NonCumulative Preferred Stock with a stated value of $25 per share;

m. Series R 7.625% Non-Cumulative Preferred Stock with a stated value of $25 per share;

n. Series S Variable Rate Non-Cumulative Preferred Stock with a stated value of $25 per share;

o. Series T 8.25% Non-Cumulative Preferred Stock with a stated value of $25 per share;

p. Series 2004-1 5.375% Non-Cumulative Convertible Preferred Stock with a stated value of $100,000 per share; and

q. Series 2008-1 8.75% Non-Cumulative Convertible Preferred Stock with a stated value of $50 per share.

34. Prior to September 6, 2008, Freddie Mac had issued several series of preferred stock with various dividend rates and stated values, including:

a. Series B Variable Rate Non-Cumulative Preferred Stock with a stated value of $50 per share;

b. 5.81% Non-Cumulative Preferred Stock with a stated value of $50 per share (issued 10/27/97);

c. Series F 5% Non-Cumulative Preferred Stock with a stated value of $50 per share;

d. Series G Variable Rate Non-Cumulative Preferred Stock with a stated value of $50 per share;

e. Series H 5.1% Non-Cumulative Preferred Stock with a stated value of $50 per share;

f. 5.3% Non-Cumulative Preferred Stock with a stated value of $50 per share (issued 10/28/98);

g. 5.1% Non-Cumulative Preferred Stock with a stated value of $50 per share (issued 3/19/99);

h. Series K 5.79% Non-Cumulative Preferred Stock with a stated value of $50 per share;

i. Series L Variable Rate Non-Cumulative Preferred Stock with a stated value of $50 per share;

j. Series M Variable Rate Non-Cumulative Preferred Stock with a stated value of $50 per share;

k. Series N Variable Rate Non-Cumulative Preferred Stock with a stated value of $50 per share;

l. Series O 5.81% Non-Cumulative Preferred Stock with a stated value of $50 per share;

m. Series P 6% Non-Cumulative Preferred Stock with a stated value of $50 per share;

n. Series Q Variable Rate Non-Cumulative Preferred Stock with a stated value of $50 per share;

o. Series R 5.7% Non-Cumulative Preferred Stock with a stated value of $50 per share;

p. 5.81% Non-Cumulative Preferred Stock with a stated value of $50 per share (issued 1/29/02);

q. Series S Variable Rate Non-Cumulative Preferred Stock with a stated value of $50 per share;

r. Series T 6.42% Non-Cumulative Preferred Stock with a stated value of $50 per share;

s. Series U 5.9% Non-Cumulative Preferred Stock with a stated value of $25 per share;

t. Series V 5.57% Non-Cumulative Preferred Stock with a stated value of $25 per share;

u. Series W 5.66% Non-Cumulative Preferred Stock with a stated value of $25 per share;

v. Series X 6.02% Non-Cumulative Preferred Stock with a stated value of $25 per share;

w. Series Y 6.55% Non-Cumulative Preferred Stock with a stated value of $25 per share; and

x. Series Z Fixed-to-Floating Rate Non-Cumulative Preferred Stock with a stated value of $25 per share.

35. As shown below, prior to September 6, 2008, each series of Fannie Mae preferred stock ranked on a parity with all other issued and outstanding series of Fannie Mae preferred stock as to the payment of dividends and the distribution of assets upon dissolution, liquidation, or winding up of Fannie Mae, and each series of Freddie Mac preferred stock ranked on a parity with all other issued and outstanding series of Freddie Mac preferred stock as to the payment of dividends and the distribution of assets upon dissolution, liquidation, or winding up of Freddie Mac. Thus, the holders of each series of Fannie Mae and Freddie Mac preferred stock had equal contractual rights to receive their respective dividends, as well as their respective liquidation preferences (or their respective pro rata portions thereof) upon dissolution, liquidation, or winding up of Fannie Mae and Freddie Mac.

36. Prior to September 6, 2008, Fannie Mae and Freddie Mac each regularly declared and paid dividends on each series of their respective preferred stock.

37. The Certificate of Designation for each series of Fannie Mae preferred stock held by the Arrowood Parties constitutes a contract with provisions governing their dividend and liquidation rights, and provides in pertinent part:

> **2. Dividends.**
>
> (a) Holders of record of [the particular series of] Preferred Stock (each individually a "Holder," or collectively the "Holders") will 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, non-cumulative cash dividends at [the specified percentage rate] per annum of the [specified] stated value . . . per share of [the particular series of] Preferred Stock.
>
> * * *
>
> **4. Liquidation Rights.**
>
> (a) Upon any voluntary or involuntary dissolution, liquidation or winding up of Fannie Mae, after payment or provision for the liabilities of Fannie Mae and the expenses of such dissolution, liquidation or winding up, the Holders of outstanding shares of the [particular series of] Preferred Stock will be entitled to receive out of the assets of Fannie Mae or proceeds thereof available for distribution to stockholders, before any payment or distribution of assets is made to holders of Fannie Mae's common stock (or any other stock of Fannie Mae ranking, as to the distribution of assets upon dissolution, liquidation or winding up of Fannie Mae, junior to the [particular series of] Preferred Stock), the amount of [the stated value] per share plus an amount . . . equal to the dividend (whether or not declared) for the then-current quarterly Dividend Period accrued to but excluding the date of such liquidation payment, but without accumulation of unpaid dividends on the [particular series of] Preferred Stock for prior Dividend Periods.
>
> (b) If the assets of Fannie Mae available for distribution in such event are insufficient to pay in full the aggregate amount payable to Holders of [the particular series of] Preferred Stock and holders of all other classes or series of stock of Fannie Mae, if any, ranking, as to the distribution of assets upon dissolution, liquidation or winding up of Fannie Mae, on a parity with the [particular series of Preferred Stock, the assets will be distributed to the Holders of [the particular series of] Preferred Stock and holders of all such other stock pro rata, based on the full respective preferential amounts to which they are entitled (but without, in the

case of any noncumulative preferred stock, accumulation of unpaid dividends for prior Dividend Periods).

38. Likewise, the Certificate of Designation for each series of Freddie Mac preferred stock held by the Arrowood Parties constitutes a contract with provisions governing their dividend and liquidation rights, and provides in pertinent part:

2. Dividends

(a) Holders of outstanding shares of Non-Cumulative 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, non-cumulative cash dividends at the [specified] annual rate per share of Non-Cumulative Preferred Stock.

* * *

7. Liquidation Rights and Preference

(a) Except as otherwise set forth herein, upon the voluntary or involuntary dissolution, liquidation or winding up of Freddie Mac, after payment of or provision for the liabilities of Freddie Mac and the expenses of such dissolution, liquidation or winding up, the holders of the outstanding shares of the Non-Cumulative Preferred Stock shall be entitled to receive out of the assets of Freddie Mac 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 Freddie Mac ranking junior to the Non-Cumulative Preferred Stock upon liquidation, the amount of [the stated value] per share plus an amount . . . equal to the dividend, if any, 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, and the holders of the outstanding shares of any class or series of stock of Freddie Mac ranking on a parity with the Non-Cumulative Preferred Stock upon liquidation shall be entitled to receive out of the assets of Freddie Mac available for distribution to stockholders, before any such payment or distribution shall be made on the Common Stock or any other class or series of stock of Freddie Mac ranking junior to the Non-Cumulative Preferred Stock and to such parity stock upon liquidation, any corresponding preferential amount to which the holders of such parity stock may, by the terms thereof, be entitled; provided, however, that if the assets of Freddie Mac available for distribution to stockholders shall be insufficient for the payment of

> the amount which the holders of the outstanding shares of the Non-Cumulative Preferred Stock and the holders of the outstanding shares of such parity stock shall be entitled to receive upon such dissolution, liquidation or winding up of Freddie Mac as aforesaid, then ... all of the assets of Freddie Mac available for distribution to stockholders shall be distributed to the holders of outstanding shares of the Non-Cumulative Preferred Stock and to the holders of outstanding shares of such parity stock pro rata, so that the amounts so distributed to holders of the Non-Cumulative Preferred Stock and to holders of such classes or series of such parity stock, respectively, shall bear to each other the same ratio that the respective distributive amounts to which they are so entitled bear to each other.

39. The Certificate of Designation for each series of Fannie Mae preferred stock held by the Arrowood Parties also contains the following provisions governing amendments to the terms of Fannie Mae preferred stock:

> **7. Voting Rights; Amendments.**
>
> * * *
>
> (b) Without the consent of the Holders of [the particular series of] Preferred Stock, Fannie Mae will have the right to amend, alter, supplement or repeal any terms of this Certificate or the [particular series of] Preferred Stock (1) to cure any ambiguity, or to cure, correct or supplement any provision contained in this Certificate of Designation that may be defective or inconsistent with any other provision herein or (2) to make any other provision with respect to matters or questions arising with respect to the [particular series of] Preferred Stock that is not inconsistent with the provisions of this Certificate of Designation ***so long as such action does not materially and adversely affect the interests of the Holders of [the particular series of] Preferred Stock***; provided, however, that any increase in the amount of authorized or issued [particular series of] Preferred Stock or the creation and issuance, or an increase in the authorized or issued amount, of any other class or series of stock of Fannie Mae, whether ranking prior to, on a parity with or junior to the [particular series of] Preferred Stock, as to the payment of dividends or the distribution of assets upon dissolution, liquidation or winding up of Fannie Mae, or otherwise, will not be deemed to materially and adversely affect the interests of the Holders of [the particular series of] Preferred Stock.

> (c) ***Except as set forth in paragraph (b) of this Section 7, the terms of this Certificate or the [particular series of] Preferred Stock may be amended, altered, supplemented, or repealed only with the consent of the Holders of at least two-thirds of the shares of [the particular series of] Preferred Stock then outstanding***, given in person or by proxy, either in writing or at a meeting of stockholders at which the Holders of [the particular series of] Preferred Stock shall vote separately as a class. On matters requiring their consent, Holders of [the particular series of] Preferred Stock will be entitled to one vote per share.

(Emphasis added).

40. Likewise, the Certificate of Designation for each series of Freddie Mac preferred stock held by the Arrowood Parties contains the following provisions governing amendments to the terms of the Freddie Mac preferred stock:

> **9. Miscellaneous**
>
> * * *
>
> (h) Freddie Mac, 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 Non-Cumulative Preferred Stock, Freddie Mac 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 materially and adversely affect the interests of the holders of the Non-Cumulative Preferred Stock***.
>
> (ii) ***The consent of the holders of at least 66 2/3% of all of the shares of the Non-Cumulative 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 Non-Cumulative Preferred Stock shall vote together as a class, ***shall be necessary for authorizing, effecting or validating the amendment, alteration, supplementation or repeal of the provisions of this Certificate if such amendment, alteration, supplementation or repeal would materially anti adversely affect the powers, preferences, rights, privileges,***

> ***qualifications, limitations, restrictions, terms or conditions of the Non-Cumulative Preferred Stock***. 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 Freddie Mac (including the Non-Cumulative Preferred Stock), whether ranking prior to, on a parity with or junior to the Non-Cumulative Preferred Stock, shall not be deemed to constitute such an amendment, alteration, supplementation or repeal.

(Emphasis added).

41. Thus, the contracts governing all of the Junior Preferred Stock held by the Arrowood Parties provided that Fannie and Freddie, respectively, were prohibited from amending the terms of any of the Junior Preferred Stock in a way that was materially adverse to the Junior Preferred Stockholders. The only exception to that requirement was if Fannie or Freddie issued a new class or series of stock. In executing the Third Amendment, the FHFA, Fannie, and Freddie have not purported to issue a new series of stock, and therefore the contractual prohibition against amending the terms of the Junior Preferred Stock in a way that is materially adverse to the Arrowood Parties has been violated. Indeed, if the Third Amendment in fact constituted the issuance of a new series of stock to Treasury, then the Third Amendment was illegal, because the statutory authority allowing Treasury to acquire new series of stock in Fannie and Freddie expired at the end of 2009. 12 U.S.C. §§ 1455(*l*)(4), 1719(g)(4). Moreover, as shown below, there can be no doubt that the Third Amendment not only made "materially adverse" changes to rights of Junior Preferred Stockholders, but in fact *nullified* the contractual rights of the Arrowood Parties and other such stockholders.

The Conservatorships

42. On September 7, 2008, OFHEO's Director James Lockhart, who then became director of the FHFA, announced that on the previous day (September 6, 2008), the FHFA had placed Fannie Mae and Freddie Mac into conservatorship. Director Lockhart described

"conservatorship" as "a statutory process designed to stabilize a troubled institution with the objective of returning the entities to normal business operations. FHFA will act as the conservator to operate the Enterprises until they are stabilized."

43. As the Conservator for Fannie Mae and Freddie Mac, the FHFA became responsible for "preserv[ing] and conserv[ing] [their] assets and property" and managing them so as to restore them to a "sound and solvent condition." 12 U.S.C. § 4617(b)(2)(D).

44. Acting FHFA Director Edward J. DeMarco confirmed this operating framework, stating that the "statutory purpose of conservatorship is to preserve and conserve each company's assets and put them in a sound and solvent condition . . . to help restore confidence in [Fannie and Freddie], enhance their capacity to fulfill their mission, and [to] mitigate the systemic risk that contributed directly to instability in the financial markets."

45. HERA also authorized Treasury to strengthen Fannie and Freddie's balance sheets by purchasing their securities, within set time limits and consistent with certain statutory requirements. From the time of HERA's enactment in 2008 through the end of 2009, Congress authorized Treasury to "purchase any obligations and other securities issued by [Fannie and Freddie] . . . on such terms and conditions as the Secretary may determine and in such amounts as the Secretary may determine." 12 U.S.C. §§ 1455(*l*)(1)(A), 1719(g)(1)(A). In order to exercise that authority, HERA required the Secretary to determine that purchasing Fannie and Freddie's securities was "necessary to . . . provide stability to the financial markets; prevent disruptions in the availability of mortgage finance; and protect the taxpayer." 12 U.S.C. §§ 1455(*l*)(1)(B), 1719(g)(1)(B). And in making those determinations, the Secretary was required to consider several factors:

> (i) [t]he need for preference or priorities regarding payments to the Government;

> (ii) [l]imits on maturity or disposition of obligations or securities to be purchased;
>
> (iii) [Fannie and Freddie's] plan[s] for the orderly resumption of private market funding or capital market access;
>
> (iv) [t]he probability of [Fannie and Freddie] fulfilling the terms of any such obligation or other security, including repayment;
>
> (v) [t]he need to maintain [Fannie and Freddie's] status as . . . private shareholder owned compan[ies]; [and]
>
> (vi) [r]estrictions on the use of [Fannie and Freddie's] resources, including limitations on the payment of dividends and executive compensation or any such other terms and conditions as appropriate for those purposes.

12 U.S.C. §§ 1455(*l*)(1)(C), 1719(g)(1)(C).

46. In his announcement, Director Lockhart explained that "in order to conserve over $2 billion in capital every year, the common stock and preferred stock dividends will be eliminated, but the common and all preferred stocks will continue to remain outstanding. Subordinated debt interest and principal payments will continue to be made." Thus, the conservatorships did not involve the appropriation of any of the outstanding preferred stock in Fannie Mae or Freddie Mac. While Director Lockhart orally stated that dividends would be "eliminated," there was no amendment to any of the Certificates of Designation for any of Fannie Mae or Freddie Mac Junior Preferred Stock (collectively, the "Certificates"). Thus, this oral announcement by Director Lockhart did not legally modify the contractual rights of the holders of Junior Preferred Stock. Moreover, as shown below, both Director Lockhart's announcement and the terms of the agreements executed between Treasury and the FHFA contemplated that future dividends could potentially be paid on the Junior Preferred Stock if the institutions returned to profitability.

47. Director Lockhart's announcement also made clear that the conservatorships would be run with a view to attracting continued private investment into Fannie Mae and Freddie Mac: "Some of the key regulations will be minimum capital standards, prudential safety and soundness standards and portfolio limits. It is critical to complete these regulations *so that any new investor will understand the investment proposition*." (Emphasis added.)

48. Also on September 7, 2008, Treasury Secretary Henry Paulson announced that in connection with the conservatorships, Fannie Mae and Freddie Mac had entered into the Agreements with Treasury pursuant to which Treasury would receive a newly-issued series of preferred stock that would be senior in priority to all the issued and outstanding series of Fannie Mae and Freddie Mac preferred stock. Secretary Paulson explained that "With this agreement, Treasury receives senior preferred equity shares and warrants that protect taxpayers. Additionally, under the terms of the agreement, common and preferred shareholders bear losses ahead of the new government senior preferred shares." Secretary Paulson made clear that "*conservatorship does not eliminate the outstanding preferred stock*, but does place preferred shareholders second, after the common shareholders, in absorbing losses." (Emphasis added.)

49. Also on September 7, 2008, Treasury issued a "Fact Sheet" describing the Agreements and explaining that the Agreements "provide significant protections for the taxpayer, in the form of senior preferred stock with a liquidation preference, an upfront $1 billion issuance of senior preferred stock with a 10% coupon from each GSE, quarterly dividend payments, warrants representing an ownership stake of 79.9% in each GSE going forward, and a quarterly fee starting in 2010."

50. The Fact Sheet further stated that "The agreements are contracts between the Department of the Treasury and each GSE." It then summarized the terms of the Agreements,

and clearly itemized each form of compensation being received by Treasury under the Agreements:

> In exchange for entering into these agreements with the GSEs, Treasury will immediately receive the following compensation:
>
> - $1 billion of senior preferred stock in each GSE
>
> - Warrants for the purchase of common stock of each GSE representing 79.9% of the common stock of each GSE on a fully diluted basis at a nominal price
>
> - The senior preferred stock shall accrue dividends at 10% per year. The rate shall increase to 12% if, in any quarter, the dividends are not paid in cash, until all accrued dividends have been paid in cash.
>
> - The senior preferred stock shall not be entitled to voting rights. In a conservatorship, voting rights of all stockholders are vested in the Conservator.
>
> - Beginning March 31, 2010, the GSEs shall pay the Treasury on a quarterly basis a periodic commitment fee that will compensate the Treasury for the explicit support provided by the agreement. The Secretary of the Treasury and the Conservator shall determine the periodic commitment fee in consultation with the Chairman of the Federal Reserve. This fee may be paid in cash or may be added to the senior preferred stock.

51. In addition, the Fact Sheet summarized a series of "covenants" made by Fannie Mae and Freddie Mac to Treasury as part of the Agreements, including the covenant that, "Without the prior consent of the Treasury, the GSEs shall not . . . [m]ake any payment to purchase or redeem its capital stock, or pay any dividends, including preferred dividends (other than dividends on the senior preferred stock)[.]" Notably, there was no covenant that prohibited any future payment of dividends to holders of the Junior Preferred Stock; nor was there any indication at all that Treasury would refuse to consent to any dividends ever being paid on the Junior Preferred Stock even if Fannie and Freddie returned to profitability and were able to repay Treasury its entire investment plus a substantial profit. Moreover, there was no covenant

preventing Junior Preferred Stockholders from receiving their pro rata share of any liquidation value in Fannie Mae or Freddie Mac.

52. On September 11, 2008, Fannie Mae filed with the SEC a Form 8-K disclosing further details regarding its conservatorship and Preferred Stock Purchase Agreement with Treasury. Among other things, this Form 8-K stated that "FHFA, as Conservator, has the power to repudiate contracts entered into by Fannie Mae prior to the appointment of FHFA as Conservator if FHFA determines, in its sole discretion, that performance of the contract is burdensome and that repudiation of the contract promotes the orderly administration of Fannie Mae's affairs. FHFA's right to repudiate any contract must be exercised within a reasonable period of time after its appointment as Conservator." FHFA did not, within a reasonable period of time of its appointment as Conservator or at any other time before August 17, 2012, purport to repudiate any of the contracts governing the issuance by Fannie Mae and Freddie Mac of the various series of preferred stock listed above and now described as the Junior Preferred Stock.

53. In summarizing the terms applicable to the Senior Preferred Stock issued to Treasury, the Form 8-K stated:

> The Senior Preferred Stock ranks prior to Fannie Mae common stock and all outstanding series of Fannie Mae preferred stock (which are listed in Item 3.03 above), as well as any Fannie Mae capital stock issued in the future, ***as to both dividends and rights upon liquidation***. The Certificate of Designation for the Senior Preferred Stock provides that Fannie Mae 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 (a) 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) have been declared and paid in cash, and (b) all amounts required to be paid with the net proceeds of any issuance of capital stock for cash have been paid in cash.

(Emphasis added).

54. Thus, the terms of the Agreements governing the Senior Preferred Stock issued to Treasury (as summarized in the Form 8-K) contemplated that it would be possible to pay dividends to the Junior Preferred Stockholders, so long as all cumulative dividends had been paid in cash on the Senior Preferred Stock and Treasury's "Commitment" to provide funding had terminated, *e.g.*, in connection with redemption of the Senior Preferred Stock.

55. The Form 8-K's summary of the Agreements governing the Senior Preferred Stock also contemplated that the Senior Preferred Stock would be redeemed at some future date in connection with the termination of Treasury's "Commitment" to provide funding: "If after termination of the Commitment, Fannie Mae pays down the liquidation preference of each outstanding share of Senior Preferred Stock in full, the shares will be deemed to have been redeemed as of the payment date."

Fannie Mae and Freddie Mac's Debt to the Government Balloons to More Than $188 Billion

56. Since Fannie Mae and Freddie Mac have been in conservatorship, Treasury has caused Fannie Mae and Freddie Mac to draw billions of dollars from the Government. An amount equal to the funds drawn from the Government has been added to the original $1 billion face value of the Government's Senior Preferred Stock in each of Fannie Mae and Freddie Mac, and has thereby increased exponentially the amount Fannie Mae and Freddie Mac must eventually pay the Government to redeem its respective Senior Preferred Stock. To a large degree, the billions in dollars of funding from Treasury reflects (a) excessive write downs of the assets held by Fannie and Freddie which triggered losses that are now being reversed, because these assets were worth substantially more than their written down values; and (b) the need to

borrow cash from Treasury in order to pay Treasury its 10% annual coupon on its Senior Preferred Stock.

57. On February 26, 2009, Fannie Mae filed with the SEC its Form 10-K for the fiscal year ended December 31, 2008, which disclosed that "[a]t December 31, 2008, our total liabilities exceeded our total assets, as reflected on our consolidated balance sheet, by $15.2 billion," and therefore "[t]he Director of FHFA submitted a request on February 25, 2009 for funds from Treasury on our behalf under the terms of the senior preferred stock purchase agreement to eliminate our net worth deficit as of December 31, 2008. . . . Accordingly, the amount of the aggregate liquidation preference of the senior preferred stock will increase to $16.2 billion as a result of our expected draw."

58. On March 11, 2009, Freddie Mac filed with the SEC its Form 10-K for the fiscal year ended December 31, 2008, which disclosed that "[t]he Director of FHFA has submitted a draw request to Treasury under the Purchase Agreement in the amount of $30.8 billion, which we expect to receive in March 2009. When this draw is received . . . the aggregate liquidation preference of the senior preferred stock will increase from $1.0 billion as of September 8, 2008 to $45.6 billion."

59. On February 24, 2010, Freddie Mac filed with the SEC its Form 10-K for the fiscal year ended December 31, 2009, which disclosed that "[a]s a result of draws under the Purchase Agreement, the aggregate liquidation preference of the senior preferred stock has increased from $1.0 billion as of September 8, 2008 to $51.7 billion as of December 31, 2009."

60. On February 26, 2010, Fannie Mae filed with the SEC its Form 10-K for the fiscal year ended December 31, 2009, which disclosed that "the aggregate liquidation preference of the senior preferred stock was $60.9 billion as of December 31, 2009 and will increase to $76.2

billion as a result of FHFA's request on our behalf for funds to eliminate our net worth deficit as of December 31, 2009."

61. On February 24, 2011, Fannie Mae filed with the SEC its Form 10-K for the fiscal year ended December 31, 2010, which disclosed that "the aggregate liquidation preference of the senior preferred stock was $88.6 billion as of December 31, 2010 and will increase to $91.2 billion as a result of FHFA's request on our behalf for funds to eliminate our net worth deficit as of December 31, 2010."

62. On February 24, 2011, Freddie Mac filed with the SEC its Form 10-K for the fiscal year ended December 31, 2010, which disclosed that "[t]he draws received during 2010 increased the aggregate liquidation preference of the senior preferred stock to $64.2 billion at December 31, 2010 from $51.7 billion at December 31, 2009. To address our net worth deficit of $401 million as of December 31, 2010, FHFA, as Conservator, will submit a draw request, on our behalf, to Treasury under the Purchase Agreement in the amount of $500 million. Upon funding of the draw request . . . our aggregate funding received from Treasury under the Purchase Agreement will increase to $63.7 billion."

63. On February 29, 2012, Fannie Mae filed with the SEC its Form 10-K for the fiscal year ended December 31, 2011, which disclosed that "the aggregate liquidation preference of the senior preferred stock was $112.6 billion as of December 31, 2011 and will increase to $117.1 billion as a result of FHFA's request on our behalf for funds to eliminate our net worth deficit as of December 31, 2011."

64. On March 9, 2012, Freddie Mac filed with the SEC its Form 10-K for the fiscal year ended December 31, 2011, which disclosed that "[w]e had a net worth deficit of $146 million as of December 31, 2011, and, as a result, FHFA, as Conservator, will submit a draw

request, on our behalf, to Treasury under the Purchase Agreement in the amount of $146 million. Upon funding of the draw request . . . our aggregate liquidation preference on the senior preferred stock owned by Treasury will increase to $72.3 billion."

65. Thus, as of the beginning of 2012, Fannie Mae's cost to redeem the Government's Senior Preferred Stock in Fannie had ballooned from the original $1 billion to $117.1 billion, and Freddie Mac's cost to redeem the Government's Senior Preferred Stock in Freddie had increased from the original $1 billion to $72.3 billion—resulting in a total face amount (and liquidation preference) for the Government's Senior Preferred Stock in both Fannie and Freddie of approximately $189.4 billion.

66. Nevertheless, while Treasury's large infusions of cash into Fannie and Freddie created substantial priority rights for the Senior Preferred Stock, it did not eliminate the rights of the Junior Preferred Stock, which continued to be entitled to dividends payable after all dividends paid on the Senior Preferred Stock, and to a liquidation preference after the liquidation preference on the Senior Preferred Stock was satisfied. For example, as of March 31, 2013, the aggregate liquidation preference of all of the Junior Preferred Stock in Fannie and Freddie was approximately $33 billion. As shown below, the growing profitability of Fannie and Freddie during 2012 soon confirmed that, despite being junior to Treasury's Senior Preferred Stock, the Junior Preferred Stock was worth billions of dollars.

Fannie Mae and Freddie Mac Become Profitable

67. After three years in conservatorship, both Fannie Mae and Freddie Mac began to report significant profits, reflecting the recovery of the broader housing market and the increased value of the assets that both Fannie and Freddie had been forced to write down. Thus, by the first quarter of 2012, Fannie Mae had no need to draw additional funds from the Government because instead of generating losses, it began generating profits.

68. On May 9, 2012, Fannie Mae filed with the SEC its Form 10-Q for the first quarter of 2012, which disclosed Fannie Mae's first quarterly profit since before the conservatorship. In the Form 10-Q Fannie Mae reported "total comprehensive income of $3.1 billion in the first quarter of 2012, consisting of net income of $2.7 billion and other comprehensive income of $362 million" and "net worth of $268 million as of March 31, 2012 [which] reflects our total comprehensive income of $3.1 billion largely offset by our payment to Treasury of $2.8 billion in senior preferred stock dividends during the first quarter of 2012." Fannie Mae further reported that as a result of our positive net worth as of March 31, 2012, we will not request a draw this quarter from Treasury under the senior preferred stock purchase agreement."

69. Fannie Mae's profitability grew in the second quarter of 2012. On August 8, 2012, Fannie Mae filed with the SEC its Form 10-Q for the second quarter of 2012, in which Fannie Mae reported "comprehensive income of $5.4 billion in the second quarter of 2012, consisting of net income of $5.1 billion and other comprehensive income of $328 million" and "net worth of $2.8 billion as of June 30, 2012 [which] reflects our comprehensive income of $8.5 billion offset by our payment to Treasury of $5.8 billion in senior preferred stock dividends during the first half of 2012 . . . . As a result of our positive net worth as of June 30, 2012, we are not requesting a draw from Treasury under the senior preferred stock purchase agreement."

70. Although Freddie Mac was also in conservatorship and had to draw on the Government's funding commitment to pay the Government dividends on the Government's senior preferred stock, Freddie Mac was able to generate quarterly profits for certain quarters even before 2012. For example, in its Form 10-Q for the quarter ended June 30, 2009, filed with the SEC on August 7, 2009, Freddie Mac reported a quarterly profit of $800 million, and in its

Form 10-Q for the quarter ended March 30, 2011, filed with the SEC on May 4, 2011, Freddie Mac reported a quarterly profit of $2.7 billion.

71. By the first quarter of 2012, Freddie Mac began to generate quarterly profits on a consistent basis. In its Form 10-Q for the quarter ended March 30, 2012, filed with the SEC on May 3, 2012, Freddie Mac reported a quarterly profit of $1.8 billion, and in its Form 10-Q for the quarter ended June 30, 2012, filed with the SEC on August 7, 2012, Freddie Mac reported a quarterly profit of $2.9 billion.

The Net Worth Sweep

72. With Fannie Mae and Freddie Mac's return to consistent profitability, the holders of Fannie Mae and Freddie Mac Junior Preferred Stock began to see some light at the end of the tunnel. Although Fannie Mae and Freddie Mac were still in conservatorship, Fannie Mae and Freddie Mac's rapidly growing profitability and net worth gave the Junior Preferred Stockholders reason to believe that Fannie Mae and Freddie Mac would soon be financially healthy enough to begin paying dividends on the Junior Preferred Stock even after paying the 10% annual dividend on Treasury's Senior Preferred Stock (as Fannie and Freddie were able to do as of no later than the second quarter of 2012), or to redeem the Government's Senior Preferred Stock, exit conservatorship, and resume paying regular dividends on the Junior Preferred Stock. Alternatively, even if Fannie and Freddie were gradually wound down or liquidated, their profitability reflected the value of their underlying assets, and any reasonable liquidation would generate more than enough value to pay off the Senior Preferred Stock held by Treasury while yielding sufficient funds to pay the full par value to the holders of Junior Preferred Stock.

73. Not satisfied with the prospect of being repaid dividends at the agreed-upon rate of 10% per annum (increased to 12% under certain circumstances) and being repaid the full face

value of the Senior Preferred Stock, the Government decided not to abide by the terms of its deal with Fannie and Freddie, and thus obtain for itself the full value of the Junior Preferred Stock.

74. On August 17, 2012, Treasury issued a news release announcing that Fannie and Freddie had agreed to a Third Amendment to the Senior Preferred Stock Agreements that, among other things, increased the dividends Fannie Mae and Freddie Mac are required to pay the Government from 10% of the value of the Senior Preferred Stock to an *unlimited amount* equal to Fannie Mae and Freddie Mac's *entire net worth*.

75. Treasury described the terms of this Third Amendment, described herein as the "Net Worth Sweep," as a "*Full Income Sweep of All Future Fannie Mae and Freddie Mac Earnings to Benefit Taxpayers for Their Investment*," and stated that "***The agreements will replace the 10 percent dividend payments made to Treasury on its preferred stock investments in Fannie Mae and Freddie Mac with a quarterly sweep of every dollar of profit that each firm earns going forward.***" (Emphasis added). Specifically, as shown below, the Net Worth Sweep provides that beginning as of January 1, 2013, Fannie and Freddie must pay Treasury a quarterly dividend equal to their *entire net worth*, minus a capital reserve amount that starts at $3 billion and decreases to $0 by January 1, 2018. This means that any increase in the net worth of Fannie or Freddie flowing from net income or other comprehensive income will automatically be swept to Treasury *in its entirety*, no matter how large that increase in net worth is, or how much it exceeds the 10% dividend provided for in the Agreements governing the Senior Preferred Stock.

76. Treasury stated that one of the objectives of the Net Worth Sweep was "***Making sure that every dollar of earnings that Fannie Mae and Freddie Mac generate will be used to benefit taxpayers for their investment in those firms.***" (Emphasis added). In other words, the purpose was to take any and all profits of Fannie and Freddie, no matter how much they

exceeded the actual rights given to Treasury through its Senior Preferred Stock, and to take any and all value in Fannie and Freddie, leaving absolutely nothing for the holders of the Junior Preferred Stock.

77. Treasury also stated that the Net Worth Sweep was designed to fulfill the "***the commitment made in the Administration's 2011 White Paper that the GSEs will be wound down and will not be allowed to retain profits, rebuild capital, and return to the market in their prior form.***" (Emphasis added). Thus, Treasury's intent is to ensure that Fannie and Freddie can never generate profits for the holders of the Junior Preferred Stock, and thus to ensure that the entire value of the Junior Preferred Stock be taken by Treasury, causing damage to the Junior Preferred Stockholders.

78. Treasury also stated that the Net Worth Sweep would require Fannie and Freddie to wind down their mortgage portfolios at a faster rate than previously required:

> *Accelerated Wind Down of the Retained Mortgage Investment Portfolios at Fannie Mae and Freddie Mac*
>
> The agreements require an accelerated reduction of Fannie Mae and Freddie Mac's investment portfolios. Those portfolios will now be wound down at an annual rate of 15 percent - an increase from the 10 percent annual reduction required in the previous agreements. As a result of this change, the GSEs' investment portfolios must be reduced to the $250 billion target set in the previous agreements four years earlier than previously scheduled.

79. Also on August 17, 2012, Fannie Mae filed with the SEC a Form 8-K disclosing further details of the Third Amendment to the Agreement and the Net Worth Sweep:

> For each dividend period from January 1, 2013 through and including December 31, 2017, ***the dividend amount will be the amount, if any, by which our net worth as of the end of the immediately preceding fiscal quarter exceeds an applicable capital reserve amount. The applicable capital reserve amount will be $3 billion for 2013 and will be reduced by $600 million each year until it reaches zero on January 1, 2018***. For each dividend period thereafter, the dividend amount will be the amount

> of our net worth, if any, as of the end of the immediately preceding fiscal quarter.
>
> Our net worth as defined by the agreement is the amount, if any, by which our total assets (excluding Treasury's funding commitment and any unfunded amounts related to the commitment) exceed our total liabilities (excluding any obligation in respect of capital stock), in each case as reflected on our balance sheet prepared in accordance with generally accepted accounting principles. If we do not have a positive net worth or if our net worth does not exceed the applicable capital reserve amount as of the end of a fiscal quarter, then no dividend amount will accrue or be payable for the applicable dividend period.
>
> * * *
>
> In addition to the above-described amendments, the amendment also requires that Fannie Mae amend or replace the existing Certificate of Designation for the senior preferred stock to reflect the revised dividend payment provisions described above by no later than September 30, 2012.

(Emphasis added).

80. Neither Fannie Mae nor Freddie Mac received any consideration—let alone reasonable consideration—in return for the benefits that were transferred to Treasury under the Third Amendment.

81. The Net Worth Sweep eliminates the entire economic value of the Junior Preferred Stock. It literally appropriates for the benefit of Treasury all of the economic value that could ever be paid out on the Junior Preferred Stock, and makes it impossible for the holders of Junior Preferred Stock ever to receive a dividend or any other form of distribution from either Fannie or Freddie, whether in liquidation or otherwise.

82. The Net Worth Sweep has had an immediate, enormous effect on the dividend payments from Fannie and Freddie to Treasury. On May 9, 2013, Fannie issued a press release stating:

> ● Strong credit results and increased revenue resulted in pre-tax income of $8.1 billion for the first quarter, the largest quarterly pre-tax income in the company's history. * * *
>
> ● Based on net worth of $62.4 billion at March 31, 2013, the company's dividend obligation to Treasury will be $59.4 billion by June 30, 2013. After the June payment, we will have paid an aggregate of $95.0 billion in cash dividends to Treasury since conservatorship began. Senior preferred stock outstanding and held by Treasury remained $117.1 billion at March 31, 2013, as dividend payments do not offset prior Treasury draws.

83. Of the $59.4 billion dividend obligation which Fannie's statement said would be paid to Treasury by June 30, 2013, $50.6 billion resulted from the release of a valuation allowance on deferred tax assets, and not directly from operations.

84. On May 8, 2013, Freddie issued a press release stating:

> Treasury Draws and Dividend Payments
>
> ● No additional Treasury draw required for the first quarter of 2013
>
> ● Aggregate cash dividends of $29.6 billion paid to Treasury since conservatorship began, including $5.8 billion paid in the first quarter of 2013
>
> ● Based on net worth of $10.0 billion at March 31, 2013, the company's dividend obligation to Treasury will be $7.0 billion in June 2013
>
> ● Senior preferred stock outstanding and held by Treasury remained $72.3 billion at March 31, 2013, as dividend payments do not offset prior Treasury draws.

85. The last quoted phrase in each of these press releases bears special note: "dividend payments do not offset prior Treasury draws." What that means is that no matter how profitable Fannie and Freddie become, all of their net worth will be paid to Treasury as dividends, meaning that Treasury will always hold the $189.4 billion face amount of Senior Preferred Stock which it now holds based on the initial stock issuance and prior draws, ensuring

that the Junior Preferred Stock and Common Stock can never receive any amounts from Fannie and Freddie.

86. On May 9, 2013, *Politico* reported:

> Fannie Mae will send its largest check yet to taxpayers this summer: $59.4 billion.
>
> The government-owned mortgage finance company has been turning a profit in recent quarters thanks to the recovering housing market and the rapid pace of mortgage refinancings spurred on by the Federal Reserve's cheap money policies.
>
> On Thursday, Fannie announced the uptick in profits will allow it to take advantage of certain tax benefits on losses that were deferred as the company was taken over by the government in 2008. This boosts the company's net worth and frees up $50.6 billion for the government under the terms of the bailout agreement.
>
> This amount combined with the $8.1 billion first-quarter profit reported Thursday, the largest gain in its history, means the company will send the government $59.4 billion by June 30.
>
> * * *
>
> Lawmakers on the Senate Banking and House Financial Services committees have said the new profits should not delay reform further, but with the budget already tight, keeping the continued flow of cash in place could be tempting.
>
> "Washington could quickly get addicted to the revenue from Fannie and Freddie," Guggenheim Partners analyst Jaret Seiberg said in a note to clients.
>
> Under the terms of the bailout agreement, Fannie and Freddie cannot get out from under government control simply by paying back the taxpayer money they have received because Treasury owns preferred shares in the company.
>
> As of June 30, Fannie will have paid Treasury $95 billion in dividend payments under its conservatorship agreement while Treasury will still hold $117 billion in preferred shares in the company.
>
> Should the government keep control of the companies for another 10 years, the Obama administration budget projects taxpayers

> could get $51 billion more back from Fannie and Freddie than the $187 billion they put into the two firms.
>
> A Treasury Department official confirmed that the funds returned by Fannie and Freddie will be deposited into the general fund and will be factored into how long the department can continue to pay the government's bills before running up against the debt ceiling.
>
> The $59 billion Fannie will send, combined with the $7 billion Freddie said it would pay the Treasury by June 30, would likely push back the date when the government will breach the debt ceiling until October, if it is not raised before then, the Bipartisan Policy Center said today.
>
> Laurie Goodman, a top analyst at Amherst Securities, said rising home prices, coupled with higher fees Fannie and Freddie charge new homebuyers, will keep the companies profitable for some time.
>
> "I think the profits are sustainable. They have raised [fees] very, very considerably," Goodman said in an interview. "And bad loans are running off."

87. On May 10, 2013, Fitch Ratings issued a report stating "[w]e believe the cumulative dividends paid by Fannie could exceed the $117 billion in senior preferred stock owned by Treasury by late this year or early 2014, based on the current earnings run-rate."

FHFA and Treasury's Actions Were Arbitrary and Capricious, and Exceeded Both Agencies' Statutory Authority under HERA

88. Neither Treasury nor the FHFA made any public record of their decision making processes in agreeing to the Third Amendment.

89. Thus, there is no public record that Treasury made the determinations or considered the factors required by HERA before executing the Third Amendment. In any event, Treasury's description of the Third Amendment as assisting an expedited winding down of Fannie and Freddie's operations demonstrates that the Third Amendment is wholly inconsistent with consideration of required statutory factors, such as "the need to maintain [Fannie and Freddie's] status as . . . private shareholder-owned compan[ies]" and Fannie and Freddie's plans

"for the orderly resumption of private market funding or capital market access." *See* 12 U.S.C. §§ 1455(*l*)(1)(C), 1719(g)(1)(C). There is also no evidence that Treasury considered alternatives to the Third Amendment that would have been both consistent with its statutory obligations and less harmful to holders of Fannie and Freddie's Junior Preferred Stock and Common Stock, including refinancing the Senior Preferred Stock or allowing Fannie and Freddie to resume paying dividends to holders of their Junior Preferred Stock and Common Stock.

90. There is also no public record that the FHFA considered whether the Third Amendment is consistent with its statutory obligations as Fannie and Freddie's Conservator. Treasury's stated purpose of winding down Fannie and Freddie, which necessarily involves dissipating their assets and property, is incompatible on its face with FHFA's charge to put Fannie and Freddie back into "a sound and solvent condition" and to "conserve [their] assets and property." Acting Director DeMarco's statement that the Third Amendment reflects the FHFA's goal of "gradually contracting [Fannie and Freddie's] operations" is also inconsistent with that obligation. Similarly inconsistent with FHFA's statutory obligations are Acting Director DeMarco's April 18, 2013 statement explaining that the Third Amendment reinforces "the notion that [Fannie and Freddie] will not be building capital as a potential step to regaining their former corporate status" and the FHFA's statement in its June 13, 2013 Annual Report stating that the FHFA's focus is on preparing the housing industry for a future "without Fannie Mae and Freddie Mac."

91. Finally, there is no public record that either government agency—Treasury or the FHFA—considered whether the Third Amendment is consistent with their duties to holders of Fannie and Freddie's Junior Preferred Stock and Common Stock.

Fannie Mae and Freddie Mac and Their Conservator FHFA Breached The Contractual Obligations to the Junior Preferred Stockholders

92. Through the Third Amendment, Fannie and Freddie and their Conservator FHFA eliminated the Junior Preferred Stockholders' contractual rights to receive dividends before the Government could receive any dividends in excess of its 10% cumulative dividend on the Senior Preferred stock, and to receive a pro rata distribution of any liquidation proceeds available after the Government received full recovery of the face amount of the Senior Preferred Stock. Thus, the Third Amendment constituted an amendment, alteration, and repeal of the terms of the Certificates, *e.g.*, the contractual terms governing the holders' rights to receive dividends and liquidation distributions, in a manner that materially and adversely affected—indeed, totally obliterated—the rights and interests of the Arrowood Parties and other holders of the Junior Preferred Stock.

93. In breach of the terms of the Certificates, Fannie and Freddie and their Conservator FHFA amended, altered, and repealed the terms of the Certificates in a manner that materially and adversely affected the rights and interests of the holders of the Junior Preferred Stock without seeking or obtaining the consent of two-thirds of the Junior Preferred Stockholders as required by Section 7(c) of Fannie Certificate and Section 9(h)(ii) of the Freddie Certificate.

94. Fannie and Freddie's agreement to the Net Worth Sweep did not purport to be the creation and issuance of any other class or series of Fannie Mae or Freddie Mac stock, nor did it purport to be an increase in the authorized or issued amount of any other class or series of Fannie Mae or Freddie Mac stock. Rather, the Net Worth Sweep to which Fannie and Freddie agreed in August 2012 was described merely as an amendment to the terms of the Senior Preferred Stock that Fannie and Freddie had issued in September 2008. Accordingly, the amendment, alteration, and repeal of the terms of the Certificates via Fannie and Freddie's agreement to the Net Worth

Sweep cannot be deemed exempt from the two-thirds vote requirement set forth in Section 7(c) of Fannie Certificate and Section 9(h)(ii) of the Freddie Certificate.

95. In addition to their explicit terms, inherent in the Certificates was an implied covenant by Fannie and Freddie to deal fairly with the Junior Preferred Stockholders and to fulfill the issuers' contractual obligations in good faith, *e.g.*, an implied promise that Fannie and Freddie would not take actions that would make it impossible for the Arrowood Parties and other Junior Preferred Stockholders to realize any value from their dividend and liquidation rights.

96. Fannie and Freddie and their Conservator FHFA acted unfairly and in bad faith with respect to the Arrowood Parties and breached their implied covenant of good faith and fair dealing by agreeing to the Net Worth Sweep, the purpose and effect of which was to make it *impossible* for the Junior Preferred Stockholders to realize any value from their dividend and liquidation rights, and thus to deny the Arrowood Parties and other Junior Preferred Stockholders the fruits of their contracts with Fannie and Freddie.

97. As a direct and proximate result of the foregoing breaches, the Arrowood Parties have been deprived of the entire economic value of the Junior Preferred Stock.

COUNT I

Against Treasury and Secretary Lew for Violation Of The Administrative Procedure Act: Treasury's Conduct Exceeds Its Statutory Authority Under The Housing And Economic Recovery Act

98. The Arrowood Parties incorporate by reference and reallege each and every allegation set forth above, as though fully set forth herein.

99. The APA empowers the Court to "hold unlawful and set aside agency action, findings, and conclusions" that are "in excess of statutory jurisdiction, authority, or limitations" or that are "without observance of procedure required by law." 5 U.S.C. § 706(2)(C), (D).

100. HERA limits Treasury's authority to make financial investments in Fannie and Freddie. For example, Treasury's authority under HERA to purchase Fannie and Freddie's securities and to modify the terms and conditions of those securities expired on December 31, 2009. 12 U.S.C. §§ 1455(*l*)(4), 1719(g)(4).

101. If the Third Amendment was not the issuance of new securities, then, as stated above, it was an unlawful amendment to the terms of the Junior Preferred Stock. If, instead, the Third Amendment was the issuance of new securities, then the Third Amendment was illegal, because the statutory authority allowing Treasury to acquire new series of stock in Fannie and Freddie expired at the end of 2009. 12 U.S.C. §§ 1455(*l*)(4), 1719(g)(4).

102. Under the original Agreements, Treasury purchased equity interests that entitled it to Senior Preferred Stock with certain characteristics: a liquidation preference equal to Fannie and Freddie's draws against Treasury's funding commitment and an annual dividend worth ten percent of the aggregate liquidation preference. These interests were embodied by stock certificates issued by Fannie and Freddie. The Agreements also grant Treasury warrants to purchase up to 79.9% of Fannie and Freddie's Common Stock at a nominal price. The Third Amendment altered the underlying stock certificates to create a new security that entitles Treasury to a complete sweep of all of Fannie and Freddie's net worth every quarter for as long as they remain in operation and that extinguishes all other equity rights.

103. The Third Amendment thus effected a wholesale change to the nature of Treasury's securities after its authority to purchase new securities expired. Notably, Treasury could have exercised its warrants to purchase 79.9% of Fannie and Freddie's Common Stock under the existing terms of the Agreements. Doing so would have enabled both Treasury and private investors to share in Fannie and Freddie's financial gains; instead, Treasury executed the

Third Amendment, creating a new equity interest that seizes all of Fannie and Freddie's gains for itself.

104. Treasury also exceeded its authority by amending the Agreements without making certain statutorily required findings or considering statutorily required factors. Before exercising its temporary authority to purchase securities, HERA requires Treasury to "determine that such actions are necessary to . . . (i) provide stability to the financial markets; (ii) prevent disruptions in the availability of mortgage finance; and (iii) protect the taxpayer." 12 U.S.C. § 1719(g)(1)(B). In requiring Treasury to make these statutorily required determinations, HERA requires Treasury to consider such factors as "the [Fannie and Freddie's] plan[s] for the orderly resumption of private market funding or capital market access" and "the need to maintain the [Fannie and Freddie's] status as . . . private shareholder-owned compan[ies]," among other factors. 12 U.S.C. § 1719(g)(1)(C).

105. These statutory criteria apply to amendments of the Agreements, in addition to the original execution of those Agreements. Otherwise, Treasury could fundamentally alter its investments in Fannie and Freddie at any time, including after its investment authority has expired, without making the required determinations or considering the necessary factors. This would turn HERA's grant of temporary authority to Treasury to purchase Fannie and Freddie's securities under certain conditions into an unconstrained, permanent authority.

106. As far as the public record discloses, Treasury has not made any of the required determinations or considered any of the necessary factors. It therefore exceeded its statutory authority.

107. In any event, the Third Amendment is not compatible with due consideration of the factors Treasury must consider before purchasing Fannie and Freddie's securities or

amending its Agreements to purchase such securities. The Third Amendment destroys value in all privately held securities, demonstrating that it is wholly incompatible with "the need to maintain the [Fannie and Freddie's] status as . . . private shareholder-owned compan[ies]" and with the "orderly resumption of private market funding or capital market access."

108. Treasury and Secretary Lew's conduct in entering into the Third Amendment was therefore "in excess of statutory . . . authority" and "without observance of procedure required by law," and the Arrowood Parties are therefore entitled to relief against Treasury and Secretary Lew pursuant to 5 U.S.C. §§ 702, 706(2)(C), (D).

COUNT II

Against Treasury and Secretary Lew for Violation Of The Administrative Procedure Act: Treasury's Conduct Was Arbitrary and Capricious

109. The Arrowood Parties incorporate by reference and reallege each and every allegation set forth above, as though fully set forth herein.

110. The APA empowers the Court to "hold unlawful and set aside agency action, findings, and conclusions" that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). This means, among other things, that agency action is unlawful unless it is the product of "reasoned decisionmaking." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 52 (1983). Decisionmaking that relies on inadequate evidence or that results in inconsistent or contradictory conclusions cannot satisfy that standard.

111. Before Treasury exercises its temporary authority to purchase Fannie and Freddie's securities, HERA requires Treasury to determine that the financial support is necessary to "provide stability to the financial markets," "prevent disruptions in the availability of mortgage finance," and "protect the taxpayer." 12 U.S.C. §§ 1455(*l*)(1)(B)(i)-(iii),

1719(g)(1)(B)(i)-(iii). In making these determinations, HERA further requires Treasury to "take into consideration" several factors, including the "plan for the orderly resumption of private market funding or capital market access," and the "need to maintain [the] status [of Fannie and Freddie] as . . . private shareholder-owned compan[ies]." Id. §§ 1455(*l*)(1)(C)(iii), (v), 1719(g)(1)(c)(iii), (v).

112. These statutory criteria apply to all amendments of the Agreements. Otherwise, Treasury could fundamentally alter its investments in Fannie and Freddie at any time, including after its investment authority has expired, without making the required determinations or considering the necessary factors. This would turn HERA's grant of limited, temporary authority to Treasury, to purchase Fannie and Freddie's securities under certain conditions, into an unconstrained and permanent authority.

113. There is no public record that Treasury made the required determinations or considered the necessary factors before agreeing to the Third Amendment. Thus, Treasury has failed to explain how its conduct is consistent with its statutory obligations. Indeed, the available evidence reveals that it was not. Further, Treasury also has not explained whether it considered alternatives to the Third Amendment that would have been both consistent with its statutory obligations and less harmful to private investors in Fannie and Freddie, including refinancing the Senior Preferred Stock or allowing Fannie and Freddie to resume paying dividends to holders of their Junior Preferred Stock. Treasury has thus arbitrarily and capriciously failed to provide a reasoned explanation for its conduct, which results in the government's appropriation of tens of billions in private shareholder value.

114. Treasury also acted in an arbitrary and capricious manner by failing to consider whether the Third Amendment is consistent with the fiduciary duties it owes as Fannie and

Freddie's dominant shareholder to the Arrowood Parties and other holders of Fannie and Freddie's Junior Preferred Stock.

115. Under Delaware law, which governs shareholders' relationship with Fannie Mae, and Virginia law, which governs shareholders' relationship with Freddie Mac, a corporation's dominant shareholders owe fiduciary duties to minority shareholders.

116. Treasury is the dominant shareholder and de facto controlling entity of Fannie and Freddie: Treasury is Fannie and Freddie's only viable source of capital, and it must give its permission before Fannie and Freddie issue debt or equity senior to the Senior Preferred Stock.

117. The Third Amendment expropriates the value from holders of the Junior Preferred Stock for the sole benefit of Fannie and Freddie's dominant shareholder. In fact, Treasury admits that the Third Amendment's purpose is to wind down Fannie and Freddie's operations. Treasury's actions in preventing any dividends or value from reaching holders of Junior Preferred Stock, combined with Treasury's intent to liquidate Fannie and Freddie, substantially diminishes the value of the Arrowood Parties' Junior Preferred Stock.

118. Treasury and Secretary Lew's conduct in entering into the Third Amendment was arbitrary and capricious, and the Arrowood Parties are therefore entitled to relief under 5 U.S.C. §§ 702, 706(2)(A).

COUNT III

Against FHFA and Acting Director DeMarco for Violation Of The Administrative Procedure Act: The FHFA's Conduct Exceeds Its Statutory Authority Under The Housing And Economic Recovery Act

119. The Arrowood Parties incorporate by reference and reallege each and every allegation set forth above, as though fully set forth herein.

120. The APA empowers the Court to "hold unlawful and set aside agency action, findings, and conclusions" that are "in excess of statutory jurisdiction, authority, or limitations" or that are "without observance of procedure required by law." 5 U.S.C. § 706(2)(C), (D).

121. The FHFA's authority as Fannie and Freddie's Conservator is strictly limited by HERA. When acting as a Conservator, HERA requires the FHFA to take steps to put Fannie and Freddie in "a sound and solvent condition" and to work to "conserve [their] assets and property." 12 U.S.C. § 4617(b)(2)(D).

122. The FHFA, as Fannie and Freddie's Conservator, is without authority to wind down Fannie and Freddie's operations. FHFA may only undertake such actions in its capacity as Fannie and Freddie's receiver, but the FHFA has declined to put Fannie and Freddie into receivership, and there would be no statutory or factual basis for it to do so.

123. As Treasury has acknowledged, the Third Amendment is designed to wind down Fannie and Freddie's operations. The Third Amendment intentionally impairs Fannie and Freddie's ability to operate as going concerns, preventing them from ever rebuilding capital, achieving financial health, or returning to private ownership. In fact, the Third Amendment requires Fannie and Freddie to accelerate the dissolution of their holdings.

124. The dissolution of Fannie and Freddie is in direct contravention of HERA's statutory command that the FHFA "conserve [their] property and assets" and undertake those actions necessary to place Fannie and Freddie in "a sound and solvent condition." 12 U.S.C. § 4617(b)(2)(D).

125. Further, under HERA, even when acting as a receiver, the FHFA must wind down Fannie and Freddie in accordance with specific claims-determination procedures. Among other things, HERA requires the FHFA to "promptly publish a notice to the creditors of the regulated

entity to present their claims," provide creditors with no fewer than ninety days in which to file a claim, and "establish such alternative dispute resolution processes as may be appropriate for the resolution of claims." 12 U.S.C. § 4617(b)(3)(B)(i), (b)(7)(A).

126. The FHFA's decision, as a Conservator, to transfer all of Fannie and Freddie's net worth to Treasury is an end-run around the procedural requirements HERA imposes on the FHFA. The Third Amendment allows Treasury to be paid amounts that exceed the value of its claims against Fannie and Freddie, while making it impossible to satisfy claims of the Arrowood Parties and other holders of Fannie and Freddie's Junior Preferred Stock. In short, the Third Amendment effectively nullifies the claims of holders of Fannie and Freddie's Junior Preferred Stock and precludes such holders from availing themselves of statutory protections to contest that nullification.

127. The FHFA and Acting Director DeMarco's conduct in entering into the Third Amendment was therefore "in excess of statutory . . . authority" and "without observance of procedure required by law," and the Arrowood Parties are therefore entitled to relief against the FHFA and Acting Director DeMarco pursuant to 5 U.S.C. §§ 702, 706(2)(C), (D).

COUNT IV

Against FHFA and Acting Director DeMarco for Violation Of The Administrative Procedure Act: The FHFA's Conduct Was Arbitrary And Capricious

128. The Arrowood Parties incorporate by reference and reallege each and every allegation set forth above, as though fully set forth herein.

129. The APA empowers the Court to "hold unlawful and set aside agency action, findings, and conclusions" that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). Agency action is arbitrary and capricious if it is not the product of "reasoned decisionmaking." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut.*

Auto. Ins. Co., 463 U.S. 29, 52 (1983). This means, among other things, that an agency must provide an adequate evidentiary basis for its action, consider all important aspects of the problem before it, and rely upon consistent, logical reasoning in reaching its decision.

130. In entering into the Third Amendment, the FHFA acted in an arbitrary and capricious manner. The FHFA failed to engage in a reasoned decisionmaking process, to consider important aspects of the problem it believed it faced, to provide an adequate explanation for its decision; to consider alternatives, or to offer a reasoned justification of the Third Amendment.

131. The FHFA has not offered any legitimate justification for the Third Amendment, which it has acknowledged prohibits Fannie and Freddie from building capital and which Treasury has further acknowledged expedites their dissolution. The FHFA has not explained how the Third Amendment is consistent with its statutory obligation to "conserve [Fannie and Freddie's] assets and property" and to return Fannie and Freddie to "a sound and solvent condition." 12 U.S.C. § 4617(b)(2)(D). The FHFA also has not explained whether it considered alternatives to the Third Amendment that would have been both consistent with its statutory obligations and less harmful to the Arrowood Parties and other holders of Fannie and Freddie's Junior Preferred Stock, including refinancing the Senior Preferred Stock or allowing Fannie and Freddie to resume paying dividends to holders of their Junior Preferred Stock.

132. Moreover, the Junior Preferred Stock, such as that held by the Arrowood Parties, was issued under a regime that gave its holders the opportunity to receive a stream of dividend payments and certain protections in the event of liquidation. The Third Amendment, however, creates an entirely new regime that deprives holders of the Junior Preferred Stock, including the Arrowood Parties, of any ability to realize the benefits of their bargains, no matter how well

Fannie and Freddie perform in the market or under what conditions they may eventually liquidate.

133. The FHFA had an obligation to consider whether the Third Amendment was consistent with the duties it owes to holders of Fannie and Freddie's Junior Preferred Stock, including the Arrowood Parties. The FHFA failed to do so. The FHFA therefore failed to consider an important aspect of the issue addressed by its action, rendering the Third Amendment arbitrary and capricious.

134. The FHFA and Acting Director DeMarco's conduct in entering into the Third Amendment was arbitrary and capricious, and the Arrowood Parties are therefore entitled to relief under 5 U.S.C. §§ 702, 706(2)(C).

COUNT V

Against Fannie Mae, Freddie Mac, and FHFA, as Conservator of Fannie and Freddie for Breach of Contract

135. The Arrowood Parties incorporate by reference and reallege each and every allegation set forth above, as though fully set forth herein.

136. The Certificates are contracts between the holders of Junior Preferred Stock, including the Arrowood Parties, and Fannie and Freddie.

137. Fannie, Freddie, and their Conservator FHFA breached the terms of the Certificates by amending, altering, and repealing the terms of the Certificates in a manner that materially and adversely affected the rights and interests of the Arrowood Parties without seeking or obtaining the consent of the Arrowood Parties, as alleged herein.

138. As a direct and proximate result of the foregoing breach of contract, the Arrowood Parties sustained damages, as alleged herein.

COUNT VI

Against Fannie Mae, Freddie Mac, and FHFA, as Conservator of Fannie and Freddie for Breach of the Implied Covenant of Good Faith and Fair Dealing

139. The Arrowood Parties incorporate by reference and reallege each and every allegation set forth above, as though fully set forth herein.

140. Inherent in the Certificates was an implied covenant by Fannie and Freddie to deal fairly with the holders of Junior Preferred Stock, including the Arrowood Parties, and to fulfill their contractual obligations in good faith, *e.g.*, an implied promise not to take actions that would make it impossible for the Arrowood Parties to realize any value from their dividend and liquidation rights.

141. Fannie, Freddie, and their Conservator FHFA acted unfairly and in bad faith with respect to the Junior Preferred Stockholders and breached their implied covenant of good faith and fair dealing by agreeing to the Net Worth Sweep, the purpose and effect of which was to make it impossible for the Junior Preferred Stockholders to realize any value from their dividend and liquidation rights, and thus to deny the Junior Preferred Stockholders the fruits of their contracts with Fannie and Freddie, as alleged herein, especially because neither Fannie nor Freddie received any consideration from Treasury in return for executing the Third Amendment, including the Net Worth Sweep.

142. As a direct and proximate result of the foregoing breach of the implied covenant of good faith and fair dealing, the Arrowood Parties have sustained damages, as alleged herein.

PRAYER FOR RELIEF

WHEREFORE, the Arrowood Parties demand judgment as follows:

A. Declaring that the Third Amendment, and its adoption, are not in accordance with HERA within the meaning of 5 U.S.C. § 706(2)(C); and that Treasury and the FHFA acted arbitrarily and capriciously within the meaning of 5 U.S.C. § 706(2)(A) by executing the Third Amendment;

B. Vacating and setting aside the Third Amendment, including its provisions that sweep the full amount of Fannie and Freddie's net worth to Treasury, that prevent redemption of the Government Preferred Stock, and that accelerate Fannie and Freddie's dissolution, and providing that all payments made by Fannie and Freddie under the Third Amendment, in excess of the amounts which would have been due as dividends absent the Third Amendment, be treated as a redemption of Senior Preferred Stock;

C. Enjoining Secretary Lew, Treasury and its officers, employees, and agents from implementing, applying, or taking any action whatsoever pursuant to the Third Amendment;

D. Enjoining Acting Director DeMarco, FHFA and its officers, employees, and agents from implementing, applying, or taking any action whatsoever pursuant to the Third Amendment;

E. If injunctive relief is not granted, awarding the Arrowood Parties damages in an amount to be determined including but not limited to the aggregate par value of their Junior Preferred Stock, that is: For Arrowood Indemnity, $35,197,500; for Arrowood Surplus Lines, $5,100,000; and for Financial Structures, $2,000,000, together with amounts equal to the dividends that would have been paid on such Junior Preferred Stock absent the Government's wrongful conduct; together with interest thereon; and, alternatively, if injunctive relief is granted, awarding the Arrowood Parties damages in an amount to be determined, to the extent that the injunctive relief does not fully redress their injuries, together with interest thereon;

F. Awarding the Arrowood Parties the costs and disbursements of the action, including reasonable attorneys' fees, experts' fees, costs, and other expenses; and

G. Granting such other and further relief as the Court deems just and proper.

JURY TRIAL DEMANDED

The Arrowood Parties demand a trial by jury on all claims so triable.

Respectfully submitted,

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Date: September 20, 2013

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

In re Fannie Mae/Freddie Mac Senior Preferred Stock Purchase Agreement Class Action Litigations	**Misc. Action No. 13-mc-1288 (RLW)**
	CLASS ACTION
THIS DOCUMENT RELATES TO: **ALL CASES**	**CONSOLIDATED AMENDED CLASS ACTION AND DERIVATIVE COMPLAINT**

TABLE OF CONTENTS

Page(s)

Plaintiffs Melvin Bareiss, Joseph Cacciapalle, John Cane, Francis J. Dennis, Michelle M. Miller, Marneu Holdings, Co., United Equities Commodities, Co., and 111 John Realty Corp. (collectively "Plaintiffs"), by the undersigned attorneys, submit this Consolidated Amended Class Action and Derivative Complaint against the defendants named herein.

NATURE AND SUMMARY OF THE ACTION

1. This is a class action brought by Plaintiffs on behalf of themselves and several classes (the "Classes," as defined herein) of holders of preferred stock or common stock issued by either the Federal National Mortgage Association ("Fannie Mae" or "Fannie") or the Federal Home Loan Mortgage Corporation ("Freddie Mac" or "Freddie;" Fannie Mae and Freddie Mac together, the "Companies"), seeking damages and equitable relief, including rescission, for breach of contract and breach of the implied covenant of good faith and fair dealing, in connection with the Third Amendment to Amended and Restated Senior Preferred Stock Purchase Agreement, dated August 17, 2012 (the "Third Amendment"), between the Defendant United States Department of the Treasury ("Treasury") and the Defendant Federal Housing Finance Agency ("FHFA") in its capacity as conservator for Fannie Mae and Freddie Mac.

2. This is also a class action brought by Plaintiffs on behalf of themselves and a sub-class (the "Takings Class," as defined herein) of certain holders of preferred stock or common stock issued by either Fannie Mae or Freddie Mac, seeking just compensation for the taking of private property in violation of the Takings Clause and Due Process Clause of the United States Constitution.

3. This is also a derivative action brought by Plaintiffs on behalf of Fannie Mae, seeking damages and equitable relief, including rescission, for breach of fiduciary duty. Plaintiffs allege the following based upon personal knowledge as to themselves and their own

acts and upon information and belief as to all other matters. Plaintiffs' information and belief is based on, inter alia, the investigation of Plaintiffs' counsel.

4. Fannie Mae and Freddie Mac are government sponsored enterprises chartered by the U.S. Congress to facilitate liquidity and stability in the secondary market for home mortgages. While they are commonly referred to as "Government Sponsored Enterprises" or "GSEs," Fannie Mae and Freddie Mac are not government agencies. Instead, as private, for-profit corporations, the Companies have shareholders, directors, and officers like other non-governmental corporations, and their debt and equity securities have for years been privately owned and publicly traded, including by public pension funds, mutual funds, community banks, insurance companies, and myriad individual investors.

5. Although both Fannie and Freddie were chartered by the U.S. Congress, the federal government did not guarantee, directly or indirectly, their securities or other obligations. Fannie and Freddie were stockholder-owned corporations, and, before the 2008 financial crisis, their businesses were self-sustaining and funded exclusively with private capital.

6. To raise capital, the Companies issued several publicly traded securities including common stock and numerous classes of non-cumulative preferred stock ("Preferred Stock"). The Preferred Stock, which had the essential characteristics of a fixed income security, was long perceived to be a conservative investment paying modest but reliable rates of return and carrying high credit ratings. The common stock, in turn, participated in the earnings of the Companies for many years. By 2008, Fannie Mae and Freddie Mac were two of the largest privately owned financial institutions in the world, and had been consistently profitable for decades.

7. In July 2008, in response to the crisis in the residential housing and mortgage markets, Congress passed the Housing and Economic Recovery Act of 2008 ("HERA"), creating

FHFA to oversee the operations of Fannie Mae and Freddie Mac. Congress empowered FHFA to serve as Conservator to the Companies when necessary to preserve their financial health. When acting as Conservator, FHFA is obligated to manage the Companies with the goal of putting them in a sound and solvent financial condition while preserving and conserving their assets. 12 U.S.C. § 4617(b)(2)(D). Congress also authorized Treasury to provide limited financial assistance to the Companies by purchasing securities issued by the Companies if it determined that such purchases would help stabilize financial markets, prevent disruptions in the mortgage markets, and protect taxpayers.

8. Just two months after HERA's enactment, on September 6, 2008, FHFA placed Fannie Mae and Freddie Mac into temporary conservatorship. The objective of the conservatorship was to stabilize the institutions so they could return to their normal business operations. Indeed, by statute, the purpose of appointing the conservator was "to preserve and conserve the [Companies'] assets and property and to put the [Companies] in a sound and solvent condition." HERA expressly grants FHFA, as Conservator, the power to take such action as may be necessary to put the Companies in a "sound and solvent condition" and that is appropriate to "carry on the business of the Companies" and "preserve and conserve the[ir] assets and property." FHFA itself vowed, at the time the Companies were placed into conservancy, that it was committed to operating the Companies "until they are stabilized" and that the conservatorship would be terminated upon successful completion of its plan to restore the Companies to "a safe and solvent condition." The public was entitled to rely on these official statements of the purposes of the conservatorship, and public trading in the Companies' stock was allowed to, and did, continue.

9. In connection with the appointment of FHFA as Conservator, Fannie Mae and Freddie Mac each entered into a Senior Preferred Stock Purchase Agreement ("PSPA") with Treasury. Under these contracts, Treasury agreed to invest in a newly created class of securities in the Companies, known as Senior Preferred Stock ("Government Stock"), when and as necessary for the Companies to maintain a positive net worth. In return for its commitment to purchase Government Stock, Treasury received $1 billion of Government Stock in each Company as a commitment fee and warrants to acquire 79.9% of the common stock of the Companies at a nominal price. The Government Stock ranked senior in priority to all other series of Fannie Mae and Freddie Mac Preferred Stock, and would earn an annual dividend, paid quarterly, equal to 10% of the outstanding liquidation preference, i.e., the sum of the $1 billion commitment fee plus the total amount of Government Stock outstanding. The warrants to acquire a 79.9% ownership stake in the Companies gave Treasury a significant "long" position – over and above the substantial 10% coupon on its Government Stock – which, if exercised, could result in enormous profits to the government in the event the Companies returned to profitability.

10. Shortly after being placed into conservatorship, the Companies, under the control of FHFA, wrote down their assets significantly. FHFA caused the Companies to declare large non-cash losses in the value of deferred tax assets, and to take out large loss reserves on their balance sheets. These accounting adjustments reflected exceedingly negative views about the Companies' future financial prospects and temporarily decreased the Companies' operating capital and their net worth by hundreds of billions of dollars. To fill the holes in the Companies' balance sheets created by these significant write-downs, Treasury immediately began purchasing Government Stock. By mid-2012, Treasury had invested approximately $189 billion in Government Stock, the majority attributable to these accounting adjustments, and the remainder

to repay Treasury the hefty 10% coupon on its outstanding Government Stock – dividends that had ballooned to approximately $19 billion annually, or nearly $5 billion quarterly.

11. Treasury made its investment in Fannie Mae and Freddie Mac pursuant to temporary authority established under Section 1117 of HERA. That authority expired on December 31, 2009. Before the authority expired, Treasury and FHFA made two substantive amendments to the PSPAs (neither of which are challenged in this lawsuit).

12. By the second quarter of 2012, both Fannie Mae and Freddie Mac had returned to profitability and were solvent. The Companies made a combined quarterly profit of $8.3 billion in the second quarter of 2012, or approximately 170% of the $5 billion quarterly dividend payable to Treasury on its Government Stock. Thus, by no later than the end of the second quarter of 2012, the Companies were generating sufficient profits to pay a dividend on the Preferred Stock, from available cash, to private investors. And once the 10% coupon on the Government Stock was paid in full, and the Companies' satisfied their contractual obligations to holders of the Preferred Stock, Treasury would also be entitled to dividends with respect to its ownership of 79.9% of the Companies' common stock (assuming exercise of Treasury's warrants).

13. Furthermore, as the housing market recovered, it became clear that the Companies' actual financial condition was never as bad as FHFA projected when it ordered the Companies to write down their balance sheets. For example, between 2008 and 2012, the Companies' actual realized loan losses were far less – by about $100 billion – than their anticipated losses. As their financial conditions have improved, the Companies have been able to reverse the earlier write-downs of their deferred tax assets and loss reserves. Significantly, the excessive write-downs were what caused Treasury to inject surplus funds into the Companies in

the first place, triggering billions of dollars of payments back to Treasury under the 10% coupon on Government Stock, which, in turn, required further draw downs on Treasury's funding commitment.

14. Consequently, by no later than the second quarter of 2012, Treasury was well-positioned to reap the fruits of its investment in Fannie Mae and Freddie Mac. As the housing recovery gained traction, the stream of profits on Treasury's investments in the Companies was projected to continue, and grow, in the coming years. Indeed, coupled with the expected reversal of loss reserves and the write-up in value of other assets, the Companies' net worth was poised to increase by several hundred billion dollars. Treasury was entitled to a substantial 10% coupon on its Government Stock (now payable out of the Companies' available cash), and to 79.9% of the Companies' profits going forward, subject to the Companies' fulfillment of their contractual obligations to the holders of their Preferred Stock. In addition, Treasury, through FHFA, as Conservator, could require Fannie Mae and Freddie Mac to begin repaying the principal of Treasury's investment in the Companies by redeeming Treasury's Government Stock.

15. Instead, Treasury insisted on all of the Companies' profits, forever. Accordingly, rather than exercising its right to purchase up to 79.9% of the Companies' common stock or taking steps to enable the Companies to redeem the Government Stock, FHFA, as Conservator, and Treasury acted together to ensure that Treasury would be the sole beneficiary, to the exclusion of all other shareholders, of the Companies as operating enterprises.

16. Specifically, FHFA and Treasury announced the "Third Amendment" to the PSPAs. The Third Amendment had devastating consequences for holders of the Preferred Stock and common stock. In place of the 10% coupon due on Treasury's Government Stock, the Third Amendment changed the PSPAs so as to entitle Treasury to a dividend of 100% of all current

and future profits of the Companies. As a result of this purported "amendment" to the terms of the Companies' PSPAs with Treasury, Fannie Mae and Freddie Mac would be left with no funds to redeem Treasury's Government Stock or distribute to the holders of Preferred Stock or common stock, whether by dividend, redemption, or in a liquidation. Indeed, since the PSPAs provided that in the event of a liquidation of Fannie Mae or Freddie Mac, the Government would receive a liquidation preference that included the amount of any prior unpaid dividend, the Third Amendment guaranteed that even if the Companies were liquidated, Treasury would receive the full amount of their net worth in that liquidation.

17. The Third Amendment, which Fannie Mae, Freddie Mac, and the Government implemented without seeking or obtaining the consent of the holders of Preferred Stock or common stock as contractually required, sidestepped the rules of priority, eliminated the contractual rights of the Preferred Stock and common stock holders, and expropriated for the Government the economic value of these privately-held securities. As Treasury stated on the day of the announcement, the Third Amendment was intended to ensure that "every dollar of earnings that Fannie Mae and Freddie Mac generate will . . . benefit taxpayers."

18. Neither the Companies nor their private investors received any meaningful value in return for the Third Amendment. As noted above, under the Third Amendment, the amount of cash the Companies transfer to Treasury as a dividend does not reduce the amount of the Government Stock outstanding. Furthermore, the Companies have not been permitted to redeem Treasury's Government Stock. Thus, regardless of how much money the Companies send to Treasury, all of the Government Stock will remain outstanding, and Treasury will continue to take substantially all of the Companies' net worth, as long as they remain in business. The Third Amendment thus enriches the federal government through a self-dealing arrangement, and

destroys tens of billions of dollars of value in the Companies' Preferred Stock and common stock. Treasury and FHFA effectively nationalized two of the nation's biggest financial institutions, after they returned to profitability and while FHFA was supposed to be serving as their Conservator.

19. Treasury has reaped immense profits via the Third Amendment. On or about June 30, 2013, the Companies collectively paid Treasury a $66.3 billion dividend – more than fourteen times the $4.7 billion that Treasury would have received under the original 10% coupon on its Government Stock. Such large payments were not unexpected; shortly after the Third Amendment was executed, FHFA's Inspector General recognized that the new arrangement could result in an "extraordinary payment to Treasury." FHFA Office of Inspector General, Analysis of the 2012 Amendments to the Government Stock Purchase Agreements, at 15 (Mar. 20, 2013). Moreover, Treasury and FHFA maintain that this excess payment of $61.6 billion somehow does not represent a return on capital invested, and therefore do not take it into account as a repayment of funds that Treasury advanced to the Companies. Therefore, the liquidation preference of Treasury's Government Stock has not been reduced and stands at $189 billion (with approximately $117 billion attributable to Fannie Mae and $72 billion attributable to Freddie Mac) – i.e., the same amount as of the time of the Third Amendment. As a result of the Third Amendment, Treasury's annualized rate of return on its Government Stock for the quarter was a staggering 140%.

20. Moreover, the Companies have continued to report strong earnings and the payment of enormous dividends to Treasury for the second and third quarters of 2013. For example, for the most recent quarter the Companies reported $39.2 billion in combined profits and announced that they will collectively pay $39 billion in dividends to Treasury for the third

quarter of 2013 under the Third Amendment. Thus, by the end of this year, Fannie Mae will have paid an aggregate of approximately $113.9 billion in dividends to Treasury, and Freddie Mac will have paid approximately $71.345 billion – i.e., $9 million more than Freddie received from Treasury – for total dividend payments of $185.2 billion as of December 2013.

21. The statutes and regulations governing Treasury and FHFA did not authorize them to enter into the Third Amendment, and in fact, FHFA's actions were contrary to its statutory responsibility as Conservator to take those actions "necessary to put the [Companies] in a sound and solvent condition" and "appropriate to carry on the business of the [Companies] and preserve and conserve [their] assets and property." 12 U.S.C. § 4617(b)(2)(D).

22. The Third Amendment has stripped Fannie Mae and Freddie Mac of their ability to rebuild their capital reserves or to distribute dividends to Plaintiffs, the other members of the Classes, or other holders of Fannie Mae and Freddie Mac stock. Moreover, by appropriating the entirety of the Companies' net worth for the government's coffers on a quarterly basis, the Third Amendment has effectively eliminated the property and contractual rights of Plaintiffs and the Classes to receive their liquidation preference upon the dissolution, liquidation or winding up of Fannie Mae and Freddie Mac. FHFA and Treasury took away the Classes' rights:

- To receive dividend payments. Under the terms of the Preferred Stock certificates of designation and the Freddie Common Stock certificate of designation ("Certificates" or "Certificates of Designation"), Fannie Mae and Freddie Mac owed Plaintiffs and the other members of the Classes dividends, if declared, to the extent that the Companies earned profits above and beyond their requirement to pay the 10% dividend on the Treasury's Senior Preferred Stock. As of the second quarter of 2012, the quarters leading up to this filing, and for the foreseeable future, Fannie Mae and Freddie Mac's profits have exceeded or will likely exceed that threshold;

- To receive a liquidation distribution upon Fannie Mae and Freddie Mac's dissolution, liquidation or winding up, a right which was still worth a substantial amount of money even though it was junior to the liquidation preference of the Senior Preferred Stock; and
- To vote upon changes to the Preferred Stock or common stock that were materially adverse to stockholders.

23. Plaintiffs and the other members of the Classes paid valuable consideration in exchange for these contractual rights, and in doing so helped provide financial support for Fannie Mae and Freddie Mac's business both before and after the imposition of the conservatorship. Indeed, even after the imposition of the conservatorship, the contractual rights of Plaintiffs and the other members of the Classes had substantial market value – market value that swiftly dissipated in the wake of the Third Amendment.

24. The current projections for the Companies' continued profitability show that by the first quarter of 2014, they will be able not only to repay all of the money the Companies drew down from Treasury, but also to pay the requisite 10% annual dividend. But for the Third Amendment, Fannie Mae and Freddie Mac would be capable of paying billions in dollars in profits to the holders of their other Preferred Stock and their common stock, including the members of the Classes. Due to the Third Amendment, that money will all accrue to Treasury instead. Treasury will receive a massive surplus above and beyond its pre-Third Amendment contractual entitlements, and Plaintiffs and the other members of the Classes will receive nothing.

25. Entry into the Third Amendment by Treasury and FHFA, in its capacity as Conservator for Fannie Mae and Freddie Mac, was not an arm's length agreement, and was in breach of the express terms of the Certificates of the Preferred Stock and of Freddie Mac Common Stock, and in breach of the implied covenant of good faith and fair dealing inherent in such Certificates. This action seeks an award of compensatory damages for such breach to Plaintiffs and the other members of the Classes and/or equitable relief with respect to such breach, including rescission of the Third Amendment.

26. Entry into the Third Amendment by Treasury and FHFA also constituted an unlawful taking of private property under the Takings Clause and Due Process Clause of the United States Constitution. Even after the imposition of the conservatorship Plaintiffs and the Takings Class had a reasonable, investment-based expectation in the value of their dividend rights and liquidation preferences. Treasury and FHFA violated their property rights by effectively expropriating these contractual rights without any compensation whatsoever. This action seeks an award of just compensation to Plaintiffs and the other members of the Takings Class.

27. Moreover, Treasury, as *de facto* controlling stockholder of the Companies, stood on both sides of the decision to implement the Third Amendment. Although Treasury has gained, and will gain, enormous benefits from the Third Amendment, the Companies received nothing in return. As such, the Third Amendment was, and is, waste and not entirely fair to Fannie Mae, and constituted a breach of the fiduciary duties owed to Fannie Mae by FHFA and Treasury, as Fannie Mae's controlling stockholder. Furthermore, the Third Amendment was inconsistent and in conflict with FHFA's statutory responsibilities, as Conservator to the Companies, to put the Companies back into "a sound and solvent condition" and to "conserve

[their] assets and property." Accordingly, this action also seeks, derivatively on behalf of Fannie Mae, an award of compensatory damages and disgorgement for such breach and/or equitable relief with respect to such breach, including rescission of the Third Amendment.

JURISDICTION AND VENUE

28. This Court has subject matter jurisdiction over this action pursuant to 12 U.S.C. §§ 1452(c), 1723a(a) and 4617, and 28 U.S.C. §§ 1343(a)(3) and 1346(a)(2). In addition, this Court has subject matter jurisdiction under 28 U.S.C. § 1332(d)(2)(A) in that Plaintiffs and defendants are citizens of different states and the matter in controversy exceeds $5 million, exclusive of interest and costs. The Court also has subject matter jurisdiction over the state law claims asserted herein pursuant to 28 U.S.C. § 1367(a).

29. Venue is proper in this district under 28 U.S.C. §§ 1391(e)(1)(A) and (B), because this is an action against agencies of the United States; one or more of the Defendants reside in this district; and a substantial portion of the transactions and wrongs complained of herein, including the Defendants' primary participation in the wrongful acts detailed herein, occurred in this district. In addition, one or more of the Defendants maintains executive officers in this district, and Defendants have engaged in regular activities and conducted business here, which have had an effect in this district. Moreover, a substantial part of the events or omissions giving rise to this action occurred in this judicial district.

THE PARTIES

30. Plaintiff Melvin Bareiss is a citizen of the state of Kansas, and is a holder of Fannie Mae 8.25% Series T Preferred Stock. Mr. Bareiss purchased Fannie Mae Preferred Stock in May 2008, and has been a holder of Fannie Mae Preferred Stock continuously since then.

31. Plaintiff Joseph Cacciapalle is a citizen of the state of New Jersey, and is a holder of Fannie Mae 8.25% Series S Preferred Stock, Fannie Mae 8.25% Series T Preferred Stock, and

Freddie Mac 8.375% Series Z Preferred Stock. Mr. Cacciapalle purchased Fannie Mae Preferred Stock in January 2008, purchased Freddie Mac Preferred Stock in February 2008, and has been a holder of Fannie Mae Stock and Freddie Mac Preferred Stock continuously since then.

32. Plaintiff John Cane is a citizen of the state of Vermont, and is a holder of Fannie Mae Preferred 8.25% Series T Preferred Stock. Mr. Cane purchased Fannie Mae Preferred Stock in 2009, held Fannie Mae Preferred Stock as of August 17, 2012, and has been a holder of Fannie Mae Preferred Stock continuously since then.

33. Plaintiff Francis J. Dennis is a citizen of the state of New Jersey, and is a holder of Fannie Mae 8.25% Series S Preferred Stock and Fannie Mae 8.25% Series T Preferred Stock. Mr. Dennis purchased Fannie Mae Preferred Stock in May 2008, and has been a holder of Fannie Mae Preferred Stock continuously since then.

34. Plaintiff Michelle M. Miller is a citizen of the state of Missouri, and is a holder of Fannie Mae common stock and Freddie Mac common stock. Ms. Miller purchased Fannie Mae common stock in July 2010 and Freddie Mac common stock in October 2009, and has been a holder of Fannie Mae common stock and Freddie Mac common stock continuously since then.

35. Plaintiff Marneu Holdings, Co. is a New York general partnership, with offices in New York, N.Y. Its partners are New York citizens, such that it is also a New York citizen. Marneu Holdings, Co. is a holder of Fannie Mae 5.375% Series I Preferred Stock, Fannie Mae Variable Rate Series P Preferred Stock, Fannie Mae 4.75% Series M Preferred Stock, Fannie Mae 8.25% Series S Preferred Stock, Fannie Mae 5.375% Convertible Series 2004-1 Preferred Stock, Freddie Mac Fixed-to-Floating Rate Series Z Preferred Stock, and Freddie Mac 6.02% Series X Preferred Stock. Marneu Holdings, Co. purchased Fannie Mae Preferred Stock in

December 2009, and Freddie Mac Preferred Stock in October 2012, and has been a holder of Fannie Mae Preferred Stock and Freddie Mac Preferred Stock continuously since then.

36. Plaintiff 111 John Realty Corp. is a New York "S" corporation, with offices in New York, New York, and is therefore a citizen of the state of New York. 111 John Realty Corp. is a holder of Fannie Mae 8.25% Series S Preferred Stock. 111 John Realty Corp. purchased Fannie Mae Preferred Stock in September 2012, and has been a holder of Fannie Mae Preferred Stock continuously since then.

37. Plaintiff United Equities Commodities, Co. is a New York general partnership, with offices in New York, New York. Its partners are New York citizens, such that it is also a New York citizen. United Equities Commodities, Co. is a holder of Fannie Mae 8.25% Series T Preferred Stock and Freddie Mac Variable Rate Series M Preferred Stock. United Equities Commodities, Co. purchased Fannie Mae Preferred Stock in June 2011, and Freddie Mac Preferred Stock in October 2012, and has been a holder of Fannie Mae Preferred Stock and Freddie Mac Preferred Stock continuously since then.

38. Defendant FHFA, as Conservator of Fannie Mae, is an independent agency of the United States government with its headquarters located at Constitution Center, 400 7th Street, S.W., Washington, D.C. 20024, and therefore is a citizen of the District of Columbia. According to FHFA's strategic plan for fiscal years 2013-17, "[s]ince September 2008, FHFA has been the conservator of Fannie Mae and Freddie Mac… with responsibility of overseeing management and governance of the Enterprise[]."

39. Defendant Treasury is an executive agency of the United States government with its headquarters located at 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220, and

therefore is a citizen of the District of Columbia. The Department of the Treasury owns the Government Stock, and is a signatory to certain agreements central to this Complaint.

40. Defendant and nominal defendant Fannie Mae is a federally-chartered Government Sponsored Enterprise with its principal executive offices located at 3900 Wisconsin Avenue, N.W., Washington, D.C. 20016, and therefore is a citizen of the District of Columbia.

41. Defendant and nominal defendant Freddie Mac is a federally chartered Government Sponsored Enterprise with its principal executive offices located at 8200 Jones Branch Drive, McLean, Virginia, and is therefore a citizen of Virginia.

ADDITIONAL PARTIES

42. Plaintiff American European Insurance Company is a New Jersey corporation with offices in New York, New York, and is a holder of Fannie Mae 8.25% Series T Preferred Stock and Freddie Mac Variable Rate Series M Preferred Stock. American European Insurance Company held Fannie Mae Preferred Stock in May 2008 and Freddie Mac Preferred Stock in January 2001, and has been a holder of Fannie Mae Preferred Stock and Freddie Mac Preferred Stock continuously since then.

43. Plaintiff Barry P. Borodkin (acting individually and on behalf of his IRA and SEP IRA) is a citizen of the state of New York, and is a holder of Fannie Mae Variable Rate Series F Preferred Stock, Fannie Mae Variable Rate Series G Preferred Stock, Fannie Mae 5.81% Series H Preferred Stock, Fannie Mae 5.125% Series L Preferred Stock, Fannie Mae 4.75% Series M Preferred Stock, Fannie Mae 5.50% Series N Preferred Stock, Fannie Mae Variable Rate Series P Preferred Stock, Fannie Mae 6.75% Series Q Preferred Stock, Fannie Mae 7.625% Series R Preferred Stock, and Fannie Mae 8.25% Series S Preferred Stock and Fannie Mae 8.25% Series T Preferred Stock. Mr. Borodkin held Fannie Mae Preferred Stock prior to August 2012, and has been a holder of Fannie Mae Preferred Stock continuously since then.

44. Plaintiff Mary Meiya Liao is a citizen of the state of California, and is a holder of Fannie Mae 8.25% Series T. Preferred Stock. Ms. Liao purchased Fannie Mae Preferred Stock in May 2008, and has been a holder of Fannie Mae Preferred Stock continuously since then.

FACTS

I. BACKGROUND OF FANNIE MAE AND FREDDIE MAC

45. Fannie Mae and Freddie Mac are stockholder-owned corporations organized and existing under the Federal National Mortgage Act and the Federal Home Loan Corporation Act, respectively. Fannie Mae was established in 1938 as a federal agency to provide the mortgage market with supplemental liquidity, and was converted to a private corporation in 1968. Freddie Mac was created as an alternative to Fannie Mae to make the secondary mortgage market more competitive and efficient. Both Companies are Government Sponsored Enterprises, which are private corporations that Congress created to increase mortgage market liquidity. They seek to accomplish this by purchasing mortgages that private banks originate and bundling them into mortgage-related securities to be sold to investors. Through the creation of this secondary mortgage market, the Companies increase liquidity for private banks, which enables them to make additional loans to individuals for home purchases.

46. Notwithstanding their government charters, private shareholders owned Fannie Mae and Freddie Mac until 2007. Before 2007, the Companies were consistently profitable. In fact, prior to that time, the most recent full-year loss for Fannie Mae was in 1985, while Freddie Mac had never experienced an annual loss, according to the Companies' regulator.

II. FHFA PLACES THE COMPANIES INTO RECEIVERSHIP AND CAUSES THEM TO INITIATE MASSIVE WRITE-DOWNS

47. Beginning in 2006, an industry-wide financial crisis and nationwide declines in the housing market caused the Companies to suffer losses. As the Office of Federal Housing

Enterprise Oversight (the "OFHEO"), which was Fannie Mae and Freddie Mac's regulator at that time, stated in its 2008 annual report to Congress:

> In 2007, a confluence of factors – turmoil in the housing and mortgage markets, loss of liquidity in the credit marks, and volatility in the capital markets adversely impacted the financial performance of financial institutions . . . with significant exposure to mortgage markets. The Enterprises' financial results suffered along with the results of other financial institutions. Both Enterprises were unprofitable in 2007 – Freddie Mac's first annual net loss ever, and Fannie Mae's first since 1985.

48. Despite these losses, the OFHEO continued to assure the marketplace of the Companies' soundness. For example, in a March 19, 2008 statement, OFHEO director James Lockhart said that, "Fannie Mae and Freddie Mac have played a very important and beneficial role in the mortgage markets over the last year. Let me be clear – both companies have prudent cushions above the OFHEO-directed capital requirements and have increased their reserves. We believe they can play an even more positive role in providing the stability and liquidity the markets need right now." On that date, Lockhart also said that the idea of a bailout is "nonsense in my mind. The companies are safe and sound, and they will continue to be safe and sound." *As Crisis Grew*, *A Few Options Shrank To One*, N.Y. TIMES, Sept. 7, 2008. Similarly, on June 9, 2008, OFHEO published a news release stating that it classified Fannie Mae and Freddie Mac as "adequately capitalized as of March 31, 2008."

49. In July 2008, Congress enacted HERA, establishing FHFA to replace the OFHEO as the Companies' regulator, and granting Treasury temporary authority to assist the Companies through the purchase of securities. HERA provided a specific list of enumerated circumstances under which FHFA would have the power to place the Companies into conservatorship or receivership. HERA was passed not because Fannie Mae or Freddie Mac was deemed to be insolvent or operating unsafely at that time, but rather, to provide the struggling mortgage and financial markets with added confidence. As Treasury Secretary Henry Paulson testified to a

Congressional panel, "If you've got a bazooka, and people know you've got it, you may not have to take it out." *Paulson's Itchy Finger, on the Trigger of a Bazooka*, N.Y. TIMES, Sept. 9, 2008. Indeed, on July 10, 2008, Paulson and Federal Reserve Chairman Ben Bernanke both testified before the House Financial Services committee that Fannie Mae and Freddie Mac were adequately capitalized, and on July 10, 2008, the OFHEO issued a statement that, as of March 31, 2008, Fannie Mae and Freddie Mac were "holding capital well in excess of the OFHEO-directed requirement[.]"

50. Similarly, in support of HERA, Senator Isakson (R-GA) commented that:

> The bill we are doing tomorrow is not a bailout to Freddie Mac and Fannie Mae or the institutions that made bad loans. It is an infusion of confidence the financial markets need. Fannie and Freddie suffer by perception from the difficulties of our mortgage market. If anybody would take the time to go look at the default rates, for example, they would look at the loans Fannie Mae holds, and they are at 1.2 percent, well under what is considered a normal, good, healthy balance. The subprime market's defaults are in the 4 to 6 to 8-point range. That is causing the problem. That wasn't Fannie Mae paper, and it wasn't securitized by Fannie Mae. They have $50 billion in capital, when the requirement is to have $15 billion, so they are sound. But the financial markets, because of the collapse of the mortgage market, have gotten worse.

51. Nonetheless, on September 6, 2008, FHFA placed the Companies into conservatorship and, in a press release issued the next day, said that, "as the conservator, FHFA will assume the power of the Board and management." As the Conservator for the Companies, FHFA became responsible for "preserv[ing] and conserv[ing] [their] assets and property" and managing them in a manner that would restore them to a "sound and solvent condition." 12 U.S.C. § 4617(b)(2)(D). At the time, FHFA stated that the goal of this action was "to help restore confidence in Fannie Mae and Freddie Mac, enhance their capacity to fulfill their mission, and mitigate the systemic risk that has contributed directly to the instability in the current market." According to FHFA's press release, the conservatorship was "a statutory process designed to stabilize a troubled institution with the objective of returning the entities to

normal business operations. FHFA will act as the conservator to operate the Enterprises until they are stabilized." FHFA also issued a Fact Sheet indicating that, "[u]pon the [FHFA] Director's determination that the Conservator's plan to restore the Company to a safe and solvent condition has been completed successfully, the Director will issue an order terminating the conservatorship. At present, there is no exact time frame that can be given as to when this conservatorship may end."

52. The decision to place the Companies into conservatorship was driven not by analysis of the HERA statutory factors, but by broader macroeconomic and political concerns and the need to provide support for the struggling mortgage market. As the *New York Times* stated, the administration sought "to shrink drastically [Fannie Mae and Freddie Mac's] outsize influence on Wall Street and on Capitol Hill while at the same time counting on them to pull the nation out of its worst housing crisis in decades." *In Rescue To Stabilize Lending, U.S. Takes Over Mortgage Finance Titans*, N.Y. TIMES, Sept. 7, 2008. "In the end, [Secretary of the Treasury] Mr. Paulson's decision seems to have been a philosophical one, rather than one forced by imminent crisis. Of course, for stagecraft purposes, it was played as impending disaster." *Paulson's Itchy Finger, on the Trigger of a Bazooka*, N.Y. TIMES, Sept. 9, 2008.

53. Regarding the securities held by private investors, FHFA's director told investors that, among the "components of [the] conservatorship[,]" "the common stock and preferred stock dividends will be eliminated, but the common and all preferred stocks will continue to remain outstanding. Subordinated debt interest and principal payments will continue to be made." In another statement issued that same day, Treasury Secretary Paulson likewise made clear that, "conservatorship does not eliminate the outstanding preferred stock, but does place preferred shareholders second, after the common shareholders, in absorbing losses." And in a Form 8-K

filing issued by Freddie Mac on September 11, 2008, Freddie Mac stated that, "The holders of Freddie Mac's existing common stock and preferred stock . . . will retain all their rights in the financial worth of those instruments, as such worth is determined by the market." In a Form 8-K filing issued by Fannie Mae on September 11, 2008, Fannie Mae stated that:

> The Certificate of Designation for the Senior Preferred Stock provides that Fannie Mae 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** (a) 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) have been declared and paid in cash, and (b) all amounts required to be paid with the net proceeds of any issuance of capital stock for cash have been paid in cash. (emphasis added)

54. Thus, the conservatorship did not itself involve the appropriation of any Preferred Stock or common stock, amend any of the Certificates of Designation, or otherwise legally modify any contractual rights held by Plaintiffs or the other members of the Classes. Moreover, FHFA stated that it was critical to complete key regulations "so that any new investor will understand the investment proposition," clearly implying that FHFA intended that private investors would continue to purchase Fannie Mae and Freddie Mac securities.

55. Treasury was authorized under HERA to strengthen the Companies' balance sheets by purchasing their securities, within set time frames and consistent with prescribed statutory requirements. Beginning with HERA's enactment in 2008 until the end of 2009, Congress authorized Treasury to "purchase any obligations and other securities issued by the [Companies] . . . on such terms and conditions as the Secretary may determine and in such amounts as the Secretary may determine." 12 U.S.C. §§ 1455(l)(1)(A), 1719(g)(1)(A). To exercise this authority, the Secretary was required to determine that purchasing the Companies' securities was "necessary to . . . provide stability to the financial markets; prevent disruptions in

the availability of mortgage finance; and protect the taxpayer." 12 U.S.C. §§ 1455(l)(1)(B), 1719(g)(1)(B). The Secretary was required to consider several factors in making these determinations:

> (i) [t]he need for preferences or priorities regarding payments to the Government; (ii) [l]imits on maturity or disposition of obligations or securities to be purchased; (iii) [t]he [Companies'] plan[s] for the orderly resumption of private market funding or capital market access; (iv) [t]he probability of the [Companies] fulfilling the terms of any such obligation or other security, including repayment; (v) [t]he need to maintain the [Companies'] status as private shareholder-owned compan[ies]; [and] (vi) Restrictions on the use of [the Companies'] resources, including limitations on the payment of dividends and executive compensation and any such other terms and conditions as appropriate for those purposes.

Id. §§ 1455(l)(1)(C), 1719(g)(1)(C).

56. Treasury used its temporary authority under HERA to enter into the PSPAs with FHFA, which acted on behalf of both Companies. The PSPAs are identical in all material respects. Under the PSPAs, Treasury purchased 1 million shares of Government Stock from each company in exchange for allowing the Companies to draw up to $100 billion each from Treasury. The Government Stock has a liquidation preference equal to $1 billion plus the sum of all draws by each company against Treasury's funding commitment. The Government Stock is also entitled to a cumulative dividend equal to 10% of the outstanding liquidation preference. If a company pays a dividend, the PSPAs require Treasury to be paid dividends declared in full, but not paid, for prior dividend periods, before any privately held securities may receive a dividend. Indeed, the PSPAs explicitly prohibit any shareholder other than Treasury from being paid any dividend without Treasury's consent. Further, if the Companies liquidate, no shareholder can recover anything before the Treasury recovers the full liquidation value of its shares. Treasury also has the right under the PSPAs to purchase up to 79.9% of the Companies' common stock at a nominal price.

57. On September 11, 2008, Fannie Mae filed with the U.S. Securities and Exchange Commission a Form 8-K disclosing further details regarding its conservatorship and the PSPA. Among other things, this Form 8-K stated that "FHFA, as Conservator, has the power to repudiate contracts entered into by Fannie Mae prior to the appointment of FHFA as Conservator if FHFA determines, in its sole discretion, that performance of the contract is burdensome and that repudiation of the contract promotes the orderly administration of Fannie Mae's affairs. FHFA's right to repudiate any contract must be exercised within a reasonable period of time after its appointment as Conservator." FHFA did not, either within a reasonable period of time after its appointment as Conservator or at any other time before August 17, 2012, purport to repudiate any of the contracts governing the Companies' Preferred Stock or common stock.

58. At the end of 2009, Treasury's statutory authority to purchase the Companies' securities expired. To enable Treasury to provide the Companies with liquidity beyond 2009, Treasury and FHFA amended the PSPAs twice. First, in May 2009, Treasury agreed to expand its funding commitment to $200 billion per company from $100 billion per company. Then, on December 24, 2009, just before the expiration of Treasury's temporary authority under HERA, it agreed to a funding commitment that would be sufficient to allow the Companies to satisfy their 2010, 2011, and 2012 capitalization requirements and a funding commitment up to a limit determined by an agreed-upon formula for subsequent years.

59. Before FHFA placed the Companies into conservatorship, Fannie Mae and Freddie Mac Preferred Stock enjoyed strong credit ratings, with all three major credit rating agencies assigning high investment-grade ratings on the Preferred Stock from the dates of issuance until 2008. Treasury and other federal agencies encouraged private entities to invest in

the Companies, and banking regulators permitted banks to carry the Companies' Preferred Stock on their balance sheets at a lower risk weighting than other companies' preferred stock.

60. When the Companies entered conservatorship, FHFA suspended payment of dividends on all Preferred Stock and common stock, and the PSPAs explicitly prohibit payment of any such dividends without Treasury's consent. As a result, no dividends have been paid to the holders of the Companies' Preferred Stock and common stock since 2008.

61. Furthermore, after FHFA took control of the Companies, it decided that it did not expect them to be profitable, and that they would likely incur large losses in the coming years. FHFA therefore directed the Companies to book substantial loss reserves – recording loan losses before they were actually incurred – and required the Companies to eliminate from their balance sheets the value of non-cash deferred tax assets that would only be of use if the Companies became profitable.

62. These write-downs and accounting decisions directed by FHFA led to a circular payment obligation requiring the Companies to draw down Treasury's funding commitment, which, in turn, required the Companies to pay increased dividends to Treasury. Under the initial PSPAs, Treasury committed to make quarterly payments to the Companies in order to maintain a zero net worth. Each quarter, FHFA looked to the Companies' financial statements to determine if their liabilities exceeded their assets. If so, FHFA would request that Treasury draw down the Companies' funding commitment and provide funds equal to the net worth deficit. Because of the impact of the accounting adjustments directed by FHFA, the Companies had less capital, and therefore needed capital from Treasury both to operate and to pay the quarterly dividends due under the PSPAs. The Companies thus were required to draw additional funds from Treasury's funding commitment, thereby increasing the amount of Treasury's aggregate liquidation

preference, and thus the amount of dividends payable to Treasury. Between 2008 and 2012, under the PSPAs, as amended, Treasury provided approximately $187 billion to the Companies.

63. Throughout this time, the Companies continued to be managed in conservatorship by FHFA. HERA empowered FHFA to force the Companies into receivership and to liquidate their assets under certain circumstances, 12 U.S.C. § 4617(b)(2)(E), but FHFA always has maintained that its relationship with the Companies is that of Conservator rather than liquidator. *See* News Release FHFA, *A Strategic Plan For Enterprise Conservatorships: The Next Chapter In A Story That Needs An Ending,* at 9 (Feb. 21, 2012) (asserting that "[w]ithout action by Congress, FHFA must continue to look to the existing statutory provisions that guide ***the conservatorships***.") (emphasis added).

III. THE COMPANIES RETURN TO PROFITABILITY

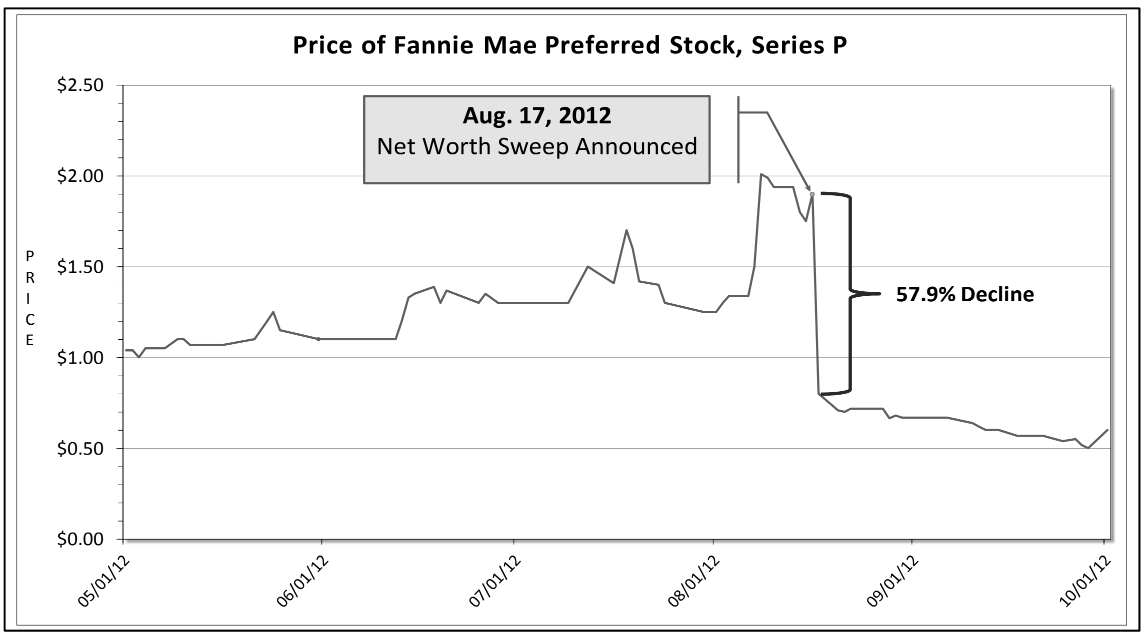
64. In 2012, it became clear that FHFA had overestimated the Companies' likely losses and underestimated the possibility of a return to profitability. For example, the Companies' actual loan losses were far less than anticipated. Between the beginning of 2007 and the second quarter of 2012, more than $234 billion had been set aside by the Company to absorb anticipated loan losses, whereas loan losses of just over $125 billion were actually recognized during that period, such that the projected losses had been overestimated by $109 billion.

65. Contrary to FHFA's 2008 projections, the Companies posted profits of more than $10 billion in the first two quarters of 2012. Even more importantly, the Companies disclosed that they expected to be consistently profitable for the foreseeable future, such that they would eventually be able to remove the valuation allowance against their deferred tax assets, worth approximately $100 billion.

66. Thus, the Companies were positioned to pay back the government for the support they had received, with money left over to provide a financial return to their private investors.

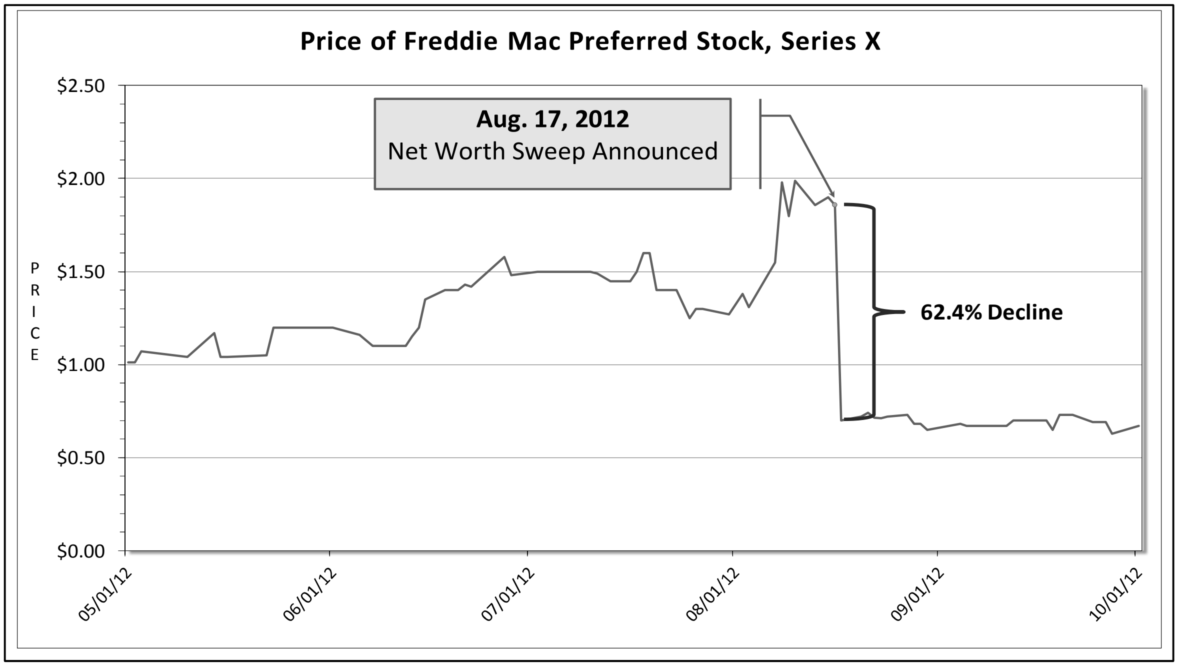
Yet instead of either allowing the Government Stock to be redeemed or compensating private investors for the excess value that the Companies were providing, Treasury and FHFA instead implemented the Third Amendment to ensure that private investors would be locked out of this recovery.

67. The return of Fannie Mae and Freddie Mac to profitability in 2012 led to a substantial increase in the trading prices of the Companies' Preferred Stock. In fact, the price of each series of Fannie Mae Preferred Stock increased between 67% and 115%, with an average of 83%, from May 1, 2012, to August 17, 2012, up until the time that Treasury issued a news release announcing the Third Amendment. The Series P Preferred Stock, for example, increased by 83% during that time period, only to decline significantly after the Third Amendment was announced:



68. Similarly, the price of each series of Freddie Mac Preferred Stock increased an average of 86% from May 1, 2012, to August 17, 2012. The Series X Preferred Stock, for

example, increased by 84% during that time period, but suffered a material decline after the Third Amendment was announced:



IV. THE THIRD AMENDMENT BARS THE COMPANIES' SHAREHOLDERS FROM PARTICIPATING IN THE COMPANIES' RETURN TO PROFITABILITY

69. With the Companies' return to consistent and record profitability, the holders of the Preferred Stock and common stock had reason to believe and expect that they would in time regain a return on their investment. They also had a reasonable expectation that the Companies would eventually be healthy enough to redeem the Government Stock, exit conservatorship, and be "return[ed] to normal business operations," as FHFA's director had vowed when the conservatorship was established.

70. These reasonable and realistic expectations of the holders of the Preferred Stock and common stock did not last long, however, due to the Government's own self-dealing rather than any change in the outlook for the housing market, broader economy, or the financial performance of the Companies.

71. As noted above, FHFA agreed to sweep all the Companies' profits to Treasury exactly when they had returned to stable profitability. At a dividend rate of 10%, Treasury's approximately $189 billion in outstanding Government Stock earns annual dividends of some $18.9 billion, payable in quarterly installments of approximately $4.7 billion. Thus, in any quarter in which the Companies' combined profits exceed $4.7 billion (or more precisely, any quarter in which Fannie Mae or Freddie Mac's profits exceed the dividend owed on their Government Stock), that value would inure to the benefit of the private shareholders ***but for the Third Amendment***. As FORTUNE magazine reported:

> Why did the Treasury enact the so-called Third Amendment that so radically altered the preferred-stock agreement? By mid-2012, Fannie and Freddie were beginning to generate what would become gigantic earnings as the housing market rebounded. If the original agreement remained in place, the GSEs would build far more than $100 billion in retained earnings, and hence fresh capital, in 2013 alone. That would exert pressure for Congress to allow Fannie and Freddie to pay back the government in full, and reemerge as private players. Timothy Geithner was strongly opposed to the rebirth of the old Fannie and Freddie. The "sweep clause" that grabbed the entire windfall in profits was specifically designed to ensure that Fannie and Freddie remained wards of the state that would eventually be liquidated.

What's Behind Perry Capital's Fannie and Freddie Gambit, FORTUNE, July 8, 2013.

72. In an August 17, 2012 press release announcing the modification of the PSPA, Treasury said that the changes would "help expedite the wind down of Fannie Mae and Freddie Mac, make sure that every dollar of earnings each firm generates is used to benefit taxpayers, and support the continued flow of mortgage credit during a responsible transition to a reformed housing finance market." It called the amendment a full income sweep of "every dollar of profit that [the] firm earns going forward," and that the amendment will fulfill the "commitment made in the Administration's 2011 White Paper that [Fannie Mae and Freddie Mac] will be wound down and will not be allowed to retain profits, rebuild capital, and return to the market in their prior form." This language was in stark contrast to their earlier representations that they sought

only to "stabilize" the Companies and return them "to normal business operations" (as well as the February 2, 2010 statement of Edward DeMarco, Acting Director of FHFA, that "[t]here are a variety of options available for post-conservatorship outcomes, but the only one that FHFA may implement today under existing laws is to reconstitute the two companies under their current charters.").

73. Treasury will receive a windfall in payments of dividends under the Third Amendment. In 2012, the Companies made combined profits of more than $28 billion. In the first quarter of 2013, they posted combined profits of approximately $15 billion, Fannie Mae added approximately $51 billion to its balance sheet by reversing write-downs of deferred tax assets, and Freddie Mac may soon be able to recognize tens of billions of dollars in deferred tax assets as well. At the end of the second quarter of 2013, the Third Amendment required the Companies to pay $66.3 billion to Treasury. At the end of the third quarter of 2013, the Third Amendment required the Companies to pay $39 billion to Treasury. In total, by the end of this year, Fannie Mae will have paid $113.9 billion in dividends to Treasury, and Freddie Mac will have paid $71.345 billion, *i.e.*, $9 million more than it received from the Government. Thus, by December 2013, the Companies' will have paid back a total of $185.3 billion in the form of dividends to Treasury, or within about $2 billion of the $187.5 billion they received from the government.

74. The President's proposed fiscal year 2014 budget estimates that Fannie Mae and Freddie Mac will together pay $238.5 billion in dividends to Treasury over the next ten years, far outstripping the government's investments. Even this figure likely underestimates the total value of the dividends that Treasury is likely to receive via the Third Amendment, since the budget was released before Fannie Mae announced its decision to release its deferred tax assets.

75. The Third Amendment is even capturing the Companies' recoveries on legal claims that preceded the conservatorships. For example, on October 1, 2013, Freddie Mac announced that it had entered into a $1.3 billion settlement with three financial institutions concerning Freddie Mac's claims relating to representations and warranties on loans that it had purchased, and that FHFA, as Freddie Mac's Conservator, had approved the settlement. The claims at issue involved loans that Freddie Mac purchased between 2000 and 2012, such that many of them preceded the conservatorship by years. Yet none of the funds recouped will go to benefit Freddie Mac shareholders. Rather, Freddie Mac's CEO stated that, "[w]ith these settlements, Freddie Mac is recouping funds effectively due to the nation's taxpayers."

76. Moreover, FHFA has announced other, similar settlements with financial institutions relating to breaches of representations and warranties on loans purchased by Fannie Mae and Freddie Mac well before the conservatorship. For example, on October 25, 2013, FHFA announced a $1.1 billion settlement, in its role as Conservator to Fannie Mae and Freddie Mac, with JP Morgan relating to claims that the bank repurchase breaching loans sold to Fannie and Freddie in the years leading up to the financial crisis. In addition, FHFA announced a separate $4 billion settlement with JP Morgan, also in FHFA's role as Conservator to the Companies, relating to claims that the bank violated the federal securities laws in the connection with the sales and securitizations of loans to the Companies from 2005 to 2007. Similarly, on May 28, 2013, FHFA announced a $3.5 billion settlement, in its role as Conservator to the Companies with Citigroup, covering claims of alleged violations of federal and state securities laws in connection with private-label residential mortgage-backed securities purchased by Fannie Mae and Freddie Mac. FHFA has announced similar settlements this year with General Electric ($549 million), UBS ($885 million) and Wells Fargo ($335 million). Most recently, on

December 2, 2013, it was announced that Bank of America agreed to pay Freddie Mac a total of $404 million to settle claims related to breaches of representations and warranties on approximately 716,000 single-family loans originated between 2000 and 2009 and sold to Freddie Mac.

77. In sum, the Government is now expropriating "every dollar of earnings that each firm earns" on a quarterly basis. This guarantees that there can never be a distribution to the holders of Preferred Stock or common stock no matter how much income the Companies earn and no matter how much their assets are worth in any liquidation. That is, the Preferred Stock and common stock holders' stake in the Companies has been taken, in quarterly installments, since the moment the Third Amendment took effect, and this taking of their property will continue until the last dime has been extracted from the Companies if, and when, they are wound up.

78. Plaintiffs and other holders of the Preferred Stock and common stock had a reasonable, investment-backed expectation in the value of their right to a portion of the profits earned by the Companies and, thus, in the future dividends their stock would pay, if the Companies once again become profitable and restored to sound and solvent condition. Just as the Federal Government cannot seize corporate assets for a public purpose without paying just compensation, so too it cannot seize corporate stock to accomplish the same end.

V. THE THIRD AMENDMENT VIOLATED THE CONTRACTUAL RIGHTS OF HOLDERS OF THE COMPANIES' PREFERRED STOCK AND COMMON STOCK

79. The Companies have issued common stock and several series of Preferred Stock that are, as a result of the PSPAs, subordinate to the Government Stock. Prior to September 6, 2008, Fannie Mae had issued common stock and several series of Preferred Stock, including:

FANNIE MAE STOCK

Security	CUSIP	Ticker Symbol
Common Stock	313 586 109	FNMA
5.25% Non-Cumulative Preferred Stock, Series D	313 586 505	FDDXD
5.10% Non-Cumulative Preferred Stock, Series E	313 586 604	FNMFM
Variable Rate Non-Cumulative Preferred Stock, Series F	313 586 703	FNMAP
Variable Rate Non-Cumulative Preferred Stock, Series G	313 586 802	FNMAO
5.81% Non-Cumulative Preferred Stock, Series H	313 586 885	FNMAM
5.375% Non-Cumulative Preferred Stock, Series I	313 586 877	FNMAG
5.125% Non-Cumulative Preferred Stock, Series L	313 586 844	FNMAN
4.75% Non-Cumulative Preferred Stock, Series M	313 586 836	FNMAL
5.50% Non-Cumulative Preferred Stock, Series N	313 586 828	FNMAK
Variable Rate Non-Cumulative Preferred Stock, Series O	313 586 794	FNMFN
5.375% Non-Cumulative Convertible Series 2004-1 Pref. Stock	313 586 810	FNMFO
Variable Rate Non-Cumulative Preferred Stock, Series P	313 586 786	FNMAH
6.75% Non-Cumulative Preferred Stock, Series Q	313 586 778	FNMAI
7.625% Non-Cumulative Preferred Stock, Series R	313 586 760	FNMAJ
Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series S	313 586 752	FNMAS
8.25% Non-Cumulative Preferred Stock, Series T	313 586 737	FNMAT

80. Likewise, prior to September 6, 2008, Freddie Mac had issued common stock and several series of Preferred Stock, including:

FREDDIE MAC STOCK

Security	CUSIP	Ticker Symbol
Common Stock	313 400 301	FMCC
5.1% Preferred Stock, due 12/31/2049	313 400 814	FREJO
5.3% Non-Cumulative Perpetual Preferred Stock	313 400 822	FREJP
5.81% Perpetual Preferred Stock	313 400 889	FREGP
Variable-Rate Preferred Stock, Series B	313 400 608	FMCCI
5% Preferred Stock, Series F	313 400 863	FMCKK
Variable-Rate Preferred Stock, Series G	313 400 848	FMCCG
5.1% Preferred Stock, Series H	313 400 855	FMCCH
5.79% Preferred Stock, Series K	313 400 830	FMCCK
Variable-Rate Preferred Stock, Series L	313 400 798	FMCCL
Variable-Rate Preferred Stock, Series M	313 400 780	FMCCM
Variable-Rate Preferred Stock, Series N	313 400 764	FMCCN
5.81% Preferred Stock, Series O	313 400 772	FMCCO
6% Preferred Stock, Series P	313 400 749	FMCCP
Variable-Rate, Series Q	313 400 756	FMCCJ
5.7% Preferred Stock, Series R	313 400 731	FMCKP
Variable-Rate, Series S	313 400 715	FMCCS

6.42% Preferred Stock, Series T	313 400 699	FMCCT
5.9% Preferred Stock, Series U	313 400 681	FMCKO
5.57% Preferred Stock, Series V	313 400 673	FMCKM
5.66% Preferred Stock, Series W	313 400 665	FMCKN
6.02% Preferred Stock, Series X	313 400 657	FMCKL
6.55% Preferred Stock, Series Y	313 400 640	FMCKI
Fixed-to-Floating Rate Preferred Stock, Series Z	313 400 624	FMCKJ

81. This Preferred Stock and common stock, which was issued prior to the issuance of the Government Stock, is held by private investors such as pension funds, community banks, insurance companies, and individual investors. As of March 31, 2013, the Companies' outstanding Preferred Stock had an aggregate liquidation preference of $33 billion. Each class of Preferred Stock has its own contractual dividend rate and liquidation value.

82. Prior to September 8, 2008, each series of Fannie Mae Preferred Stock ranked on a parity with all other issued and outstanding series of Fannie Mae Preferred Stock as to the payment of dividends and the distribution of assets upon dissolution, liquidation or winding up of Fannie Mae, and each series of Freddie Mac Preferred Stock ranked on a parity with all other issued and outstanding series of Freddie Mac Preferred Stock as to the payment of dividends and the distribution of assets upon dissolution, liquidation, or winding up of Freddie Mac. In other words, each series of Fannie Mae and Freddie Mac Preferred Stock carried equal contractual rights to with regards to the dividends, and each series of Fannie Mae and Freddie Mac Preferred Stock carried equal liquidation preferences (or their respective pro rata portions thereof) upon dissolution, liquidation, or winding up of Fannie Mae and Freddie Mac. Prior to September 6,

2008, Fannie Mae and Freddie Mac each regularly declared and paid dividends on each series of their respective Preferred Stock.

83. Delaware law applies to Fannie Mae pursuant to Section 1.05 of its bylaws, which provides that "the corporation has elected to follow the applicable corporate governance practices and procedures of the Delaware General Corporation Law." Virginia law applies to Freddie Mac pursuant to Section 11.3 of its bylaws, which provides that, "[T]he Corporation shall follow the corporate governance practices and procedures of the law of the Commonwealth of Virginia[.]" Under both Delaware and Virginia law, preferred stock designations are deemed as amendments to a corporation's charter and are therefore generally reviewed as contractual in nature.

84. Thus, the Certificate of Designation for each series of Preferred Stock constitutes a contract with provisions governing the holders' dividend, liquidation rights and amendments to the terms of the Preferred Stock. These provisions are materially similar to, for example, the Certificate of Designation for Fannie Mae's Series T Preferred Stock, as described below:

> **1. Dividends.**
>
> (a) Holders of record of Series T Preferred Stock (each individually a "Holder," or collectively the "Holders") ***will be entitled to receive, ratably, when, as and if declared by the Board of Directors, in its sole discretion out of funds legally available therefore, non-cumulative cash dividends at [specified rate] per annum of the [specified] stated value . . . of Series T Preferred Stock.***
>
> * * *
>
> **4. Liquidation Rights.**
>
> (a) Upon any voluntary or involuntary dissolution, liquidation or winding up of Fannie Mae, after payment or provision for the liabilities of Fannie Mae and the expenses of such dissolution, liquidation or winding up, the Holders of outstanding shares of the Series T Preferred Stock ***will be entitled to receive out of the assets of Fannie Mae or proceeds thereof available for distribution to stockholders,*** before any payment or distribution of assets is made to holders of Fannie Mae's common stock (or any other stock of Fannie Mae ranking, as to the

distribution of assets upon dissolution, liquidation or winding up of Fannie Mae, junior to the Series T Preferred Stock), ***the amount of [the stated value] per share plus an amount . . . equal to the dividend (whether or not declared) for the then-current quarterly Dividend Period accrued to but excluding the date of such liquidation payment***, but without accumulation of unpaid dividends on the Series T Preferred Stock for prior Dividend Periods.

(b) If the assets of Fannie Mae available for distribution in such event are insufficient to pay in full the aggregate amount payable to Holders of Series T Preferred Stock and holders of all other classes or series of stock of Fannie Mae, if any, ranking, as to the distribution of assets upon dissolution, liquidation or winding up of Fannie Mae, on a parity with the Series T Preferred Stock, the assets will be distributed to the Holders of Series T Preferred Stock and holders of all such other stock pro rata, based on the full respective preferential amounts to which they are entitled (but without, in the case of any non-cumulative preferred stock, accumulation of unpaid dividends for prior Dividend Periods).

* * *

7. Voting Rights; Amendments.

* * *

(b) Without the consent of the Holders of Series T Preferred Stock, Fannie Mae will have the right to amend, alter, supplement or repeal any terms of this Certificate or the Series T Preferred Stock (1) to cure any ambiguity, or to cure, correct or supplement any provision contained in this Certificate of Designation that may be defective or inconsistent with any other provision herein or (2) to make any other provision with respect to matters or questions arising with respect to the Series T Preferred Stock that is not inconsistent with the provisions of this Certificate of Designation ***so long as such action does not materially and adversely affect the interests of the Holders of Series T Preferred Stock***; provided, however, that any increase in the amount of authorized or issued Series T Preferred Stock or the creation and issuance, or an increase in the authorized or issued amount, of any other class or series of stock of Fannie Mae, whether ranking prior to, on a parity with or junior to the Series T Preferred Stock, as to the payment of dividends or the distribution of assets upon dissolution, liquidation or winding up of Fannie Mae, or otherwise, will not be deemed to materially and adversely affect the interests of the Holders of Series T Preferred Stock.

(c) ***Except as set forth in paragraph (b) of this Section 7, the terms of this Certificate or the Series T Preferred Stock may be amended, altered, supplemented, or repealed only with the consent of the Holders of at least two-thirds of the shares of Series T Preferred Stock then outstanding,*** given in person or by proxy, either in writing or at a meeting of stockholders at which the Holders of Series T Preferred Stock shall vote separately as a class. On matters requiring their consent, Holders of Series T Preferred Stock will be entitled to one vote per share.[1]

85. The Certificate of Designation for the common stock issued by Freddie Mac also constitutes a contract with provisions governing the holders' dividend, liquidation rights and amendments to the terms of the common stock. These provisions provide, in pertinent part:

2. Dividends.

(a) The holders of outstanding shares of Common Stock shall be entitled to receive, ratably, dividends (in cash, stock or other property), when, as and if declared by the Board of Directors out of assets legally available therefor. The amount of dividends, if any, to be paid to holders of the outstanding Common Stock from time to time and the dates of payment shall be fixed by the Board of Directors of Freddie Mac (the "Board of Directors"). Each such dividend shall be paid to the holders of record of outstanding shares of the Common Stock as they appear in the books and records of Freddie Mac on such record date, not to be earlier than 45 days nor later than 10 days preceding the applicable dividend payment date, as shall be fixed in advance by the Board of Directors.

* * *

8. Liquidation Rights.

(a) Upon the dissolution, liquidation or winding up of Freddie Mac, after payment of or provision for the liabilities of Freddie Mac and the expenses of such dissolution, liquidation or winding up, and after any payment or distribution shall have been made on any other class or series of stock of Freddie Mac ranking prior to the Common Stock upon liquidation, the holders of the outstanding shares of the Common Stock shall be entitled to receive out of the assets of Freddie Mac available for distribution to stockholders, before any payment or distribution shall be made on any other class or series of stock of Freddie Mac ranking junior to the Common Stock upon liquidation, the amount of $0.21 per share, plus a sum equal to all dividends declared but unpaid on such shares to the date of final distribution. The holders of the outstanding shares of any class or series of stock of Freddie Mac ranking prior to, on a parity with or junior to the Common Stock upon liquidation shall also receive out of such assets payment of any corresponding preferential amount to which the holders of such stock may. by the terms thereof, be entitled. Thereafter, subject to the foregoing and to the provisions of paragraph (b) of this Section 8, the balance of any assets of Freddie Mac available for distribution to stockholders upon such dissolution, liquidation

[1] All emphasis added unless otherwise noted.

or winding up shall be distributed to the holders of outstanding Common Stock in the aggregate.

(b) Notwithstanding the foregoing, upon the dissolution, liquidation or winding up of Freddie Mac, the holders of shares of the Common Stock then outstanding shall not be entitled to be paid any amounts to which such holders are entitled pursuant to paragraph (a) of this Section 8 unless and until the holders of any classes or series of stock of Freddie Mac ranking prior upon liquidation to the Common Stock have been paid all amounts to which such classes or series of stock are entitled pursuant to their respective terms.

* * *

10. Miscellaneous.

* * *

(h)(ii) The affirmative vote by the holders of shares representing at least 66 2/3% of all of the shares of the Common Stock at the time outstanding and entitled to vote, voting together as a class, shall be necessary for authorizing, effecting or validating the amendment, alteration, supplementation or repeal of any of the provisions of this Certificate if such amendment, alteration, supplementation or repeal would materially and adversely affect the powers, preferences, rights, privileges, qualifications, limitations, restrictions, terms or conditions of the Common Stock.

86. Thus, the Classes had a right to exclude the Companies from destroying their dividend, liquidation and voting rights, as the Companies were contractually barred from amending the terms of the Preferred Stock or Freddie Mac common stock held by the Classes in a manner that had a material and adverse impact on stockholders, unless they first received the permission of two-thirds of the affected holders. The Companies neither sought nor obtained such permission before entering into the Third Amendment. There can be no doubt that the Third Amendment made "materially adverse" changes to rights of the holders of Preferred Stock and Freddie Mac common stock, such that it violated the Classes' contractual rights. The only exception to this requirement was if Fannie Mae or Freddie Mac issued a new class or series of stock. In executing the Third Amendment, FHFA, Fannie Mae, and Freddie Mac have not purported to issue a new series of stock, and therefore the contractual provision against

amending the terms of the Preferred Stock and Freddie Mac common stock in a way that is materially adverse to stockholders has been violated. Indeed, if the Third Amendment in fact constituted the issuance of a new series of stock to the Treasury, then the Third Amendment was illegal, because the statutory authority allowing the Treasury to acquire new series of stock in Fannie Mae and Freddie Mac expired at the end of 2009. 12 U.S.C. §§ 1455(l)(4), 1719(g)(4).

87. Through the Third Amendment, Fannie Mae and Freddie Mac and their Conservator FHFA eliminated the Preferred Stockholders' and Freddie Mac common stockholders' contractual rights to receive dividends before the Government could receive any dividends in excess of its 10% cumulative dividend on the Government Stock, and to receive a pro rata distribution of any liquidation proceeds available after the Government received full recovery of the face amount of the Government Stock. Thus, the Third Amendment amended, altered, and repealed the terms of the Certificates of Designation, *e.g.,* the contractual terms governing the holders' rights to receive dividends and liquidation distributions, in a manner that materially and adversely affected – indeed, completely destroyed – the rights and interests of the holders of the Preferred Stock and Freddie Mac common stock.

88. In further breach of the terms of the Certificates of Designation, Fannie Mae and Freddie Mac and their Conservator FHFA did not seek or obtain the consent of two-thirds of the stockholders as required by the terms of the Certificates before amending, altering, and repealing the terms of the Certificates in a manner that materially and adversely affected the rights and interests of the holders of the Preferred Stock and Freddie Mac common stock.

89. Fannie Mae's and Freddie Mac's agreement to the Third Amendment did not purport to create and issue any other class or series of Fannie Mae or Freddie Mac stock, nor did it purport to be an increase in the authorized or issued amount of any other class or series of

Fannie Mae or Freddie Mac stock. Rather, the Third Amendment to which the Companies agreed in August 2012 was described simply as an amendment to the terms of the Government Stock that Fannie Mae and Freddie Mac had issued in September 2008. Accordingly, the amendment, alteration, and repeal of the terms of the Certificates via their agreement to the Third Amendment was not exempt from the two-thirds vote requirement set forth in the Certificates.

90. In addition to their explicit terms, inherent in the Certificates was an implied covenant by Fannie Mae and Freddie Mac to deal fairly with the holders of Preferred Stock and Freddie Mac common stock and to fulfill the issuers' contractual obligations in good faith, *e.g.*, an implied promise that Fannie Mae and Freddie Mac would not take actions that would make it impossible for the holders of the Preferred Stock and Freddie Mac common stock to realize any value from their dividend and liquidation rights.

91. Fannie Mae and Freddie Mac and their Conservator FHFA acted unfairly and in bad faith with respect to the holders of the Preferred Stock and Freddie Mac common stock and breached their implied covenant of good faith and fair dealing by agreeing to the Third Amendment, the purpose and effect of which was to make it impossible for the holders of the Preferred Stock and Freddie Mac common stock to realize any value from their dividend and liquidation rights, and thus to deny the holders of the Preferred Stock and Freddie Mac common stock the fruits of their agreements with Fannie Mae and Freddie Mac.

VI. THE THIRD AMENDMENT WAS INCONSISTENT AND IN CONFLICT WITH FHFA'S STATUTORY RESPONSIBILITIES AS A CONSERVATOR

92. The Third Amendment is wholly inconsistent with, and in manifest conflict with, FHFA's statutory responsibilities as Conservator of Fannie Mae and Freddie Mac. As Conservator, FHFA is obligated to "take such action as may be – (i) necessary to put the regulated entity in a sound and solvent condition; and (ii) appropriate to carry on the business of

the regulated entity and preserve and conserve the assets and property of the regulated entity." 12 U.S.C. § 4617(b)(2)(D). As FHFA itself has acknowledged, the agency "has a statutory charge to work to restore a regulated entity in conservatorship to a sound and solvent condition . . . ." Conservatorship and Receivership, 76 Fed. Reg. 35,727 (June 20, 2011). Accordingly, "allowing capital distributions to deplete the entity's conservatorship assets would be inconsistent with the agency's statutory goals, as they would result in removing capital at a time when the Conservator is charged with rehabilitating the regulated entity." *Id.* The Third Amendment's quarterly sweep of all net profits thus clearly harms, rather than promotes, the soundness and solvency of the Companies by effectively preventing them from rebuilding their capital. Nor can distributing the entire net worth of the Companies to Treasury be reconciled with FHFA's statutory obligation to preserve and conserve their assets and property. Indeed, Fannie Mae has identified the dividend obligations imposed by the Third Amendment as posing a "specific risk to [its] business" by prohibiting it from "build[ing] capital reserves." Fannie Mae, Universal Debt Facility, Offering Circular, at 11 (May 14, 2013).

93. Furthermore, on information and belief, FHFA agreed to the Third Amendment at the insistence and under the direction and supervision of Treasury. Treasury, however, lacks the authority to impose such direction and supervision, and FHFA lacks the authority to submit to it. Indeed, HERA expressly provides that "[w]hen acting as conservator, . . . [FHFA] shall not be subject to the direction or supervision of any other agency of the United States . . . ." 12 U.S.C. § 4617(a)(7).

94. Statements by both FHFA and Treasury provide further confirmation that the Third Amendment is inconsistent with FHFA's statutory powers and responsibilities as Conservator. Treasury, for example, stated the Third Amendment would "expedite the wind

down of Fannie Mae and Freddie Mac," and it emphasized that the "quarterly sweep of every dollar of profit that each firm earns going forward" would make "sure that every dollar of earnings that Fannie Mae and Freddie Mac generate will be used to benefit taxpayers." Press Release, U.S. Dep't of Treasury, *Treasury Department Announces Further Steps to Expedite Wind Down of Fannie Mae and Freddie Mac* (Aug. 17, 2012). Indeed, Treasury emphasized that the Third Amendment would ensure that the Companies "will be wound down and will not be allowed to retain profits, rebuild capital, and return to the market in their prior form." *Id.*

95. Likewise, FHFA Acting Director DeMarco stated that the Third Amendment reflected the agency's goal of "gradually contracting [the Companies'] operations." Edward J. DeMarco, Acting Director, FHFA, *Statement on Changes to Fannie Mae and Freddie Mac Preferred Stock Purchase Agreements*. DeMarco later informed a Senate Committee that the "recent changes to the [Purchase Agreements], replacing the 10 percent dividend with a net worth sweep, reinforce the notion that the [Companies] will not be building capital as a potential step to regaining their former corporate status." Edward J. DeMarco, Acting Director, FHFA, Statement Before the U.S. Senate Comm. on Banking, Housing and Urban Affairs, at 3 (Apr. 18, 2013). Likewise, in its 2012 report to Congress, FHFA explained that it had begun "prioritizing [its] actions to move the housing industry to a new state, one without Fannie Mae and Freddie Mac." FHFA, Report to Congress 2012, at 13 (June 13, 2013). Thus, according to FHFA, the Third Amendment "ensures all the [Companies'] earnings are used to benefit taxpayers" and "reinforces the fact that the [Companies] will not be building capital." *Id*. at 1, 13.

96. The incredibly negative impact of the Third Amendment on the Companies' balance sheets is demonstrated by Fannie Mae's results in the first quarter of this year. As explained above, at the end of the first quarter, Fannie Mae's net worth stood at $62.4 billion.

Under previous versions of the PSPAs, Fannie Mae would have been obligated to pay Treasury only $2.9 billion, and the balance – $59.5 billion – would have been credited to capital reserves. The Third Amendment, however, required Fannie Mae to pay Treasury $59.4 billion. This windfall was not unanticipated. Indeed, FHFA's Office of the Inspector General recognized that, as a result of the Third Amendment, reversal of the Companies' deferred tax valuation allowances could result in "an extraordinary payment to Treasury." FHFA Office of Inspector General, Analysis of the 2012 Amendments to the Government Stock Purchase Agreements, at 15 (Mar. 20, 2013).

97. FHFA has announced that, during the conservatorship, existing statutory and FHFA-directed regulatory capital requirements will not be binding on the Companies. And at the end of 2012, Fannie Mae had a deficit of core capital in relation to statutory minimum capital of $141.2 billion. This deficit decreased to $88.3 billion by the end of the first quarter of 2013. When adjusted for the $59.4 billion dividend payment to Treasury, however, Fannie Mae's core capital deficit jumped back up to $147.7 billion. Thus, because of the Third Amendment, Fannie Mae is now in a worse position with respect to its core capital than it was before the record profitability it achieved in the first quarter of this year.

98. Additionally, the dividend under the Government Stock must be paid to Treasury in cash, even though the net worth of the Companies may include non-cash assets, such as the deferred tax assets. As a result, the Companies have had to sell non-liquid assets or issue debt to pay the dividend, which has had the foreseeable effect of preventing them from maximizing the value of their assets. Borrowing money to pay a dividend on a paper profit is directly contrary to operating the Companies in a safe and sound manner and restoring them to financial health, as FHFA is statutorily required to do when it is acting as a conservator.

99. Further, the Companies can never accumulate capital under the Third Amendment and can never redeem the Government Stock: so long as the Companies remain in operation, all of their net worth will be transferred to Treasury but the outstanding balance of the Government Stock will remain $189 billion. Under the Third Amendment, none of the Companies' assets can be used to provide value to holders of their Preferred Stock or common stock.

100. Accordingly, the Third Amendment is wholly inconsistent with, and presents a manifest conflict of interest with FHFA's statutorily prescribed powers, functions and responsibilities as Conservator to the Companies.

101. Indeed, several related individual actions have been commenced against Defendants by holders of Fannie Mae and Freddie Mac preferred and common stock asserting FHFA and Treasury acted beyond their statutory powers and functions in adopting the Third Amendment. These related actions, which are being coordinated and will be adjudicated concurrently with these consolidated actions, assert that (i) neither Treasury nor FHFA had authority to enter into the Third Amendment; and (ii) the Third Amendment was unlawful and should be set aside because the Treasury and FHFA acted arbitrarily and capriciously in entering into the Third Amendment. For example, the related actions allege that FHFA is without authority to wind down the Companies pursuant to the Net Worth Sweep, as well as that the Third Amendment created new securities, and Treasury's purchase of those securities violated that clearly demarcated limit on its authority. Moreover, the related actions allege that there is no public record or evidence that: (1) Treasury made the determinations or considered the factors that HERA requires before it executed the Third Amendment; (2) Treasury considered alternatives to the Third Amendment that would have been both consistent with its statutory obligations and less harmful to holders of the Companies' Preferred Stock and common stock,

including refinancing the Government Stock or allowing the Companies to resume paying dividends to holders of their Preferred Stock and common stock; (3) FHFA considered whether the Third Amendment is compatible with its statutory obligations as the Companies' Conservator; (4) FHFA considered alternatives to the Third Amendment that would have been both consistent with its statutory obligations and less harmful to holders of the Companies' Preferred Stock and common stock, including refinancing the Government Stock or allowing the Companies to resume paying dividends to holders of their Preferred Stock and common stock; and (5) that either Treasury or FHFA considered whether the Third Amendment is consistent with their duties to holders of the Companies' Preferred Stock and common stock.

VII. BY ENTERING INTO THE THIRD AMENDMENT, FHFA AND TREASURY VIOLATED THEIR FIDUCIARY OBLIGATIONS TO FANNIE MAE AND ITS PRIVATE SHAREHOLDERS

102. Delaware law applies to Fannie Mae pursuant to Section 1.05 of its bylaws. Under Delaware law, officers and directors of a corporation owe that corporation and its shareholders fiduciary obligations of due care, good faith, loyalty, and candor, and are required to use their utmost ability to control and manage the corporation in a fair, just, honest, and equitable manner.

103. By reason of its purported conservatorship of Fannie Mae and because of its ability to control the business and corporate affairs of Fannie Mae, FHFA is a *de facto* officer or director of Fannie Mae, and therefore owed the Companies and their shareholders fiduciary obligations of due care, good faith, loyalty, and candor, and was and is required to use its utmost ability to control and manage Fannie Mae and Freddie Mac in a fair, just, honest, and equitable manner.

104. As disclosed in Fannie Mae's 2012 Form 10-K filing, "Upon its appointment, the conservator [FHFA] immediately succeeded to all rights, titles, powers and privileges of Fannie

Mae, and of any shareholder, officer or director of Fannie Mae with respect to Fannie Mae and its assets, and succeeded to the title to the books, records and assets of any other legal custodian of Fannie Mae. As a result, our Board of Directors no longer had the power or duty to manage, direct or oversee our business and affairs." Fannie Mae's current directors "serve on behalf of the conservator and exercise their authority as directed by and with the approval, where required, of the conservator. FHFA has instructed Fannie Mae's directors to consult with it and obtain its written approval before taking action in a wide variety of areas, including but not limited to:

(a) Engaging in redemptions or repurchases of subordinated debt;

(b) Matters that relate to the Conservator's powers, Fannie Mae's conservatorship status, or the legal effect of the conservatorship on contracts;

(c) Agreements relating to litigation, claims, regulatory proceedings, or tax-related matters where the value of the claim exceeds a specified threshold;

(d) Actions that are likely to cause significant reputational risk;

(e) Establishing the annual operating budget; and

(f) Matters requiring the approval of or consultation with Treasury under the PSPAs.

105. While Fannie Mae's officers are under FHFA's control, in a February 2, 2010 letter to Congress, the Director of FHFA confirmed that "Like other corporate executives, the Enterprises' executive officers are subject to the legal responsibility to use sound and prudent business judgment in their stewardship of their companies," and that FHFA had charged the Companies' boards with "ensuring normal corporate governance practices and procedures are in place." FHFA was and is required to act in furtherance of the best interests of the Companies and their shareholders so as to benefit all shareholders equally and not in furtherance of the

personal interest or benefit of FHFA, Treasury, or the federal government. Because of its position of control and authority as the purported conservator of Fannie Mae and Freddie Mac, FHFA was able to and did, directly and/or indirectly, exercise control over the wrongful acts complained of herein.

106. Additionally, under Delaware law, a dominant or controlling shareholder owes fiduciary duties to the corporation and its minority shareholders, so long as that shareholder exercises actual control of corporate conduct. *Kahn v. Lynch Communication Systems, Inc.*, 638 A.2d 1110 (Del. 1994).

107. Treasury exercises *de facto* control over Fannie Mae, including through its Senior Preferred Stock, and warrants to purchase the Companies' common stock, as well as its control of the provision of funds to Fannie Mae. As controlling stockholder of Fannie Mae, Treasury owed fiduciary duties of due care, good faith, loyalty, and candor, to Fannie Mae and its stockholders. Because of Treasury's *de facto* position of control and authority over Fannie Mae, it stood on both sides of the decision to engage in the Third Amendment and it was able to and did, directly and/or indirectly, exercise control over the wrongful acts complained of herein.

108. The Third Amendment offered no benefits whatsoever to Fannie Mae or its minority shareholders. Rather, it was an egregiously self-dealing transaction, the benefits of which flowed entirely to the Treasury as Fannie Mae's controlling shareholder, and indirectly to FHFA through its status an agency of the federal government.

109. The Third Amendment was in no way an exercise of valid business judgment or deemed to be in the best interests of Fannie Mae. Indeed, it was specifically intended to ensure that Fannie Mae's shareholders could never again recover any value from their investments, and to ensure that the Company could not function as a private enterprise and would have to be

wound down. By preventing Fannie Mae from rebuilding capital or returning to the market, as Treasury stated in its press release, the purpose and effects of the Third Amendment ran directly contrary to FHFA's purported statutory mission to "put the regulated entity in a sound and solvent condition," "carry on the business of the regulated entity," and "preserve and conserve the assets and property of the regulated entity." 12 U.S.C. § 4617(b)(2)(D). As such, the Third Amendment was inconsistent and in manifest conflict with FHFA's statutory functions and responsibilities as Conservator to the Companies.

VIII. BY ENTERING INTO THE THIRD AMENDMENT, FHFA AND TREASURY TOOK THE VESTED PROPERTY RIGHTS OF PLAINTIFFS AND THE TAKINGS CLASS WITHOUT JUST COMPENSATION

110. In addition to violating the contractual rights of the Companies' shareholders, the Third Amendment also violated the Fifth Amendment by expropriating their interest in the Companies without just compensation. The Government cannot evade the requirements of the Fifth Amendment by imposing a conservatorship – indeed, FHFA as the Companies' Conservator was legally bound to protect the interests of all the shareholders of the Companies under its stewardship, not just the interests of its fellow Government agency.

111. The Government's unilateral imposition of the Third Amendment pursuant to FHFA's authority as Conservator of Fannie Mae and Freddie Mac cannot be characterized as "conserving" the Companies' assets or property. On the contrary, as Treasury announced, the Third Amendment's purpose was to advance the Government's public policy goals of "benefit[ing] taxpayers," "[s]upporting the continued flow of mortgage credit," and "winding down Fannie Mae and Freddie Mac" in a manner that ensured Fannie Mae and Freddie Mac would never "retain profits, rebuild capital, and return to the market in their prior form." *See* Press Release, U.S. Dep't of Treasury, *Treasury Department Announces Further Steps to Expedite Down of Fannie Mae and Freddie Mac* (Aug. 17, 2012).

112. Plaintiffs' ownership of Preferred Stock and common stock carries certain contractual and property rights, including, but not limited to, the right to receive a share of the Companies' future profits, in the form of dividend payments, and the right to receive a liquidation preference in accord with the liquidation schedule set forth in the Certificates of Designation or otherwise provided by the Companies' charter documents and applicable laws.

113. As holders of Preferred Stock and common stock, Plaintiffs and the Takings Class had a reasonable investment-backed expectation that their contractual rights as stockholders would be preserved, including their liquidation preferences and their rights to dividends. These contractual rights were important features of the Preferred Stock and common stock.

114. Plaintiffs' property interest in their Preferred Stock and common stock, including the dividend and liquidation rights inherent in such stock ownership, are constitutionally cognizable property rights protected by the Fifth Amendment.

115. The Government's imposition of the Third Amendment deprived Plaintiffs of their vested property rights by, among other things, expropriating for the Government the entire Preferred Stock and common stock holders' equity in the Companies, and by making it impossible for Plaintiffs and the Takings Class to realize any value from their contractual right to share in the Companies' future profits or from their liquidation preference.

116. In short, the Third Amendment is designed to raise general revenue for the Government at the expense of the holders of the Preferred Stock and common stock, and thereby imposes on holders of Preferred Stock and common stock a disproportionate burden that should be shared by the entire population.

CLASS ACTION ALLEGATIONS

117. With respect to Counts I and IV hereof, Plaintiffs bring this action on behalf of themselves and as a class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b) on

behalf of a Class consisting of all persons and entities who held shares of Fannie Mae Preferred Stock and who were damaged thereby (the "Fannie Preferred Class"). Excluded from the Fannie Preferred Class are the Defendants.

118. With respect to Counts II and V hereof, Plaintiffs bring this action on behalf of themselves and as a class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b) on behalf of a Class consisting of all persons and entities who held shares of Freddie Mac Preferred Stock and who were damaged thereby (the "Freddie Preferred Class"). Excluded from the Freddie Preferred Class are the Defendants.

119. With respect to Counts III and VI hereof, Plaintiffs bring this action on behalf of themselves and as a class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b) on behalf of a Class consisting of all persons and entities who held shares of Freddie Mac common stock and who were damaged thereby (the "Freddie Common Class"). Excluded from the Freddie Common Class are the Defendants.

120. With respect to Count VIII hereof, Plaintiffs bring this action on behalf of themselves and as a class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b) on behalf of a Class consisting of all persons and entities who held shares of Fannie Mae Preferred Stock, Fannie Mae common stock, Freddie Mac Preferred Stock, and/or Freddie Mac common stock as of the Third Amendment and who suffered less than $10,000 damages thereby, measured individually and not in the aggregate (the "Takings Class"). Excluded from the Class are the Defendants.

121. The Fannie Preferred Class, Freddie Preferred Class, Freddie Common Class, and Takings Class are referred to herein as the "Classes."

122. The members of the Classes are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiffs at this time and can only be ascertained through appropriate discovery, Plaintiffs believe that there are at least thousands of members in the proposed Classes. As of August 17, 2012, and the date of the filing of this action, there were hundreds of millions of shares of Fannie Mae and Freddie Mac Preferred Stock and common stock outstanding. As of February 28, 2013, there were 1,158,077,970 shares of Fannie Mae common stock outstanding, and as of December 31, 2012, there were 556 million shares of Fannie Mae Preferred Stock outstanding. As of February 15, 2013, there were 650,038,674 shares of Freddie Mac common stock outstanding, and as of December 31, 2012, there were 464,170,000 shares of Freddie Mac Preferred Stock outstanding. Record owners and other members of the Classes may be identified from records maintained by Fannie Mae and Freddie Mac and/or their transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

123. Plaintiffs' claims are typical of the claims of the other members of the Classes as all members of the Classes purchased or otherwise acquired Fannie Mae or Freddie Mac stock during the class period, and were similarly affected by Defendants' wrongful conduct that is complained of herein.

124. Plaintiffs will fairly and adequately protect the interests of the members of the Classes, and have retained counsel competent and experienced in class action, derivative, securities, and constitutional litigation. Plaintiffs have no interests that are adverse or antagonistic to the Classes.

125. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Because the damages suffered by individual members of the Classes may be relatively small, and because the damages suffered by individual members of the Takings Class are relatively small by definition, the expense and burden of individual litigation make it impracticable for Class members individually to seek redress for the wrongful conduct alleged herein.

126. Common questions of law and fact exist as to all members of the Classes and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Classes are:

a) Whether one or more Defendants breached the terms of the Certificates for the Preferred Stock and common stock and/or the implied covenant of good faith and fair dealing inherent in those Certificates;

b) Whether Treasury breached its fiduciary duties to Fannie Mae and its shareholders;

c) Whether Treasury's and FHFA's conduct in entering into the Third Amendment violated the Takings Clause of the U.S. Constitution; and

d) Whether the members of the Classes are entitled to injunctive relief, including rescission, and/or one or more Defendants are liable for damages to the members of the Classes, and the proper measure thereof, for breaches of contract, the implied covenant of good faith and fair dealing, and/or breach of fiduciary duty.

127. The prosecution of separate actions by individual Class members would create the risk of inconsistent or varying adjudications with respect to the individual Class members, which would establish incompatible standards of conduct for Defendants, or adjudications with respect to individual Class members that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair their ability to protect their interests.

128. Defendants have acted on grounds generally applicable to the Classes with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Classes as a whole.

DEMAND IS EXCUSED DUE TO THE
FHFA'S MANIFEST CONFLICT OF INTEREST

129. With respect to Count VII hereof, Plaintiffs bring action derivatively on behalf of and for the benefit of Fannie Mae to redress injuries suffered by Fannie Mae as a direct and proximate result of the breaches of fiduciary duty alleged herein. For purposes of Count VII, Fannie Mae is named as a nominal defendant in a derivative capacity.

130. Plaintiffs are holders of Fannie Mae Preferred Stock and common stock, and were holders such securities prior to September 6, 2008, including prior to and on August 17, 2012, and have been holders of said securities continuously since then. Plaintiffs have retained counsel that is competent and experienced in class action, derivative and securities litigation.

131. Plaintiffs intend to retain their shares of Preferred Stock and common stock throughout the duration of this litigation.

132. The breaches of fiduciary duty complained of herein subject, and will persist in subjecting, Fannie Mae to continuing harm because the adverse consequences of the injurious actions are still in effect and ongoing.

133. To the extent any demand requirement with respect to Fannie Mae's Board of Directors would otherwise be applicable in this context, such demand is excused and Plaintiffs are entitled to pursue the derivative claim alleged herein as a result of FHFA's domination of the Board. Fannie Mae's 2012 Form 10-K discloses that "[o]ur directors do not have any fiduciary duties to any person or entity except to the conservator and, accordingly, are not obligated to consider the interests of the company, the holders of our equity or debt securities or the holders

of Fannie Mae MBS unless specifically directed to do so by the conservator." Fannie Mae's Board of Directors is prohibited from taking action on "matters that relate to the conservator's powers" or "the legal effect of the conservatorship on contracts," such as this litigation, without prior written approval of FHFA.

134. To the extent any demand requirement with respect to FHFA would otherwise be applicable in this context, such demand is excused and Plaintiffs are entitled to pursue the derivative claim alleged herein as a result of FHFA's manifest conflict of interest.

135. Treasury exercises *de facto* control over Fannie Mae, including through its Senior Preferred Stock and warrants to purchase Fannie Mae common stock, as well as its control of the provision of funds to Fannie Mae. The Secretary of the Treasury also sits on FHFA Oversight Board. With such *de facto* power over the Companies' strategies and operations, the Treasury is in a position to, and does, direct FHFA with respect to determinations affecting the Companies and their stockholders.

136. FHFA is interested in and benefits from the Third Amendment as an agency of the federal government, and cannot reasonably be expected to initiate litigation for the breaches of fiduciary duty alleged herein, which would be asserted against itself and the Treasury, Fannie Mae's controlling stockholder. Indeed, Treasury and FHFA face a substantial threat of liability with respect to the breach of fiduciary duty claim.

137. Notwithstanding its fiduciary duties to Fannie Mae and its stockholders, FHFA has expressly acknowledged that it does not act with the interests of Fannie Mae shareholders in mind. Indeed, Fannie Mae's 2008 Form 10-K filing frankly disclosed that, since the imposition of the conservatorship, the company was "[n]o longer managed with a strategy to maximize common shareholder returns."

138. Accordingly, FHFA has a manifest conflict of interest that makes it incapable of pursing the derivative claim for breach of fiduciary duty alleged herein. Given Treasury's *de facto* controlling stockholder status and FHFA's close relationship to Treasury in connection with Fannie Mae matters, a derivative action offers the only reasonable avenue for the pursuit of the breach of fiduciary duty claim.

CAUSES OF ACTION

COUNT I

BREACH OF CONTRACT – FANNIE MAE PREFERRED STOCK (Against Fannie Mae and FHFA)

139. Plaintiffs incorporate by reference and reallege each and every allegation set forth above, as though fully set forth herein.

140. The Certificates for the Fannie Mae Preferred Stock were and are, for all purposes relevant hereto, contracts between the members of the Fannie Preferred Class and Fannie Mae.

141. The Certificates for the Fannie Mae Preferred Stock provide for contractually-specified dividend rights and liquidation preferences for the holders of Preferred Stock.

142. As Fannie Mae's Conservator, FHFA also became obligated to act consistently with Fannie Mae and Freddie Mac's responsibilities under the Certificates.

143. By entering into the Third Amendment so as to effectively deprive Plaintiffs and the other members of the Fannie Preferred Class of any possibility of receiving dividends or a liquidation preference, Fannie Mae, acting through FHFA, breached the terms of the Certificates for the Fannie Mae Preferred Stock. The Third Amendment amends, alters, supplements or repeals the contractually-specified dividend rights and liquidation preferences of the holders of Fannie Mae Preferred Stock in a manner that materially affects the interests of the holders of Fannie Mae Preferred Stock without the required consent.

144. Plaintiffs and the other members of the Fannie Preferred Class suffered damages as a direct and proximate result of the forgoing breach of contact.

COUNT II

BREACH OF CONTRACT – FREDDIE MAC PREFERRED STOCK (Against Freddie Mac and FHFA)

145. Plaintiffs incorporate by reference and reallege each and every allegation set forth above, as though fully set forth herein.

146. The Certificates for the Freddie Mac Preferred Stock were and are, for all purposes relevant hereto, contracts between the members of the Freddie Preferred Class and Freddie Mac.

147. The Certificates for the Freddie Mac Preferred Stock provide for contractually-specified dividend rights and liquidation preferences for the holders of Freddie Mac Preferred Stock.

148. As Freddie Mac's Conservator, FHFA also became obligated to act consistently with Freddie Mac's responsibilities under the Certificates.

149. By entering into the Third Amendment so as to effectively deprive Plaintiffs and the other members of the Freddie Preferred Class of any possibility of receiving dividends or a liquidation preference, the Companies, acting through FHFA, breached the terms of the Certificates for the Freddie Mac Preferred Stock. The Third Amendment amends, alters, supplements or repeals the contractually-specified dividend rights and liquidation preferences of the holders of Freddie Mac Preferred Stock in a manner that materially affects the interests of the holders of Freddie Mac Preferred Stock without the required consent.

150. Plaintiffs and the other members of the Freddie Preferred Class suffered damages as a direct and proximate result of the forgoing breach of contact.

COUNT III

BREACH OF CONTRACT – FREDDIE MAC COMMON STOCK
(Against Freddie Mac and FHFA)

151. Plaintiffs incorporate by reference and reallege each and every allegation set forth above, as though fully set forth herein.

152. The Certificate for the Freddie Mac common stock was and is, for all purposes relevant hereto, a contract between the members of the Freddie Common Class and Freddie Mac.

153. The Certificate for the Freddie Mac common stock provides for contractually-specified dividend rights and liquidation preferences for the holders of Freddie Mac common stock.

154. As Freddie Mac's Conservator, FHFA also became obligated to act consistently with Freddie Mac's responsibilities under the Certificate.

155. By entering into the Third Amendment so as to effectively deprive Plaintiffs and the other members of the Freddie Common Class of any possibility of receiving dividends or a liquidation preference, Freddie Mac, acting through FHFA, breached the terms of the Certificate for the Freddie Mac common stock. The Third Amendment amends, alters, supplements or repeals the contractually-specified dividend rights and liquidation preferences of the holders of Freddie Mac common stock in a manner that materially affects the interests of the holders of Freddie Mac common stock without the required consent.

156. Plaintiffs and the other members of the Freddie Common Class suffered damages as a direct and proximate result of the forgoing breach of contact.

COUNT IV

BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

FANNIE MAE PREFERRED STOCK (Against Fannie Mae and FHFA)

157. Plaintiffs incorporate by reference and reallege each and every allegation set forth above, as though fully set forth herein.

158. The Certificates for Fannie Mae Preferred Stock were and are, for all purposes relevant hereto, contracts between the members of the Fannie Preferred Class and Fannie Mae.

159. Inherent in these contracts was, and is, an implied covenant of good faith and fair dealing, requiring Fannie Mae to deal fairly with Plaintiffs and the other members of the Fannie Preferred Class, to fulfill their obligations to Plaintiffs and the Fannie Preferred Class in good faith, and not to deprive Plaintiffs and the Fannie Preferred Class of the fruits of their bargain.

160. As Fannie Mae's Conservator, FHFA also became obligated to act consistently with Fannie Mae's responsibilities under the implied covenant of good faith and fair dealing.

161. By entering into the Third Amendment with the purpose of effectively depriving Plaintiffs and the other members of the Fannie Preferred Class of any possibility of receiving dividends or a liquidation preference, Fannie Mae, acting through FHFA, breached the implied covenant of good faith and fair dealing inherent in the Certificates for the Preferred Stock. Through the implied covenant of good faith and fair dealing, Fannie Mae, acting through FHFA, was obligated not to eliminate the rights and interests of the Fannie Preferred Class in receiving dividends or a liquidation preference. In effectively eliminating such rights and interests entirely through the Third Amendment, Fannie Mae, acting through FHFA, acted arbitrarily and unreasonably and not in good faith or with fair dealing toward the members of the Fannie Preferred Class.

162. Plaintiffs and the other members of the Fannie Preferred Class suffered damages as a direct and proximate result of the forgoing breach of the implied covenant of good faith and fair dealing.

COUNT V

BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

FREDDIE MAC PREFERRED STOCK (Against Freddie Mac and FHFA)

163. Plaintiffs incorporate by reference and reallege each and every allegation set forth above, as though fully set forth herein.

164. The Certificates for Freddie Mac Preferred Stock were and are, for all purposes relevant hereto, contracts between the members of the Freddie Preferred Class and Freddie Mac.

165. Inherent in these contracts was, and is, an implied covenant of good faith and fair dealing, requiring Freddie Mac to deal fairly with Plaintiffs and the other members of the Freddie Preferred Class, to fulfill their obligations to Plaintiffs and the Freddie Preferred Class in good faith, and not to deprive Plaintiffs and the Freddie Preferred Class of the fruits of their bargain.

166. As Freddie Mac's Conservator, FHFA also became obligated to act consistently with Freddie Mac's responsibilities under the implied covenant of good faith and fair dealing.

167. By entering into the Third Amendment with the purpose of effectively depriving Plaintiffs and the other members of the Freddie Preferred Class of any possibility of receiving dividends or a liquidation preference, Freddie Mac, acting through FHFA, breached the implied covenant of good faith and fair dealing inherent in the Certificates for the Freddie Mac Preferred Stock. Through the implied covenant of good faith and fair dealing, Freddie Mac, acting through FHFA, was obligated not to eliminate the rights and interests of the Freddie Preferred Class in receiving dividends or a liquidation preference. In effectively eliminating such rights and

interests entirely through the Third Amendment, Freddie Mac, acting through FHFA, acted arbitrarily and unreasonably and not in good faith or with fair dealing toward the members of the Freddie Preferred Class.

168. Plaintiffs and the other members of the Freddie Preferred Class suffered damages as a direct and proximate result of the forgoing breach of the implied covenant of good faith and fair dealing.

COUNT VI

BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

FREDDIE MAC COMMON STOCK (Against Freddie Mac and FHFA)

169. Plaintiffs incorporate by reference and reallege each and every allegation set forth above, as though fully set forth herein.

170. The Certificate for Freddie Mac common stock was and is, for all purposes relevant hereto, a contract between the members of the Freddie Common Class and Freddie Mac.

171. Inherent in this contract was, and is, an implied covenant of good faith and fair dealing, requiring Freddie Mac to deal fairly with Plaintiffs and the other members of the Freddie Common Class, to fulfill their obligations to Plaintiffs and the Freddie Common Class in good faith, and not to deprive Plaintiffs and the Freddie Common Class of the fruits of their bargain.

172. As Freddie Mac's Conservator, FHFA also became obligated to act consistently with Freddie Mac's responsibilities under the implied covenant of good faith and fair dealing.

173. By entering into the Third Amendment with the purpose of effectively depriving Plaintiffs and the other members of the Freddie Common Class of any possibility of receiving dividends or a liquidation preference, Freddie Mac, acting through FHFA, breached the implied covenant of good faith and fair dealing inherent in the Certificate for the Freddie Mac common

stock. Through the implied covenant of good faith and fair dealing, Freddie Mac, acting through FHFA, was obligated not to eliminate the rights and interests of the Freddie Common Class in receiving dividends or a liquidation preference. In effectively eliminating such rights and interests entirely through the Third Amendment, Freddie Mac, acting through FHFA, acted arbitrarily and unreasonably and not in good faith or with fair dealing toward the members of the Freddie Common Class.

174. Plaintiffs and the other members of the Freddie Common Class suffered damages as a direct and proximate result of the forgoing breach of the implied covenant of good faith and fair dealing.

COUNT VII

BREACH OF FIDUCIARY DUTY

FANNIE MAE
(Against Treasury and FHFA)

175. Plaintiffs incorporate by reference and reallege each and every allegation set forth above, as though fully set forth herein.

176. By imposing a conservatorship over Fannie Mae, through which FHFA assumed the powers of its officers and directors, FHFA assumed fiduciary duties of due care, good faith, loyalty, and candor, to Fannie Mae and its stockholders, including Plaintiffs and the other members of the Fannie Preferred Class, and was and is required to use its utmost ability to control and manage Fannie Mae in a fair, just, honest, and equitable manner. FHFA was and is required to act in furtherance of the best interests of Fannie Mae and its shareholders so as to benefit all shareholders equally and not in furtherance of the personal interest or benefit of FHFA, Treasury, or the federal government.

177. Treasury exercises *de facto* control over Fannie Mae, including through its Senior Preferred Stock and warrants to purchase Fannie Mae common stock, as well as its control of the provision of funds to Fannie Mae. As controlling stockholder of Fannie Mae, Treasury owed fiduciary duties of due care, good faith, loyalty, and candor, to Fannie Mae and its other stockholders.

178. The Third Amendment constituted a self-dealing transaction. Treasury, as controlling stockholder of Fannie Mae, stood on both sides of the decision to implement the Third Amendment, to the benefit of Treasury and the detriment of Fannie Mae and its stockholders other than Treasury. Moreover, as an agency of the federal government, FHFA was interested in and benefited from the Third Amendment.

179. Through the Third Amendment, FHFA and Treasury breached their fiduciary duties to Fannie Mae. The Third Amendment was not entirely fair to Fannie Mae, as it was neither the product of a fair process nor reflected a fair price. Indeed, the Third Amendment, which effectively delivers all of Fannie Mae's profits to Treasury in perpetuity, was granted to benefit the Treasury, with no benefit to Fannie Mae in return.

180. The Third Amendment was neither entirely nor intrinsically fair, nor did it further any valid business purpose of Fannie Mae, nor did it reflect a good faith business judgment as to what was in the best interests of Fannie Mae or its shareholders.

181. The Third Amendment constituted waste and a gross abuse of discretion.

182. As a direct and proximate result of the foregoing breach of fiduciary duty, Fannie Mae suffered damages.

COUNT VIII

JUST COMPENSATION UNDER THE FIFTH AMENDMENT (Against FHFA and Treasury)

183. Plaintiffs incorporate by reference and reallege each and every allegation set forth above, as though fully set forth herein.

184. Through the conduct alleged herein, FHFA and Treasury destroyed the rights and value of the property interests associated with the Preferred Stock and common stock of the Companies held by the Takings Class, without just compensation, and nullified the Takings Class' reasonable, investment-backed expectations, and violated the fundamental principles of the Due Process and Takings Clauses of the United States Constitution.

185. The Fifth Amendment provides that no person shall, "be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation."

186. FHFA and Treasury violated the statutory, contractual, and Constitutional rights of the Takings Class in taking private property as alleged herein without providing just compensation. FHFA and Treasury took and/or exacted the property and legally cognizable property rights of the Companies' shareholders by, among other things, (1) improperly taking all of the net worth of the Companies; and (2) by improperly imposing the stock agreements and conservatorships over the Companies.

187. By imposing the Third Amendment, FHFA and Treasury took the Takings Class' vested, legally cognizable property rights without just compensation, as alleged herein. FHFA and Treasury entered into an agreement with each other to take "every dollar of earnings each firm generates . . . to benefit taxpayers." One federal agency – FHFA, which was supposedly acting as Conservator for the Companies – struck a deal with another federal agency – Treasury

– to effectively confiscate the Preferred Stock and common stock held by private investors in Fannie Mae and Freddie Mac, with *all* future earnings of the Companies to be paid to Treasury in the form of quarterly dividends.

188. The Takings Class had both a legally cognizable property interest and a reasonable, investment-backed expectation in their Preferred Stock and in the share of the Companies' future earnings to which they and other holders of Preferred Stock and common stock were contractually entitled.

189. The Takings Class also had both a legally cognizable property interest and a reasonable, investment-backed expectation in the liquidation rights to which such Preferred Stock and common stock were contractually entitled in the event that Fannie Mae and Freddie Mac were dissolved or liquidated.

190. By imposing the Third Amendment, Defendants took the Takings Class' vested, legally cognizable property rights and destroyed their reasonable, investment-backed expectations without paying just compensation.

191. As a result of the Third Amendment, the Takings Class has been deprived of all economically beneficial uses of its Preferred Stock in Fannie Mae and Freddie Mac.

192. The Takings Class is entitled to just compensation for FHFA and Treasury's taking of property.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs prays for relief and judgment, as follows:

1. Certifying that this action is a proper class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the Classes defined herein;

2. Declaring that this action is a proper derivative action and that presuit demand is excused;

3. Declaring that the Third Amendment was neither entirely nor intrinsically fair to Fannie Mae, did not further any valid business purpose of Fannie Mae, did not reflect a good faith business judgment as to what was in the best interests of Fannie Mae or its shareholders, and constituted waste and a gross abuse of discretion;

4. Declaring that, through the Third Amendment, Defendants FHFA and Treasury breached their respective fiduciary duties to Fannie Mae;

5. Awarding compensatory damages and disgorgement in favor of Fannie Mae against Defendants FHFA and Treasury, jointly and severally, as a result of such defendants' breach of their respective fiduciary duties, in an amount to be proven at trial, including interest thereon;

6. Declaring that Defendants breached the terms of the certificates of designation and the implied covenant of good faith and fair dealing;

7. Awarding Plaintiffs and the Classes the amount of damages they sustained as a result of Defendants' breaches of contract or breaches of the implied covenant of good faith and fair dealing;

8. Granting appropriate equitable and injunctive relief to remedy Defendants' breaches of contract, and breaches of the implied covenant of good faith and fair dealing, including rescission of the Third Amendment;

9. Declaring that, by entering into the Third Amendment, FHFA and Treasury have illegally taken the private property of the Takings Class without just compensation;

10. Awarding the Takings Class the amount of just compensation that will adequately compensate it for the taking of its property;

11. Awarding Plaintiffs their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

12. Such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury.

Dated: December 3, 2013

Respectfully Submitted,

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Additional Counsel for Plaintiffs

VERIFICATION

I, Joseph Cacciapalle, hereby verify that I have authorized the filing of the attached Consolidated Amended Class Action Complaint, that I have reviewed the Consolidated Amended Class Action Complaint and that the facts therein are true and correct to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

DATE: 12-2-2013

Joseph Cacciapalle
Joseph Cacciapalle

VERIFICATION

I, Melvin Bareiss, hereby verify that I have authorized the filing of the attached Consolidated Amended Class Action and Derivative Complaint, that I have reviewed the Consolidated Amended Class Action and Derivative Complaint and that the facts therein are true and correct to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

DATE: 12/3/2013

Melvin Bareiss

Dec. 3. 2013 11:53AM No. 7086 P. 1/1

Appendix A

FREDDIE MAC

CERTIFICATE OF CREATION, DESIGNATION, POWERS, PREFERENCES, RIGHTS, PRIVILEGES, QUALIFICATIONS, LIMITATIONS, RESTRICTIONS, TERMS AND CONDITIONS of VARIABLE RATE, NON-CUMULATIVE PREFERRED STOCK (Par Value $1.00 Per Share)

I, MAUD MATER, Secretary of the Federal Home Loan Mortgage Corporation, a government-sponsored enterprise of the United States of America ("Freddie Mac" or the "Corporation"), do hereby certify that, pursuant to authority vested in the Board of Directors of Freddie Mac by Section 306(f) of the Federal Home Loan Mortgage Corporation Act, as amended (12 U.S.C. §1455(f)), the Board of Directors adopted FHLMC Resolution 99-22 on September 10, 1999, which resolution is now, and at all times since such date has been, in full force and effect, and that the Chairman and Chief Executive Officer, pursuant to the authority delegated to him by such resolution, approved the final terms of the public issuance and sale of the preferred stock of Freddie Mac designated above.

The Variable Rate, Non-Cumulative 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 Freddie Mac created hereby (the "Non-Cumulative Preferred Stock") shall be designated "Variable Rate, Non-Cumulative Preferred Stock," shall have a par value of $1.00 per share and shall consist of 6,500,000 shares. The Board of Directors shall be permitted to increase the authorized number of such shares at any time. The Non-Cumulative Preferred Stock shall rank prior to the Voting Common Stock of Freddie Mac (the "Common Stock") to the extent provided in this Certificate and shall rank, both as to dividends and upon liquidation, on a parity with the Variable Rate, Non-Cumulative Preferred Stock issued on November 5, 1999, the 5.79% Non-Cumulative Preferred Stock issued on July 21, 1999, the 5.1% Non-Cumulative Preferred Stock issued on March 9, 1999, the 5.3% Non-Cumulative Preferred Stock issued on October 28, 1998, the 5.1% Non-Cumulative Preferred Stock issued on September 23, 1998, the Variable Rate, Non-Cumulative Preferred Stock issued on September 23, 1998 and September 29, 1998, the 5% Non-Cumulative Preferred Stock issued on March 23, 1998, the 5.81% Non-Cumulative Preferred Stock issued on October 27, 1997, the 6.14% Non-Cumulative Preferred Stock issued on June 3, 1997, the 6.125% Non-Cumulative Preferred Stock issued on November 1, 1996 and the Variable Rate, Non-Cumulative Preferred Stock issued on April 26, 1996 (collectively, the "Existing Preferred Stock").

2. Dividends

(a) Holders of outstanding shares of Non-Cumulative Preferred Stock will be entitled to receive, ratably, non-cumulative quarterly cash dividends which will accrue from but not including January 26, 2001 and will be payable on March 31, June 30, September 30 and December 31 of each year (each, a "Dividend Payment Date"), beginning on March 31, 2001, when as and if declared by the Board of Directors in its sole discretion, out of funds legally available for dividend payments. If a Dividend Payment Date is not a "Business Day," the related dividend will be paid on 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. For these purposes, "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 Freddie Mac are closed. Dividends will be paid to holders of record on the record date fixed by the Board of Directors, not to be earlier than 45 days or later than 10 days preceding the applicable Dividend Payment Date.

The dividend rate for the period from January 26, 2001 through and including March 31, 2003 will be 4.817%. Thereafter, dividends will accrue at a variable per annum rate (not greater than 11%) equal to the "CMT Rate" (as defined below) plus 0.10%. On April 1, 2003, and on April 1 every two years thereafter, the previous dividend rate will be replaced by the then-current CMT Rate plus 0.10%. The CMT Rate for each two-year period will be determined by Freddie Mac on the second Business Day immediately preceding the first day of such period (each, a "CMT Determination Date"). If declared, the initial dividend, which will be for the "Dividend Period" from but not including January 26, 2001 through and including March 31, 2003, will be $0.4282 per share and will be payable on March 31, 2001. Thereafter, 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 for any period shorter than a full Dividend Period shall be computed on the basis of twelve 30-day months and a 360-day year. The amount of dividends payable for each full Dividend Period will be determined by dividing the annual dividend by four. If Freddie Mac redeems the Non-Cumulative Preferred Stock, the dividend that would otherwise be payable for the Dividend Period ending on the date of redemption will be included in the redemption price of the shares redeemed and will not be separately payable.

(b) The "CMT Rate" for any CMT Determination Date will be the rate (not greater than 10.90%) equal to:

(1) the weekly average interest rate of U.S. Treasury securities having an index maturity of two years for the week that ends immediately before the week in which the relevant CMT Determination Date falls, as that rate appears on page "7052" on Telerate (or such other page as may replace the 7052 page on that service or any successor service) under the heading ". . . Treasury Constant Maturities . . . Federal Reserve Board Release H.15 . . . Mondays Approximately 3:45 p.m."

(2) If the applicable rate described in clause (1) above is not displayed on Telerate page 7052 at 3:00 p.m., New York City time, on the relevant CMT Determination Date, then the CMT Rate will be the Treasury constant maturity rate applicable to a two-year index maturity for the weekly average as published in H.15(519) (as defined below).

(3) If the applicable rate described in clause (2) above does not appear in H.15(519) at 3:00 p.m., New York City time, on the relevant CMT Determination Date, then the CMT Rate

will be the Treasury constant maturity rate, or other U.S. Treasury rate, applicable to a two-year index maturity with reference to the relevant CMT Determination Date, that:

(A) is published by the Board of Governors of the Federal Reserve System or the U.S. Department of the Treasury; and

(B) is determined by Freddie Mac to be comparable to the applicable rate formerly displayed on Telerate page 7052 and published in H.15(519).

(4) If the rate described in clause (3) above does not appear at 3:00 p.m., New York City time, on the relevant CMT Determination Date, then the CMT Rate will be the yield to maturity of the arithmetic mean of the secondary market offered rates for Treasury notes having an original maturity of approximately two years and a remaining term to maturity of not less than one year, and in a representative amount, as of approximately 3:30 p.m., New York City time, on the relevant CMT Determination Date, as quoted by three primary U.S. government securities dealers in New York City selected by Freddie Mac. In selecting these offered rates, Freddie Mac will request quotations from five primary dealers and will disregard the highest quotation — or, if there is equality, one of the highest — and the lowest quotation — or, if there is equality, one of the lowest. Treasury notes are direct, non-callable, fixed rate obligations of the U.S. government.

(5) If Freddie Mac is unable to obtain three quotations of the kind described in clause (4) above, the CMT Rate will be the yield to maturity of the arithmetic mean of the secondary market offered rates for Treasury notes with an original maturity longer than two years and a remaining term to maturity closest to two years, and in a representative amount, as of approximately 3:30 p.m., New York City time, on the relevant CMT Determination Date, as quoted by three primary U.S. government securities dealers in New York City selected by Freddie Mac. In selecting these offered rates, Freddie Mac will request quotations from five primary dealers and will disregard the highest quotation — or, if there is equality, one of the highest — and the lowest quotation — or, if there is equality, one of the lowest. If two Treasury notes with an original maturity longer than two years have remaining terms to maturity that are equally close to two years, Freddie Mac will obtain quotations for the Treasury note with the shorter remaining term to maturity.

(6) If fewer than five but more than two primary dealers are quoting offered rates as described in clause (5) above, then the CMT Rate for the relevant CMT Determination Date will be based on the arithmetic mean of the offered rates so obtained, and neither the highest nor the lowest of those quotations will be disregarded.

(7) If two or fewer primary dealers are quoting offered rates as described in clause (5) above, the CMT Rate in effect for the new Dividend Period will be the CMT Rate in effect for the prior Dividend Period.

"H.15(519)" means the weekly statistical release entitled "Statistical Release H.15(519)," or any successor publication, published by the Board of Governors of the Federal Reserve System.

Absent manifest error, Freddie Mac's determination of the CMT Rate and the dividend rate will be final and binding.

No dividends shall be declared or paid or set apart for payment on the Common Stock or any other class or series of stock ranking junior to or (except as hereinafter provided) on a parity with the Non-Cumulative Preferred Stock with respect to the payment of dividends unless dividends have been declared and paid or set apart (or ordered by the Board of Directors to be set apart) for payment on the outstanding Non-Cumulative Preferred Stock in respect of the then-current Dividend Period; provided, however, that the foregoing dividend preference shall not be cumulative and shall not in any way create any claim or right in favor of the holders of Non-Cumulative Preferred Stock in the event that Freddie Mac shall not have declared or paid or set apart (or the Board of Directors shall not have ordered to be set apart) dividends on the Non-Cumulative Preferred Stock in respect of any prior Dividend Period. In the event that Freddie Mac shall not pay any one or more dividends or any part thereof on the Non-Cumulative Preferred Stock, the holders of the Non-Cumulative Preferred Stock shall not have any claim in respect of such non-payment so long as no dividend is paid on any junior or parity stock in violation of the next preceding sentence.

(c) If, prior to July 26, 2002, one or more amendments to the Internal Revenue Code of 1986, as amended (the "Code"), are enacted that reduce or eliminate the percentage of the dividends-received deduction as specified in section 243(a)(1) of the Code or any successor provision (the "Dividends-Received Percentage"), including any change applicable only to certain categories of stock, which change is applicable to the Preferred Stock, certain adjustments may be made in respect of the dividends payable by the Corporation, and Post Declaration Date Dividends and Retroactive Dividends (as such terms are defined below) may become payable, as described below.

The amount of each dividend payable (if declared) per share of Non-Cumulative Preferred Stock for dividend payments made on or after the effective date of such change in the Code will be adjusted by multiplying the amount of the dividend payable pursuant to Section 2(a) (before adjustment) by a factor, which shall be the number determined in accordance with the following formula (the "DRD Formula"), and rounding the result to the nearest cent (with one-half cent rounded up):

$$\frac{1-.35(1-.70)}{1-.35(1-\text{DRP})}$$

For the purposes of the DRD Formula, "DRP" means the Dividends-Received Percentage (expressed as a decimal) applicable to the dividend in question; *provided, however,* that if the Dividends-Received Percentage applicable to the dividend in question is less than 50%, then the DRP will equal .50. In the event an adjustment to any dividend payable on the Non-Cumulative Preferred Stock is made pursuant to this Section 2(c), the resulting dividend rate may exceed % per annum. No amendment to the Code, other than a change in the percentage of the dividends-received deduction set forth in section 243(a)(1) of the Code or any successor provision, or a change in the percentage of the dividends-received deduction for certain categories of stock, which change is applicable to the Preferred Stock, will give rise to an adjustment.

Notwithstanding the foregoing provisions, if, with respect to any such amendment, the Corporation receives either an unqualified opinion of nationally recognized independent tax counsel selected by the Corporation or a private letter ruling or similar form of assurance from the Internal Revenue Service (the "IRS") to the effect that such an amendment does not apply to a dividend payable on the Non-Cumulative Preferred Stock, then such amendment shall not result in the adjustment provided for pursuant to the DRD Formula with respect to such dividend. The opinion referenced in the previous sentence shall be based upon the legislation amending or establishing the DRP or upon a published pronouncement of the IRS addressing such legislation. Unless the context otherwise requires, references to dividends herein shall mean dividends as adjusted by the DRD

Formula. The Corporation's calculation of the dividends payable as so adjusted shall be final and not subject to review, absent manifest error.

Notwithstanding the foregoing, if any such amendment to the Code is enacted after the dividend payable on a Dividend Payment Date has been declared but before such dividend is paid, the amount of the dividend payable on such Dividend Payment Date shall not be increased. Instead, additional dividends (the "Post Declaration Date Dividends"), equal to the excess, if any, of (x) the product of the dividend paid by the Corporation on such Dividend Payment Date and the DRD Formula (where the DRP used in the DRD Formula would be equal to the greater of the Dividends-Received Percentage applicable to the dividend in question and .50) over (y) the dividend paid by the Corporation on such Dividend Payment Date, shall be payable (if declared) to holders of Non-Cumulative Preferred Stock on the record date applicable to the next succeeding Dividend Payment Date, in addition to any other amounts payable on such date.

If any such amendment to the Code is enacted and the reduction in the Dividends-Received Percentage retroactively applies to a Dividend Payment Date as to which the Corporation previously paid dividends on the Non-Cumulative Preferred Stock (each, an "Affected Dividend Payment Date"), the Corporation shall pay (if declared) additional dividends (the "Retroactive Dividends") to holders on the record date applicable to the next succeeding Dividend Payment Date (or, if such amendment is enacted after the dividend payable on such Dividend Payment Date has been declared, to holders on the record date applicable to the second succeeding Dividend Payment Date following the date of enactment) in an amount equal to the excess of (x) the product of the dividend paid by the Corporation on each Affected Dividend Payment Date and the DRD Formula (where the DRP used in the DRD Formula would be equal to the greater of the Dividends-Received Percentage and .50 applied to each Affected Dividend Payment Date) over (y) the sum of the dividend paid by the Corporation on each Affected Dividend Payment Date. The Corporation will make only one payment of Retroactive Dividends for any such amendment. Notwithstanding the foregoing provisions, if, with respect to any such amendment, the Corporation receives either an unqualified opinion of nationally recognized independent tax counsel selected by the Corporation or a private letter ruling or similar form of assurance from the IRS to the effect that such amendment does not apply to a dividend payable on an Affected Dividend Payment Date for the Non-Cumulative Preferred Stock, then such amendment will not result in the payment of Retroactive Dividends with respect to such Affected Dividend Payment Date. The opinion referenced in the previous sentence must be based upon the legislation amending or establishing the DRP or upon a published pronouncement of the IRS addressing such legislation.

In the event that the amount of dividends payable per share of the Non-Cumulative Preferred Stock is adjusted pursuant to the DRD Formula and/or Post Declaration Date Dividends or Retroactive Dividends are to be paid, the Corporation will give notice of each such adjustment and, if applicable, any Post Declaration Date Dividends and Retroactive Dividends to be given as soon as practicable to the holders of Non-Cumulative Preferred Stock.

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

(e) No dividend shall be declared or paid or set apart for payment on any shares of the Non-Cumulative Preferred Stock if at the same time any arrears or default exists in the payment of dividends on any outstanding class or series of stock of Freddie Mac ranking prior to or (except as provided herein) on a parity with the Non-Cumulative Preferred Stock with respect to the payment of dividends. If and whenever dividends, having been declared, shall not have been paid in full, as aforesaid, on shares of the Non-Cumulative Preferred Stock and on the shares of any other class or series of stock of Freddie Mac ranking on a parity with the Non-Cumulative Preferred Stock with respect to the payment of dividends, all such dividends that have been declared on shares of the Non-Cumulative Preferred Stock and on the shares of any such other class or series shall be paid pro rata, so that the respective amounts of dividends paid per share on the Non-Cumulative Preferred Stock and on such other class or series shall in all cases bear to each other the same ratio that the respective amounts of dividends declared but unpaid per share on the shares of the Non-Cumulative Preferred Stock (including any adjustments due to changes in the Dividends-Received Percentage) and on the shares of such other class or series bear to each other.

(f) Holders of shares of the Non-Cumulative Preferred Stock shall not be entitled to any dividends, in cash or in property, other than as herein provided and shall not be entitled to interest, or any sum in lieu of interest, on or in respect of any dividend payment.

3. Optional Redemption

(a) The Non-Cumulative Preferred Stock shall not be redeemable prior to March 31, 2003. On that date and on March 31 every two years thereafter, subject to the notice provisions set forth in Section 3(b) below and to any further limitations which may be imposed by law, Freddie Mac may redeem the Non-Cumulative Preferred Stock, in whole or in part, out of funds legally available therefor, at the redemption price of $50.00 per share plus an amount, determined in accordance with Section 2 above, equal to the amount of the dividend that would otherwise be payable for the Dividend Period ending on the date of such redemption. If less than all of the outstanding shares of the Non-Cumulative Preferred Stock are to be redeemed, Freddie Mac shall select shares to be redeemed from the outstanding shares not previously called for redemption by lot or pro rata (as nearly as possible) or by any other method which Freddie Mac in its sole discretion deems equitable.

(b) In the event Freddie Mac shall redeem any or all of the Non-Cumulative Preferred Stock as aforesaid, notice of such redemption shall be given by Freddie Mac by first class mail, postage prepaid, mailed neither less than 30 nor more than 60 days prior to the redemption date, to each holder of record of the shares of the Non-Cumulative Preferred Stock being redeemed, at such holder's address as the same appears in the books and records of Freddie Mac. Each such notice shall state the number of shares being redeemed, the redemption price, the redemption date and the place at which such holder's certificate(s) representing shares of the Non-Cumulative Preferred Stock must be presented for cancellation or exchanges, as the case may be, upon such redemption. Failure to give notice, or any defect in the notice, to any holder of the Non-Cumulative Preferred Stock shall not affect the validity of the proceedings for the redemption of shares of any other holder of the Non-Cumulative Preferred Stock being redeemed.

(c) Notice having been mailed as aforesaid, from and after the redemption date specified therein and upon payment of the consideration set forth in Section 3(a) above, said shares of the Non-Cumulative Preferred Stock shall no longer be deemed to be outstanding, and all rights of the holders thereof as holders of the Non-Cumulative Preferred Stock shall cease, with respect to shares so redeemed.

(d) Any shares of the Non-Cumulative Preferred Stock which shall have been redeemed shall, after such redemption, no longer have the status of authorized, issued or outstanding shares.

4. No Voting Rights

Except as set forth in Section 9(h) below, the shares of the Non-Cumulative Preferred Stock shall not have any voting powers, either general or special.

5. No Conversion or Exchange Rights

The holders of shares of the Non-Cumulative 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 Freddie Mac.

6. No Preemptive Rights

No holder of the Non-Cumulative 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 Freddie Mac which at any time may be sold or offered for sale by Freddie Mac.

7. Liquidation Rights and Preference

(a) Except as otherwise set forth herein, upon the voluntary or involuntary dissolution, liquidation or winding up of Freddie Mac, after payment of or provision for the liabilities of Freddie Mac and the expenses of such dissolution, liquidation or winding up, the holders of the outstanding shares of the Non-Cumulative Preferred Stock shall be entitled to receive out of the assets of Freddie Mac 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 Freddie Mac ranking junior to the Non-Cumulative Preferred Stock upon liquidation, the amount of $50.00 per share plus an amount, determined in accordance with Section 2 above, equal to the dividend, if any, 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, and the holders of the outstanding shares of any class or series of stock of Freddie Mac ranking on a parity with the Non-Cumulative Preferred Stock upon liquidation shall be entitled to receive out of the assets of Freddie Mac available for distribution to stockholders, before any such payment or distribution shall be made on the Common Stock or any other class or series of stock of Freddie Mac ranking junior to the Non-Cumulative Preferred Stock and to such parity stock upon liquidation, any corresponding preferential amount to which the holders of such parity stock may, by the terms thereof, be entitled; provided, however, that if the assets of Freddie Mac available for distribution to stockholders shall be insufficient for the payment of the full amounts to which the holders of the outstanding shares of the Non-Cumulative Preferred Stock and the holders of the outstanding shares of such parity stock shall be entitled to receive upon such dissolution, liquidation or winding up of Freddie Mac as aforesaid, then, subject to paragraph (b) of this Section 7, all of the assets of Freddie Mac available for distribution to stockholders shall be distributed to the holders of outstanding shares of the Non-Cumulative Preferred Stock and to the holders of outstanding shares of such parity stock pro rata, so that the amounts so distributed to holders of the Non-Cumulative Preferred Stock and to holders of such classes or series of such parity stock, respectively, shall bear to each other the same ratio that the respective distributive amounts to which they are so entitled (including any adjustment due to changes in the Dividends-Received Percentage) bear to each other. After the payment of the aforesaid amounts to which they are entitled, the holders of outstanding shares of the Non-Cumulative Preferred Stock and the holders of outstanding shares of any such parity stock shall not be entitled to any further participation in any distribution of assets of Freddie Mac.

(b) Notwithstanding the foregoing, upon the dissolution, liquidation or winding up of Freddie Mac, the holders of shares of the Non-Cumulative Preferred Stock then outstanding shall not be entitled to be paid any amounts to which such holders are entitled pursuant to paragraph (a) of this Section 7 unless and until the holders of any classes or series of stock of Freddie Mac ranking prior upon liquidation to the Non-Cumulative Preferred Stock shall have been paid all amounts to which such classes or series are entitled pursuant to their respective terms.

(c) Neither the sale of all or substantially all of the property or business of Freddie Mac, nor the merger, consolidation or combination of Freddie Mac 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 7.

8. 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 Freddie Mac, and to determine and fix the distinguishing characteristics and the relative rights, preferences, privileges and other terms of the shares thereof. Any such class or series of stock may rank prior to or on a parity with or junior to the Non-Cumulative Preferred Stock as to dividends or upon liquidation or otherwise.

9. Miscellaneous

(a) Any stock of any class or series of Freddie Mac shall be deemed to rank:

(i) prior to the shares of the Non-Cumulative Preferred Stock, either as to dividends or upon liquidation, if the holders of such class or series shall be entitled to the receipt of dividends or of amounts distributable upon dissolution, liquidation or winding up of Freddie Mac, as the case may be, in preference or priority to the holders of shares of the Non-Cumulative Preferred Stock;

(ii) on a parity with shares of the Non-Cumulative Preferred Stock, either as to dividends or upon liquidation, whether or not the dividend rates or amounts, dividend payment dates or redemption of liquidation prices per share, if any, be different from those of the Non-Cumulative Preferred Stock, if the holders of such class or series shall be entitled to the receipt of dividends or of amounts distributable upon dissolution, liquidation or winding up of Freddie Mac, as the case may be, in proportion to their respective dividend rates or amounts or liquidation prices, without preference or priority, one over the other, as between the holders of such class or series and the holders of shares of the Non-Cumulative Preferred Stock; and

(iii) junior to shares of the Non-Cumulative Preferred Stock, either as to dividends or upon liquidation, if such class or series shall be Common Stock, or if the holders of shares of the Non-Cumulative Preferred Stock shall be entitled to receipt of dividends or of amounts distributable upon dissolution, liquidation or winding up of Freddie Mac, as the case may be, in preference or priority to the holders of shares of such class or series.

(b) Freddie Mac and any agent of Freddie Mac may deem and treat the holder of a share or shares of Non-Cumulative Preferred Stock, as shown in Freddie Mac's books and records, as the absolute owner of such share or shares of Non-Cumulative Preferred Stock for the purpose of receiving payment of dividends in respect of such share or shares of Non-Cumulative Preferred Stock and for all other purposes whatsoever, and neither Freddie Mac nor any agent of Freddie Mac 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 Freddie Mac on or with respect to any such share or shares of Non-Cumulative Preferred Stock.

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

(d) The Non-Cumulative Preferred Stock shall be issued, and shall be transferable on the books of Freddie Mac, only in whole shares, it being intended that no fractional interests in shares of Non-Cumulative Preferred Stock shall be created or recognized by Freddie Mac.

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

(f) This Certificate and the respective rights and obligations of Freddie Mac and the holders of the Non-Cumulative Preferred Stock with respect to such Non-Cumulative 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 Freddie Mac's enabling legislation, its public purposes or any provision of this Certificate.

(g) 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 Freddie Mac shall be given or served in writing addressed (unless and until another address shall be published by Freddie Mac) to Freddie Mac, 8200 Jones Branch Drive, McLean, Virginia 22102, Attn: Executive Vice President-General Counsel and Secretary. Such notice, demand or other communication to or upon Freddie Mac shall be deemed to have been sufficiently given or made only upon actual receipt of a writing by Freddie Mac. Any notice, demand or other communication which by any provision of this Certificate is required or permitted to be given or served by Freddie Mac 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 Freddie Mac or (ii) if to a person or entity other than a holder of record of the Non-Cumulative Preferred Stock, to such person or entity at such address as appears to Freddie Mac 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.

(h) Freddie Mac, 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 Non-Cumulative Preferred Stock, Freddie Mac 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 materially and adversely affect the interests of the holders of the Non-Cumulative Preferred Stock.

(ii) The consent of the holders of at least 66 2/3% of all of the shares of the Non-Cumulative 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 Non-Cumulative Preferred Stock shall vote together as a class, shall be necessary for authorizing, effecting or validating the amendment, alteration, supplementation or repeal of the provisions of this Certificate if such amendment, alteration, supplementation or repeal would materially and adversely affect the powers, preferences, rights, privileges, qualifications, limitations, restrictions, terms or conditions of the Non-Cumulative Preferred Stock. 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 Freddie Mac (including the Non-Cumulative Preferred Stock), whether ranking prior to, on a parity with or junior to the Non-Cumulative Preferred Stock, shall not be deemed to constitute such an amendment, alteration, supplementation or repeal.

(iii) Holders of the Non-Cumulative 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 (h). 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 Non-Cumulative 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 Non-Cumulative 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 Non-Cumulative Preferred Stock may be listed at such time.

(i) RECEIPT AND ACCEPTANCE OF A SHARE OR SHARES OF THE NON-CUMULATIVE 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 FREDDIE MAC AND THE HOLDER (AND ALL SUCH OTHERS).

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of Freddie Mac this 26th day of January, 2001.

[Seal]

Maud Mater, *Secretary*

Appendix A

FREDDIE MAC

CERTIFICATE OF CREATION, DESIGNATION, POWERS, PREFERENCES, RIGHTS, PRIVILEGES, QUALIFICATIONS, LIMITATIONS, RESTRICTIONS, TERMS AND CONDITIONS of 6.02% NON-CUMULATIVE PERPETUAL PREFERRED STOCK (Par Value $1.00 Per Share)

I, KEVIN I. MACKENZIE, Assistant Secretary of the Federal Home Loan Mortgage Corporation, a government-sponsored enterprise of the United States of America ("Freddie Mac" or the "Corporation"), do hereby certify that, pursuant to authority vested in the Board of Directors of Freddie Mac by Section 306(f) of the Federal Home Loan Mortgage Corporation Act, as amended (12 U.S.C. §1455(f)), the Board of Directors adopted Resolution FHLMC 2007-04 on March 2, 2007, which resolution is now, and at all times since such date has been, in full force and effect, and that the Chairman and Chief Executive Officer, pursuant to the authority delegated to him by such resolutions, approved the final terms of the public issuance and sale of the preferred stock of Freddie Mac designated above.

The 6.02% Non-Cumulative 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 Freddie Mac created hereby (the "Non-Cumulative Preferred Stock") shall be designated "6.02% Non-Cumulative Perpetual Preferred Stock," shall have a par value of $1.00 per share and shall consist of 20,000,000 shares. The Board of Directors shall be permitted to increase the authorized number of such shares at any time. The Non-Cumulative Preferred Stock shall rank prior to the Voting Common Stock of Freddie Mac (the "Common Stock") to the extent provided in this Certificate and shall rank, both as to dividends and distributions upon liquidation, on a parity with (a) the 5.66% Non-Cumulative Preferred Stock issued on April 16, 2007, (b) the 5.57% Non-Cumulative Preferred Stock issued on January 16, 2007, (c) the 5.9% Non-Cumulative Preferred Stock issued on October 16, 2006, (d) the 6.42% Non-Cumulative Preferred Stock issued on July 17, 2006, (e) the Variable Rate, Non-Cumulative Preferred Stock issued on July 17, 2006, (f) the 5.81% Non-Cumulative Preferred Stock issued on January 29, 2002, (g) the 5.7% Non-Cumulative Preferred Stock issued on October 30, 2001, (h) the 6% Non-Cumulative Preferred Stock issued on May 30, 2001, (i) the Variable Rate, Non-Cumulative Preferred Stock issued on May 30, 2001 and June 1, 2001, (j) the 5.81% Non-Cumulative Preferred Stock issued on March 23, 2001, (k) the Variable Rate, Non-Cumulative Preferred Stock issued on March 23, 2001, (l) the Variable Rate, Non-Cumulative Preferred Stock issued on January 26, 2001, (m) the Variable Rate, Non-Cumulative Preferred Stock issued on November 5, 1999, (n) the 5.79% Non-Cumulative Preferred Stock issued on July 21, 1999, (o) the 5.1% Non-Cumulative Preferred Stock issued on March 19, 1999, (p) the 5.3% Non-Cumulative Preferred Stock issued on October 28, 1998, (q) the 5.1% Non-Cumulative Preferred Stock issued on September 23, 1998, (r) the Variable Rate, Non-Cumulative Preferred

Stock issued on September 23, 1998 and September 29, 1998, (s) the 5% Non-Cumulative Preferred Stock issued on March 23, 1998, (t) the 5.81% Non-Cumulative Preferred Stock issued on October 27, 1997 and (u) the Variable Rate, Non-Cumulative Preferred Stock issued on April 26, 1996 (collectively, the "Existing Preferred Stock").

2. Dividends

(a) Holders of outstanding shares of Non-Cumulative 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, non-cumulative cash dividends at the annual rate of 6.02%, or \$1.505, per share of Non-Cumulative Preferred Stock. Dividends on the Non-Cumulative Preferred Stock shall accrue from but not including July 24, 2007 and will be payable 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 September 30, 2007. If a Dividend Payment Date is not a "Business Day," the related dividend shall be paid on 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 (c) a day on which the offices of Freddie Mac are closed.

If declared, the initial dividend, which will be for the period from but not including July 24, 2007 through and including September 30, 2007, will be \$0.27592 per share. Thereafter, dividends will accrue from Dividend Period to Dividend Period at a rate equal to 6.02% divided by four; the amount of dividends payable in respect of any shorter period shall be computed on the basis of twelve 30-day months and a 360-day year. 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.

Each such dividend shall be paid to the holders of record of outstanding shares of the Non-Cumulative Preferred Stock as they appear in the books and records of Freddie Mac 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. No dividends shall be declared or paid or set apart for payment on the Common Stock or any other class or series of stock ranking junior to or (except as hereinafter provided) on a parity with the Non-Cumulative Preferred Stock with respect to the payment of dividends unless dividends have been declared and paid or set apart (or ordered by the Board of Directors to be set apart) for payment on the outstanding Non-Cumulative Preferred Stock in respect of the then-current Dividend Period; provided, however, that the foregoing dividend preference shall not be cumulative and shall not in any way create any claim or right in favor of the holders of Non-Cumulative Preferred Stock in the event that Freddie Mac shall not have declared or paid or set apart (or the Board of Directors shall not have ordered to be set apart) dividends on the Non-Cumulative Preferred Stock in respect of any prior Dividend Period. In the event that Freddie Mac shall not pay any one or more dividends or any part thereof on the Non-Cumulative Preferred Stock, the holders of the Non-Cumulative Preferred Stock shall not have any claim in respect of such non-payment so long as no dividend is paid on any junior or parity stock in violation of the preceding sentence.

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

(c) No dividend shall be declared or paid or set apart for payment on any shares of the Non-Cumulative Preferred Stock if at the same time any arrears or default exists in the payment of dividends on any outstanding class or series of stock of Freddie Mac ranking prior to or (except as provided herein) on a parity with the Non-Cumulative Preferred Stock with respect to the payment of dividends. If and whenever dividends, having been declared, shall not have been paid in full, as aforesaid, on shares of the Non-Cumulative Preferred Stock and on the shares of any other class or series of stock of Freddie Mac ranking on a parity with the Non-Cumulative Preferred Stock with respect to the payment of dividends, all such dividends that have been declared on shares of the Non-Cumulative Preferred Stock and on the shares of any such other class or series shall be paid pro rata, so that the respective amounts of dividends paid per share on the Non-Cumulative Preferred Stock and on such other class or series shall in all cases bear to each other the same ratio that the respective amounts of dividends declared but unpaid per share on the shares of the Non-Cumulative Preferred Stock and on the shares of such other class or series bear to each other.

(d) Holders of shares of the Non-Cumulative Preferred Stock shall not be entitled to any dividends, in cash or in property, other than as herein provided and shall not be entitled to interest, or any sum in lieu of interest, on or in respect of any dividend payment.

3. Optional Redemption

(a) The Non-Cumulative Preferred Stock shall not be redeemable prior to June 30, 2012. Subject to this limitation and the notice provisions set forth in Section 3(b) below and to any further limitations which may be imposed by law, Freddie Mac may redeem the Non-Cumulative Preferred Stock, in whole or in part, at any time or from time to time, out of funds legally available therefor, at the redemption price of $25.00 per share plus an amount, determined in accordance with Section 2(a) above, equal to the amount of the dividend, if any, otherwise payable for the then-current Dividend Period accrued through and including the date of such redemption, whether or not declared. If less than all of the outstanding shares of the Non-Cumulative Preferred Stock are to be redeemed, Freddie Mac shall select shares to be redeemed from the outstanding shares not previously called for redemption by lot or pro rata (as nearly as possible) or by any other method which Freddie Mac in its sole discretion deems equitable. If Freddie Mac redeems the Non-Cumulative Preferred Stock, the dividend that would otherwise be payable for the Dividend Period ending on the date of redemption will be included in the redemption price of the shares redeemed and will not be separately payable.

(b) In the event Freddie Mac shall redeem any or all of the Non-Cumulative Preferred Stock as aforesaid, notice of such redemption shall be given by Freddie Mac by first class mail, postage prepaid, mailed neither less than 30 nor more than 60 days prior to the redemption date, to each holder of record of the shares of the Non-Cumulative Preferred Stock being redeemed, at such holder's address as the same appears in the books and records of Freddie Mac. Each such notice shall state the number of shares being redeemed, the redemption price, the redemption date and the place at which such holder's certificate(s) representing shares of the Non-Cumulative Preferred Stock must be presented for cancellation or exchange, as the case may be, upon such redemption. Failure to give notice, or any defect in the notice, to any holder of the Non-Cumulative Preferred

Stock shall not affect the validity of the proceedings for the redemption of shares of any other holder of the Non-Cumulative Preferred Stock being redeemed.

(c) Notice having been mailed as aforesaid, from and after the redemption date specified therein and upon payment of the consideration set forth in Section 3(a) above, said shares of the Non-Cumulative Preferred Stock shall no longer be deemed to be outstanding, and all rights of the holders thereof as holders of the Non-Cumulative Preferred Stock shall cease, with respect to shares so redeemed, other than the right to receive the redemption price for such redeemed shares.

(d) Any shares of the Non-Cumulative Preferred Stock which shall have been redeemed shall, after such redemption, no longer have the status of authorized, issued or outstanding shares.

4. No Voting Rights

Except as set forth in Section 9(h) below, the shares of the Non-Cumulative Preferred Stock shall not have any voting powers, either general or special.

5. No Conversion or Exchange Rights

The holders of shares of the Non-Cumulative 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 Freddie Mac.

6. No Preemptive Rights

No holder of the Non-Cumulative 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 Freddie Mac which at any time may be sold or offered for sale by Freddie Mac.

7. Liquidation Rights and Preference

(a) Except as otherwise set forth herein, upon the voluntary or involuntary dissolution, liquidation or winding up of Freddie Mac, after payment of or provision for the liabilities of Freddie Mac and the expenses of such dissolution, liquidation or winding up, the holders of the outstanding shares of the Non-Cumulative Preferred Stock shall be entitled to receive out of the assets of Freddie Mac 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 Freddie Mac ranking junior to the Non-Cumulative Preferred Stock upon liquidation, the amount of $25.00 per share plus an amount, determined in accordance with Section 2(a) above, equal to the dividend, if any, 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, and the holders of the outstanding shares of any class or series of stock of Freddie Mac ranking on a parity with the Non-Cumulative Preferred Stock upon liquidation shall be entitled to receive out of the assets of Freddie Mac available for distribution to stockholders, before any such payment or distribution shall be made on the Common Stock or any other class or series of stock of Freddie Mac ranking junior to the Non-Cumulative Preferred Stock and to such parity stock upon liquidation, any corresponding preferential amount to which the holders of such parity stock may, by the terms thereof, be entitled; provided, however, that if the assets of Freddie Mac available for distribution to stockholders shall be insufficient for the payment of the amount which the holders of the outstanding shares of the Non-Cumulative Preferred Stock and the holders of the outstanding shares of such parity stock shall be entitled to receive upon such dissolution, liquidation or winding up of Freddie Mac as aforesaid, then, subject to paragraph (b) of this Section 7, all of the assets of Freddie Mac available for distribution to stockholders shall be distributed to the holders of outstanding shares of the Non-Cumulative Preferred Stock and to the holders of outstanding shares of such parity stock pro rata, so that the amounts so distributed to holders of the Non-Cumulative Preferred Stock and to holders of such classes or series of such parity stock, respectively, shall bear to each other the same ratio that the respective distributive amounts to which they are so entitled bear to each other. After the payment of the aforesaid amounts to which they are entitled, the holders of outstanding shares of the Non-Cumulative Preferred Stock and the holders of outstanding shares of any such parity stock shall not be entitled to any further participation in any distribution of assets of Freddie Mac.

(b) Notwithstanding the foregoing, upon the dissolution, liquidation or winding up of Freddie Mac, the holders of shares of the Non-Cumulative Preferred Stock then outstanding shall not be entitled to be paid any amounts to which such holders are entitled pursuant to paragraph (a) of this Section 7 unless and until the holders of any classes or series of stock of Freddie Mac ranking prior upon liquidation to the Non-Cumulative Preferred Stock shall have been paid all amounts to which such classes or series are entitled pursuant to their respective terms.

(c) Neither the sale of all or substantially all of the property or business of Freddie Mac, nor the merger, consolidation or combination of Freddie Mac 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 7.

8. 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 Freddie Mac, and to determine and fix the distinguishing characteristics and the relative rights, preferences, privileges and other terms of the shares thereof. Any such class or series of stock may rank prior to or on a parity with or junior to the Non-Cumulative Preferred Stock as to dividends or upon liquidation or otherwise.

9. Miscellaneous

(a) Any stock of any class or series of Freddie Mac shall be deemed to rank:

(i) prior to the shares of the Non-Cumulative Preferred Stock, either as to dividends or distributions upon liquidation, if the holders of such class or series shall be entitled to the receipt of dividends or of amounts distributable upon dissolution, liquidation or winding up of Freddie Mac, as the case may be, in preference or priority to the holders of shares of the Non-Cumulative Preferred Stock;

(ii) on a parity with shares of the Non-Cumulative Preferred Stock, either as to dividends or distributions upon liquidation, whether or not the dividend rates or amounts, dividend payment dates or redemption or liquidation prices per share, if any, be different from those of the Non-Cumulative Preferred Stock, if the holders of such class or series shall be entitled to the receipt of dividends or of amounts distributable upon dissolution, liquidation or winding up of Freddie Mac, as the case may be, in proportion to their respective dividend rates or amounts or liquidation prices, without preference or priority, one over the other, as between the holders of such class or series and the holders of shares of the Non-Cumulative Preferred Stock; and

(iii) junior to shares of the Non-Cumulative Preferred Stock, either as to dividends or distributions upon liquidation, if such class or series shall be Common Stock, or if the holders of shares of the Non-Cumulative Preferred Stock shall be entitled to receipt of dividends or of amounts distributable upon dissolution, liquidation or winding up of Freddie Mac, as the case may be, in preference or priority to the holders of shares of such class or series.

(b) Freddie Mac and any agent of Freddie Mac may deem and treat the holder of a share or shares of Non-Cumulative Preferred Stock, as shown in Freddie Mac's books and records, as the absolute owner of such share or shares of Non-Cumulative Preferred Stock for the purpose of receiving payment of dividends in respect of such share or shares of Non-Cumulative Preferred Stock and for all other purposes whatsoever, and neither Freddie Mac nor any agent of Freddie Mac 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 Freddie Mac on or with respect to any such share or shares of Non-Cumulative Preferred Stock.

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

(d) The Non-Cumulative Preferred Stock shall be issued, and shall be transferable on the books of Freddie Mac, only in whole shares, it being intended that no fractional interests in shares of Non-Cumulative Preferred Stock shall be created or recognized by Freddie Mac.

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

(f) This Certificate and the respective rights and obligations of Freddie Mac and the holders of the Non-Cumulative Preferred Stock with respect to such Non-Cumulative 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 Freddie Mac's enabling legislation, its public purposes or any provision of this Certificate.

(g) 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 Freddie Mac shall be given or served in writing addressed (unless and until another address shall be published by Freddie Mac) to Freddie Mac, 8200 Jones Branch Drive, McLean, Virginia 22102, Attn: Vice President and Deputy General Counsel — Securities. Such notice, demand or other communication to or upon Freddie Mac shall be deemed to have been sufficiently given or made only upon actual receipt of a writing by Freddie Mac. Any notice, demand or other communication which by any provision of this Certificate is required or permitted to be given or served by Freddie Mac 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 Freddie Mac or (ii) if to a person or entity other than a holder of record of the Non-Cumulative Preferred Stock, to such person or entity at such address as appears to Freddie Mac 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.

(h) Freddie Mac, 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 Non-Cumulative Preferred Stock, Freddie Mac 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 materially and adversely affect the interests of the holders of the Non-Cumulative Preferred Stock.

(ii) The consent of the holders of at least 66 2/3% of all of the shares of the Non-Cumulative 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 Non-Cumulative Preferred Stock shall vote together as a class, shall be necessary for authorizing, effecting or validating the amendment, alteration, supplementation or repeal of the provisions of this Certificate if such amendment, alteration, supplementation or repeal would materially and adversely affect the powers, preferences, rights, privileges, qualifications, limitations, restrictions, terms or conditions of the Non-Cumulative Preferred Stock. 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 Freddie Mac (including the Non-Cumulative Preferred Stock), whether ranking prior to, on a parity with or junior to the Non-Cumulative Preferred Stock, shall not be deemed to constitute such an amendment, alteration, supplementation or repeal.

(iii) Holders of the Non-Cumulative 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 (h). 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 Non-Cumulative 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 Non-Cumulative 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 Non-Cumulative Preferred Stock may be listed at such time.

(i) RECEIPT AND ACCEPTANCE OF A SHARE OR SHARES OF THE NON-CUMULATIVE 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 FREDDIE MAC AND THE HOLDER (AND ALL SUCH OTHERS).

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of Freddie Mac this 24th day of July, 2007.

[Seal]

Kevin I. MacKenzie, *Assistant Secretary*

Exhibit A

CERTIFICATE OF DESIGNATION OF TERMS OF 8.25% NON-CUMULATIVE PREFERRED STOCK, SERIES T

CUSIP: 313586737

1. Designation, Par Value and Number of Shares.

The designation of the series of preferred stock of the Federal National Mortgage Association ("Fannie Mae") created by this resolution shall be "8.25% Non-Cumulative Preferred Stock, Series T" (the "Series T Preferred Stock"), and the number of shares initially constituting the Series T Preferred Stock is 80,000,000[1], which number may be increased by the Board of Directors of Fannie Mae, or a duly authorized committee thereof, in accordance with Section 7 below. Shares of Series T Preferred Stock will have no par value and will have a stated value of $25 per share. Shares of Series T Preferred Stock will have no stated maturity date, and, subject to Section 3 below, will be perpetual. The Board of Directors of Fannie Mae, or a duly authorized committee thereof, in its sole discretion, may reduce the number of shares of Series T Preferred Stock, provided such reduction is not below the number of shares of Series T Preferred Stock then outstanding.

2. Dividends.

(a) Holders of record of Series T Preferred Stock (each individually a "Holder," or collectively the "Holders") will 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, non-cumulative cash dividends at a rate of 8.25% per annum of the stated value of $25 per share of Series T Preferred Stock. Dividends on the Series T Preferred Stock shall accrue from and including May 19, 2008 (the "Issue Date") and will be payable when, as and if declared by the Board of Directors (or a designated committee of the Board) quarterly on March 31, June 30, September 30 and December 31 of each year (each, a "Dividend Payment Date"), commencing June 30, 2008. If a Dividend Payment Date is not a Business Day, the related dividend (if declared) will be paid on the next succeeding 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. A "Business Day" shall mean any day other than a Saturday, Sunday, or a day on which banking institutions in New York, New York are authorized by law to close. Dividends will be paid to Holders on the record date fixed by the Board of Directors or a duly authorized committee thereof, which may not be earlier than 45 days or later than 10 days prior to the applicable Dividend Payment Date.

If declared, the initial dividend, which will be for the period from and including the Issue Date to but excluding June 30, 2008, will be $ 0.23490 per share and will be payable on June 30, 2008. Thereafter, if declared, quarterly dividends will be $ 0.51563 per share. The "Dividend Period" relating to a Dividend Payment Date will be the period from and including the preceding Dividend Payment Date (or, in the case of the initial dividend, May 19, 2008) to but excluding such Dividend Payment Date. Dividends payable on the Series T Preferred Stock for any period greater or less than a full Dividend Period will be computed on the basis of a 360-day year consisting of twelve 30-day months, with the dividend for such partial Dividend Period computed by dividing the per annum dividend rate by 360, and multiplying that amount by the number of days in such partial Dividend Period (using the 30 day month, 360 day year convention) and stated value of $25 per share, the product of which shall be rounded to the fourth digit after the decimal point. (If the fifth digit to the right of the decimal point is five or greater, the

[1] Plus up to 12,000,000 additional shares pursuant to the Underwriters' over-allotment option.

fourth digit will be rounded up by one.) Dividends payable on the Series T Preferred Stock for each full Dividend Period will be computed by dividing the per annum dividend rate by four, and multiplying the result by the stated value per share of $25, the product of which shall be rounded to the fifth digit after the decimal point. (If the sixth digit to the right of the decimal point is five or greater, the fifth digit will be rounded up by one.) If Fannie Mae redeems the Series T Preferred Stock, the dividend that would otherwise be payable for the then-current quarterly Dividend Period will be included in the redemption price of the shares redeemed and will not be separately payable.

(b) No dividend (other than dividends or distributions paid in shares of, or options, warrants or rights to subscribe for or purchase shares of, the common stock of Fannie Mae or any other stock of Fannie Mae ranking, as to the payment of dividends and the distribution of assets upon dissolution, liquidation or winding up of Fannie Mae, junior to the Series T Preferred Stock) may be declared or paid or set apart for payment on Fannie Mae's common stock (or on any other stock of Fannie Mae ranking, as to the payment of dividends, junior to the Series T Preferred Stock) unless dividends have been declared and paid or set apart (or ordered to be set apart) on the Series T Preferred Stock for the then-current quarterly Dividend Period; provided, however, that the foregoing dividend preference shall not be cumulative and shall not in any way create any claim or right in favor of the Holders of Series T Preferred Stock in the event that dividends have not been declared or paid or set apart (or ordered to be set apart) on the Series T Preferred Stock in respect of any prior Dividend Period. If the full dividend on the Series T Preferred Stock is not paid for any quarterly Dividend Period, the Holders of Series T Preferred Stock will have no claim in respect of the unpaid amount so long as no dividend (other than those referred to above) is paid on Fannie Mae's common stock (or any other stock of Fannie Mae ranking, as to the payment of dividends, junior to the Series T Preferred Stock) for such Dividend Period.

(c) The Board of Directors of Fannie Mae, or a duly authorized committee thereof, may, in its discretion, choose to pay dividends on the Series T Preferred Stock without the payment of any dividends on Fannie Mae's common stock (or any other stock of Fannie Mae ranking, as to the payment of dividends, junior to the Series T Preferred Stock).

(d) No full dividends shall be declared or paid or set apart for payment on any stock of Fannie Mae ranking, as to the payment of dividends, on a parity with the Series T Preferred Stock for any period unless full dividends have been declared and paid or set apart for payment on the Series T Preferred Stock for the then-current quarterly Dividend Period. When dividends are not paid in full upon the Series T Preferred Stock and all other classes or series of stock of Fannie Mae, if any, ranking, as to the payment of dividends, on a parity with the Series T Preferred Stock, all dividends declared upon shares of Series T Preferred Stock and all such other stock of Fannie Mae will be declared pro rata so that the amount of dividends declared per share of Series T Preferred Stock and all such other stock will in all cases bear to each other the same ratio that accrued dividends per share of Series T Preferred Stock (but without, in the case of any non-cumulative preferred stock, accumulation of unpaid dividends for prior Dividend Periods) and such other stock bear to each other.

(e) No dividends may be declared or paid or set apart for payment on any shares of Series T Preferred Stock if at the same time any arrears exist or default exists in the payment of dividends on any outstanding class or series of stock of Fannie Mae ranking, as to the payment of dividends, prior to the Series T Preferred Stock.

(f) Holders of Series T Preferred Stock will not be entitled to any dividends, whether payable in cash or property, other than as herein provided and will not be entitled to interest, or any sum in lieu of interest, in respect of any dividend payment.

3. Optional Redemption.

(a) The Series T Preferred Stock shall not be redeemable prior to May 20, 2013. On or after that date, subject to (x) the notice provisions set forth in Section 3(b) below, (y) the receipt of any required regulatory approvals and (z) any further limitations which may be imposed by law, Fannie Mae may redeem the Series T Preferred Stock, in whole or in part, at any time, out of funds legally available therefor, at the redemption price of $25 per share plus an amount equal to the amount of the dividend (whether or not declared) for the then-current quarterly Dividend Period accrued to but excluding the date of such redemption, but without accumulation of unpaid dividends on the Series T Preferred Stock for prior Dividend Periods. The amount of dividends per share payable at redemption will be calculated in accordance with Section 2(a) above. If less than all of the outstanding shares of Series T Preferred Stock are to be redeemed, Fannie Mae will select the shares to be redeemed from the outstanding shares not previously called for redemption by lot or pro rata (as nearly as possible) or by any other method that the Board of Directors of Fannie Mae, or a duly authorized committee thereof, in its sole discretion deems equitable.

(b) In the event Fannie Mae shall redeem any or all of the Series T Preferred Stock as aforesaid, Fannie Mae will give written or electronic notice of any such redemption to Holders of Series T Preferred Stock not less than 30 days prior to the date fixed by the Board of Directors of Fannie Mae, or duly authorized committee thereof, for such redemption. Each such notice will state: (1) the number of shares of Series T Preferred Stock to be redeemed and, if fewer than all of the shares of Series T Preferred Stock held by a Holder are to be redeemed, the number of shares to be redeemed from such Holder; (2) the redemption price; (3) the redemption date; and (4) the place at which a Holder's certificate(s) representing shares of Series T Preferred Stock must be presented upon such redemption. Failure to give notice, or any defect in the notice, to any Holder of Series T Preferred Stock shall not affect the validity of the proceedings for the redemption of shares of any other Holder of Series T Preferred Stock being redeemed.

(c) Notice having been given as herein provided, from and after the redemption date, dividends on the Series T Preferred Stock called for redemption shall cease to accrue and such Series T Preferred Stock called for redemption will no longer be deemed outstanding, and all rights of the Holders thereof as registered holders of such shares of Series T Preferred Stock will cease. Upon surrender in accordance with said notice of the certificate(s) representing shares of Series T Preferred Stock so redeemed (properly endorsed or assigned for transfer, if the Board of Directors of Fannie Mae, or a duly authorized committee thereof, shall so require and the notice shall so state), such shares shall be redeemed by Fannie Mae at the redemption price aforesaid. Any shares of Series T Preferred Stock that shall at any time have been redeemed shall, after such redemption, be cancelled and not reissued. In case fewer than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without cost to the Holder thereof.

(d) The Series T Preferred Stock will not be subject to any mandatory redemption, sinking fund or other similar provisions. In addition, Holders of Series T Preferred Stock will have no right to require redemption of any shares of Series T Preferred Stock.

4. Liquidation Rights.

(a) Upon any voluntary or involuntary dissolution, liquidation or winding up of Fannie Mae, after payment or provision for the liabilities of Fannie Mae and the expenses of such dissolution, liquidation or winding up, the Holders of outstanding shares of the Series T Preferred Stock will be entitled to receive out of the assets of Fannie Mae or proceeds thereof available for distribution to stockholders, before any payment or distribution of assets is made to holders of Fannie Mae's common stock (or any other stock of Fannie Mae ranking, as to the distribution of assets upon dissolution, liquidation or winding up of Fannie Mae, junior to the Series T Preferred Stock), the amount of $25 per share plus an amount, determined in accordance with Section 2 above, equal to the dividend (whether or not declared) for the then-current quarterly Dividend Period accrued to but excluding the date of such liquidation payment, but without accumulation of unpaid dividends on the Series T Preferred Stock for prior Dividend Periods.

(b) If the assets of Fannie Mae available for distribution in such event are insufficient to pay in full the aggregate amount payable to Holders of Series T Preferred Stock and holders of all other classes or series of stock of Fannie Mae, if any, ranking, as to the distribution of assets upon dissolution, liquidation or winding up of Fannie Mae, on a parity with the Series T Preferred Stock, the assets will be distributed to the Holders of Series T Preferred Stock and holders of all such other stock pro rata, based on the full respective preferential amounts to which they are entitled (but without, in the case of any non-cumulative preferred stock, accumulation of unpaid dividends for prior Dividend Periods).

(c) Notwithstanding the foregoing, Holders of Series T Preferred Stock will not be entitled to be paid any amount in respect of a dissolution, liquidation or winding up of Fannie Mae until holders of any classes or series of stock of Fannie Mae ranking, as to the distribution of assets upon dissolution, liquidation or winding up of Fannie Mae, prior to the Series T Preferred Stock have been paid all amounts to which such classes or series are entitled.

(d) Neither the sale, lease or exchange (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of Fannie Mae, nor the merger, consolidation or combination of Fannie Mae into or with any other entity or the merger, consolidation or combination of any other entity into or with Fannie Mae, shall be deemed to be a dissolution, liquidation or winding up, voluntary or involuntary, for the purposes of this Section 4.

(e) After payment of the full amount of the distribution of assets upon dissolution, liquidation or winding up of Fannie Mae to which they are entitled pursuant to paragraphs (a), (b) and (c) of this Section 4, the Holders of Series T Preferred Stock will not be entitled to any further participation in any distribution of assets by Fannie Mae.

5. No Conversion or Exchange Rights.

The Holders of shares of Series T Preferred Stock will not have any rights to convert such shares into or exchange such shares for shares of any other class or classes, or of any other series of any class or classes, of stock or obligations of Fannie Mae.

6. No Pre-Emptive Rights.

No Holder of Series T Preferred Stock shall be entitled as a matter of right to subscribe for or purchase, or have any pre-emptive right with respect to, any part of any new or additional issue of stock of any class whatsoever, or of securities convertible into any stock of any class whatsoever, or any other shares, rights, options or other securities of any class whatsoever, whether now or hereafter authorized and whether issued for cash or other consideration or by way of dividend.

7. Voting Rights; Amendments.

(a) Except as provided below, the Holders of Series T Preferred Stock will not be entitled to any voting rights, either general or special.

(b) Without the consent of the Holders of Series T Preferred Stock, Fannie Mae will have the right to amend, alter, supplement or repeal any terms of this Certificate or the Series T Preferred Stock (1) to cure any ambiguity, or to cure, correct or supplement any provision contained in this Certificate of Designation that may be defective or inconsistent with any other provision herein or (2) to make any other provision with respect to matters or questions arising with respect to the Series T Preferred Stock that is not inconsistent with the provisions of this Certificate of Designation so long as such action does not materially and adversely affect the interests of the Holders of Series T Preferred Stock; provided, however, that any increase in the amount of authorized or issued Series T Preferred Stock or the creation and issuance, or an increase in the authorized or issued amount, of any other class or series of stock of Fannie Mae, whether ranking prior to, on a parity with or junior to the Series T Preferred Stock, as to the payment of dividends or the distribution of assets upon dissolution, liquidation or winding up of Fannie Mae, or otherwise, will not be deemed to materially and adversely affect the interests of the Holders of Series T Preferred Stock.

(c) Except as set forth in paragraph (b) of this Section 7, the terms of this Certificate or the Series T Preferred Stock may be amended, altered, supplemented, or repealed only with the consent of the Holders of at least two-thirds of the shares of Series T Preferred Stock then outstanding, given in person or by proxy, either in writing or at a meeting of stockholders at which the Holders of Series T Preferred Stock shall vote separately as a class. On matters requiring their consent, Holders of Series T Preferred Stock will be entitled to one vote per share.

(d) The rules and procedures for calling and conducting any meeting of Holders (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such a meeting, the obtaining of written consents, and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules that the Board of Directors of Fannie Mae, or a duly authorized committee thereof, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of any national securities exchange on which the Series T Preferred Stock are listed at the time.

8. Additional Classes or Series of Stock.

The Board of Directors of Fannie Mae, or a duly authorized committee thereof, without the consent of the Holders of the Series T Preferred Stock, 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 Fannie Mae, and to determine and fix the distinguishing characteristics and the relative rights, preferences, privileges and other terms of the shares thereof. Any such class or series of stock may rank prior to, on a parity with or junior to the Series T Preferred Stock as to the payment of dividends or the distribution of assets upon dissolution, liquidation or winding up of Fannie Mae, or otherwise.

9. Priority.

For purposes of this Certificate of Designation, any stock of any class or series of Fannie Mae shall be deemed to rank:

(a) Prior to the shares of Series T Preferred Stock, either as to the payment of dividends or the distribution of assets upon dissolution, liquidation or winding up of Fannie Mae, if the holders of such class or series shall be entitled to the receipt of dividends or of amounts distributable upon dissolution, liquidation or winding up of Fannie Mae, as the case may be, in preference or priority to the Holders of shares of Series T Preferred Stock.

(b) On a parity with shares of Series T Preferred Stock, either as to the payment of dividends or the distribution of assets upon dissolution, liquidation or winding up of Fannie Mae, whether or not the dividend rates or amounts, dividend payment dates or redemption or liquidation prices per share, if any, be different from those of the Series T Preferred Stock, if the holders of such class or series shall be entitled to the receipt of dividends or of amounts distributable upon dissolution, liquidation or winding up of Fannie Mae, as the case may be, in proportion to their respective dividend rates or amounts or liquidation prices, without preference or priority, one over the other, as between the holders of such class or series and the Holders of shares of Series T Preferred Stock.

(c) Junior to shares of Series T Preferred Stock, either as to the payment of dividends or the distribution of assets upon dissolution, liquidation or winding up of Fannie Mae, if such class shall be common stock of Fannie Mae or if the Holders of shares of Series T Preferred Stock shall be entitled to the receipt of dividends or of amounts distributable upon dissolution, liquidation or winding up of Fannie Mae, as the case may be, in preference or priority over the holders of such class or series.

(d) The shares of Preferred Stock of Fannie Mae designated "5.25% Non-Cumulative Preferred Stock, Series D" (the "Series D Preferred Stock"), "5.10% Non-Cumulative Preferred Stock, Series E" (the "Series E Preferred Stock"), "Variable Rate Non-Cumulative Preferred Stock, Series F" (the "Series F Preferred Stock"), "Variable Rate Non-Cumulative Preferred Stock, Series G" (the "Series G Preferred Stock"), "5.81% Non-Cumulative Preferred Stock, Series H" (the "Series H Preferred Stock"), "5.375% Non-Cumulative Preferred Stock, Series I" (the "Series I Preferred Stock"), "5.125% Non-Cumulative Preferred Stock, Series L" (the "Series L Preferred Stock"), "4.75% Non-Cumulative Preferred Stock, Series M" (the "Series M Preferred Stock"), "5.50% Non-Cumulative Preferred Stock, Series N" (the "Series N Preferred Stock"), "Non-Cumulative Preferred Stock, Series O" (the "Series O Preferred Stock"), "Non-Cumulative Convertible Series 2004-1 Preferred Stock" (the "Series 2004-1 Preferred Stock"), "Variable Rate Non-Cumulative Preferred Stock, Series P" (the "Series P Preferred Stock"), "6.75% Non-Cumulative Preferred Stock, Series Q" (the "Series Q Preferred Stock"), "7.625% Non-Cumulative Preferred Stock, Series R" (the "Series R Preferred Stock"), "Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series S" (the "Series S Preferred Stock"), and "8.75% Non-Cumulative Mandatory Convertible Preferred Stock, Series 2008-1" (the "Series 2008-1 Preferred Stock") shall be deemed to rank on a parity with shares of Series T Preferred Stock as to the payment of dividends and the distribution of assets upon dissolution, liquidation or winding up of Fannie Mae. Accordingly, the holders of record of Series D Preferred Stock, the holders of record of Series E Preferred Stock, the holders of record of Series F Preferred Stock, the holders of record of Series G Preferred Stock, the holders of record of Series H Preferred Stock, the holders of record of Series I Preferred Stock, the holders of record of Series L Preferred Stock, the holders of record of Series M Preferred Stock, the holders of record of Series N Preferred Stock, the holders of record of Series 2004-1 Preferred Stock, the holders of record of Series O Preferred Stock, the holders of record of Series P Preferred Stock, the holders of record of Series Q Preferred Stock, the holders of record of Series R Preferred Stock, the holders of record of Series S Preferred Stock, the holders of record of Series 2008-1 Preferred Stock and the Holders of Series T Preferred Stock shall be entitled to the receipt of dividends and of amounts distributable upon dissolution, liquidation or winding up of Fannie Mae, as the case may be, in proportion to their respective dividend rates or amounts or liquidation prices, without preference or priority, one over the other.

10. Transfer Agent, Dividend Disbursing Agent and Registrar.

Fannie Mae hereby appoints Computershare Trust Company, N.A., as its initial transfer agent, dividend disbursing agent and registrar for the Series T Preferred Stock. Fannie Mae may at any time designate an additional or substitute transfer agent, dividend disbursing agent and registrar for the Series T Preferred Stock.

11. Notices.

Any notice provided or permitted by this Certificate of Designation to be made upon, or given or furnished to, the Holders of Series T Preferred Stock by Fannie Mae shall be made by first-class mail, postage prepaid, to the addresses of such Holders as they appear on the books and records of Fannie Mae or by other written or electronic means to designated accounts of such Holders. Such notice shall be deemed to have been sufficiently made upon deposit thereof in the United States mail or electronic transmission to a designated account of the Holder. Notwithstanding anything to the contrary contained herein, in the case of the suspension of regular mail service or by reason of any other cause it shall be impracticable, in Fannie Mae's judgment, to give notice by mail, or if Fannie Mae has reason to believe other notification means would be ineffective, then such notification may be made, in Fannie Mae's discretion, by publication in a newspaper of general circulation in The City of New York or by hand delivery to the addresses of Holders as they appear on the books and records of Fannie Mae.

Receipt and acceptance of a share or shares of the Series T Preferred Stock by or on behalf of a Holder shall constitute the unconditional acceptance by such Holder (and all others having beneficial ownership of such share or shares) of all of the terms and provisions of this Certificate of Designation. No signature or other further manifestation of assent to the terms and provisions of this Certificate of Designation shall be necessary for its operation or effect as between Fannie Mae and the Holder (and all such others).

FREDDIE MAC

EIGHTH AMENDED AND RESTATED CERTIFICATE OF DESIGNATION, POWERS, PREFERENCES, RIGHTS, PRIVILEGES, QUALIFICATIONS, LIMITATIONS, RESTRICTIONS, TERMS AND CONDITIONS of VOTING COMMON STOCK (No Par Value Per Share)

I, ROBERT E. BOSTROM, Corporate Secretary of the Federal Home Loan Mortgage Corporation, a government-sponsored enterprise of the United States of America ("Freddie Mac"), do hereby certify, pursuant to resolutions adopted on September 7, 2008 by the Federal Housing Finance Agency in its capacity as the conservator of Freddie Mac (the "Conservator") and the authority delegated to the authorized officers thereunder (which resolutions are in full force and effect), that:

— Pursuant to Section 304(a) of the Federal Home Loan Mortgage Corporation Act, as amended (12 U.S.C. §1453(a)) (the "Freddie Mac Act"), the voting common stock of Freddie Mac (the "Common Stock") shall be issued to such holders and in the manner and amount, and subject to any limitations on concentration of ownership, as Freddie Mac prescribes; and

— The Common Stock has the following designation, powers, rights, privileges, qualifications, limitations, restrictions, terms and conditions:

1. Designation, Par Value and Number of Shares.

The Common Stock of Freddie Mac shall be designated "Common Stock," shall have no par value per share, and shall consist of 4,000,000,000 shares that have been issued or authorized for issuance (without limitation upon the authority of the Board of Directors to authorize the issuance of additional shares from time to time).

2. Dividends.

(a) The holders of outstanding shares of Common Stock shall be entitled to receive, ratably, dividends (in cash, stock or other property), when, as and if declared by the Board of Directors out of assets legally available therefor. The amount of dividends, if any, to be paid to holders of the outstanding Common Stock from time to time and the dates of payment shall be fixed by the Board of Directors of Freddie Mac (the "Board of Directors"). Each such dividend shall be paid to the holders of record of outstanding shares of the Common Stock as they appear in the books and records of Freddie Mac on such record date, not to be earlier than 45 days nor later than 10 days preceding the applicable dividend payment date, as shall be fixed in advance by the Board of Directors.

(b) Holders of shares of Common Stock shall not be entitled to any dividends, in cash, stock or other property, other than as herein provided and shall not be entitled to interest, or any sum in lieu of interest, on or in respect of any dividend payment.

3. Voting Rights.

(a) The holders of the outstanding shares of Common Stock shall have the right to vote (i) for the election of directors of Freddie Mac to the extent prescribed by applicable federal law, (ii) with respect to the amendment, alteration, supplementation or repeal of the provisions of this Certificate to the extent provided in Section 10(h) hereof, and (iii) with respect to such other matters, if any, as may be prescribed by the Board of Directors, in its sole discretion, or by applicable federal law; provided, however, that no vote shall be cast or counted in respect of any shares of Common Stock which, pursuant to procedures implemented in accordance with Section 7(b) hereof, may not be voted, nor shall such shares be considered outstanding for the purposes of calculating the requisite number or percentage of shares whose vote is required as to any matter.

(b) Holders of the outstanding shares of Common Stock entitled to vote shall be entitled to one vote per share on all matters presented to them for their vote. Such vote shall be cast in person or by proxy at a meeting of such holders or, if so determined by the Board of Directors, by written consent of the holders of the requisite number of shares of Common Stock. 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 Common 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 vote of holders of Common Stock at any such meeting or otherwise, as to the conduct of such vote, as to quorum requirements therefor, as to the requisite number or percentage of affirmative votes required for the approval of any matter and as to all related questions. Such rules and procedures shall conform to the requirements of any national securities exchange on which the Common Stock may be listed.

4. No Redemption.

Freddie Mac shall not, and shall not have the right to, redeem any shares of Common Stock whether for cash, stock or other property.

5. No Conversion Rights.

The holders of shares of Common Stock shall not have any right to convert such shares into or exchange such shares for any other class or series of stock or obligation of Freddie Mac.

6. No Preemptive Rights.

No holder of Common 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 Freddie Mac which at any time may be sold or offered for sale by Freddie Mac.

7. Ownership Reports.

(a) Except as otherwise provided herein, any beneficial owner (as such term is defined in Securities and Exchange Commission ("SEC") Rule 13d-3 under the Securities Exchange Act of 1934 (the "Exchange Act")) of the outstanding Common Stock shall furnish in writing to Freddie Mac and to each exchange where the Common Stock is listed such statements of beneficial ownership of the Common Stock, and amendments thereto, on such forms, in such time periods and in such manner as would be required by Exchange Act Sections 13(d) and 13(g) and by SEC regulations thereunder if the Common Stock were an equity security of a class registered under Exchange Act Section 12. Statements of beneficial ownership furnished to Freddie Mac under this Section 7 shall be publicly available and may be furnished to any person upon request and payment of any costs therefor, and Freddie Mac shall assume no liability for the contents of such documents. All references to the Exchange Act and any rules and regulations promulgated thereunder shall mean such statute, or such rules and regulations, as amended and in effect from time to time, including any successor statute, rules or regulations.

(b) The CEO or his designee shall be empowered to take such steps and implement such procedures as he deems to be necessary or appropriate to ensure compliance with the reporting requirements set forth in this Section 7, including the refusal to permit the voting of any excess shares of Common Stock beneficially owned by any person failing to comply with such requirements. For purposes of this Section 7, excess shares shall include all shares of Common Stock beneficially owned by a person other than that number of shares the beneficial ownership of which would not give rise to a reporting obligation if such number constituted all of the shares beneficially owned by such person.

(c) Any beneficial owner of shares of Common Stock believed by Freddie Mac to be in violation of the reporting requirements imposed by this Section 7 shall be required to respond to inquiries by the CEO or his designee made for the purpose of determining the existence, nature or extent of any such violation. Such inquiry shall be made in writing sent by first class mail, postage prepaid, shall set forth the reporting requirements referred to in this Section 7 and shall require such beneficial owner to provide Freddie Mac with such information concerning such beneficial ownership as may be specified in such inquiry. If such inquiry shall not have been responded to in a manner satisfactory to Freddie Mac within five business days after the date on which it was mailed, the shares to which the inquiry pertains shall be considered for all purposes to be beneficially owned in violation of the reporting requirements imposed by this Section 7, and the CEO or his designee shall be authorized to invoke the measures authorized by paragraph (b) of this Section 7, including the refusal to permit the voting of such shares.

(d) Any resolution or determination of, or decision or exercise of any discretion or power by, the Board of Directors or the officers, employees and agents of Freddie Mac hereunder shall be conclusive and binding on any beneficial owner of Common Stock affected and all persons concerned and shall not be open to challenge, whether as to its validity or otherwise, on any grounds whatsoever, and the Board of Directors, Freddie Mac and its officers, employees and agents shall not have any liability whatsoever in respect thereof.

(e) Each certificate representing a share or shares of Common Stock issued after December 10, 1990 shall bear a conspicuous legend to the effect that ownership of the Common Stock is subject to the reporting requirements of this Section 7.

(f) The Board of Directors shall have the right at any time to remove, relax or grant exceptions to the reporting requirements imposed under this Section 7.

8. Liquidation Rights.

(a) Upon the dissolution, liquidation or winding up of Freddie Mac, after payment of or provision for the liabilities of Freddie Mac and the expenses of such dissolution, liquidation or winding up, and after any payment or distribution shall have been made on any other class or series of stock of Freddie Mac ranking prior to the Common Stock upon liquidation, the holders of the outstanding shares of the Common Stock shall be entitled to receive out of the assets of Freddie Mac available for distribution to stockholders, before any payment or distribution shall be made on any other class or series of stock of Freddie Mac ranking junior to the Common Stock upon liquidation, the amount of $0.21 per share, plus a sum equal to all dividends declared but unpaid on such shares to the date of final distribution. The holders of the outstanding shares of any class or series of stock of Freddie Mac ranking prior to, on a parity with or junior to the Common Stock upon liquidation shall also receive out of such assets payment of any corresponding preferential amount to which the holders of such stock may, by the terms thereof, be entitled. Thereafter, subject to the foregoing and to the provisions of paragraph (b) of this Section 8, the balance of any assets of Freddie Mac available for distribution to stockholders upon such dissolution, liquidation or winding up shall be distributed to the holders of outstanding Common Stock in the aggregate.

(b) Notwithstanding the foregoing, upon the dissolution, liquidation or winding up of Freddie Mac, the holders of shares of the Common Stock then outstanding shall not be entitled to be paid any amounts to which such holders are entitled pursuant to paragraph (a) of this Section 8 unless and until the holders of any classes or series of stock of Freddie Mac ranking prior upon liquidation to the Common Stock have been paid all amounts to which such classes or series of stock are entitled pursuant to their respective terms.

(c) Neither the sale of all or substantially all the property or business of Freddie Mac, nor the merger, consolidation or combination of Freddie Mac 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 Freddie Mac, and to determine and fix the distinguishing characteristics and the relative rights, preferences, privileges and other terms of the shares thereof. Any such class or series of stock may rank prior to or on a parity with or junior to the Common Stock as to dividends or upon liquidation or otherwise.

10. Miscellaneous.

(a) Any stock of any class or series of Freddie Mac shall be deemed to rank:

(i) prior to the shares of the Common Stock, either as to dividends or upon liquidation, if the holder of such class or series shall be entitled to the receipt of dividends or of amounts distributable upon dissolution, liquidation or winding up of Freddie Mac, as the case may be, in preference or priority to the holders of shares of the Common Stock;

(ii) on a parity with shares of the Common Stock, either as to dividends or upon liquidation, whether or not the dividend rates or amounts, dividend payment dates or redemption or liquidation prices per share, if any, be different from those of the Common Stock, if the holders of such class or series shall be entitled to the receipt of dividends or of amounts distributable upon dissolution, liquidation or winding up of Freddie Mac, as the case may be, in proportion to their respective dividend rates or amounts or liquidation prices, without preference or priority, one over the other, as between the holders of such class or series and the holders of shares of the Common Stock; and

(iii) junior to shares of the Common Stock, either as to dividends or upon liquidation, if the holders of shares of the Common Stock shall be entitled to the receipt of dividends or of amounts distributable upon dissolution, liquidation or winding up of Freddie Mac, as the case may be, in preference or priority to the holders of shares of such class or series.

(b) Freddie Mac and any agent of Freddie Mac may deem and treat the holder of a share or shares of Common Stock, as shown in Freddie Mac's books and records, as the absolute owner of such share or shares of Common Stock for the purpose of receiving payment of dividends in respect of such share or shares of Common Stock and for all other purposes whatsoever, and neither Freddie Mac nor any agent of Freddie Mac 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 Freddie Mac on or with respect to any such share or shares of Common Stock.

(c) The shares of the Common Stock, when duly issued, shall be fully paid and non-assessable. Any shares owned by Freddie Mac shall retain the status of issued shares, unless and until Freddie Mac shall retire and cancel the same, but such shares shall not be regarded as outstanding while so owned.

(d) Except as otherwise provided in Freddie Mac's Employee Stock Purchase Plan or any other executive compensation or employee benefit plan or any direct stock purchase plan currently in effect or hereafter adopted by Freddie Mac, the Common Stock shall be issued, and shall be transferable on the books of Freddie Mac, only in whole shares, it being intended that, except as provided in said Plan or plans, no fractional interests in shares of the Common Stock shall be created or recognized by Freddie Mac.

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

(f) This Certificate and the respective rights and obligations of Freddie Mac and the holders of Common Stock with respect to such Common 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 Freddie Mac's enabling legislation, its public purposes or any provision of this Certificate.

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

(h) Freddie Mac, 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 affirmative vote of the holders of the Common Stock, Freddie Mac 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 materially and adversely affect the interests of the holders of the Common Stock.

(ii) The affirmative vote by the holders of shares representing at least 66 2/3% of all of the shares of the Common Stock at the time outstanding and entitled to vote, voting together as a class, shall be necessary for authorizing, effecting or validating the amendment, alteration, supplementation or repeal of any of the provisions of this Certificate if such amendment, alteration, supplementation or repeal would materially and adversely affect the powers, preferences, rights, privileges, qualifications, limitations, restrictions, terms or conditions of the Common Stock. The creation and issuance of any other class or series of stock of Freddie Mac, whether ranking prior to, on a parity with or junior to the Common Stock, or any split or reverse split of the Common Stock (including any attendant proportionate adjustment to the par value thereof), shall not be deemed to constitute such an amendment, alteration, supplementation or repeal.

(i) RECEIPT AND ACCEPTANCE OF A SHARE OR SHARES OF COMMON 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 FREDDIE MAC AND THE HOLDER (AND ALL SUCH OTHERS).

IN WITNESS WHEREOF, I have executed this Certificate as of this 10th day of September, 2008.

[Seal]

Robert E. Bostrom, *Corporate Secretary*

FILED
SEP 30 2014
Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PERRY CAPITAL LLC, **Plaintiff,** **v.** **JACOB J. LEW, *et al.*,** **Defendants.**	**Civil No. 13-1025 (RCL)**
FAIRHOLME FUNDS, INC., *et al.*, **Plaintiffs,** **v.** **FEDERAL HOUSING FINANCE AGENCY, *et al.*,** **Defendants.**	**Civil No. 13-1053 (RCL)**
ARROWOOD INDEMNITY COMPANY, *et al.*, **Plaintiffs,** **v.** **FEDERAL NATIONAL MORTGAGE ASSOCATION, *et al.*,** **Defendants.**	**Civil No. 13-1439 (RCL)**

In re Fannie Mae/Freddie Mac Senior Preferred Stock Purchase Agreement Class Action Litigations

This Memorandum Opinion relates to:
ALL CASES

Miscellaneous No. 13-1288 (RCL)

CLASS ACTION

MEMORANDUM OPINION

Before the Court are motions to dismiss or, in the alternative, for summary judgment, filed by the defendants United States Department of the Treasury ("Treasury") and Federal Housing Finance Agency ("FHFA"), as well as a cross-motion for summary judgment on Administrative Procedure Act ("APA") claims filed by the *Perry*, *Fairholme*, and *Arrowood* plaintiffs (collectively, "individual plaintiffs"). Upon consideration of the defendants' respective motions to dismiss, the individual plaintiffs' cross-motion for summary judgment, the various opposition and reply briefs thereto filed by the defendants, the individual plaintiffs, and the class action plaintiffs ("class plaintiffs"), the applicable law, and the entire record herein, the Court will GRANT the defendants' motions to dismiss and DENY the individual plaintiffs' cross-motion for summary judgment.

I. BACKGROUND

This matter is brought before the Court by both a class action lawsuit and a set of three individual lawsuits. These four lawsuits contain numerous overlapping, though not identical, claims. The purported class plaintiffs consist of private individual and institutional investors who own either preferred or common stock in the Federal National Mortgage Association ("Fannie Mae") or the Federal Home Loan Mortgage Corporation ("Freddie Mac"). Am. Compl. at ¶¶ 30-44, *In re Fannie Mae/Freddie Mac Senior Preferred Stock Purchase Agreement Class*

Action Litigs., No. 13-1288 (D.D.C. Dec. 3, 2013), ECF No. 4 ("*In re Fannie Mae/Freddie Mac* Am. Compl."); Derivative Compl. at ¶¶ 19-21, *In re Fannie Mae/Freddie Mac*, No. 13-1288 (D.D.C. July 30, 2014), ECF No. 39 ("*In re Fannie Mae/Freddie Mac* Derivative Compl."). The individual plaintiffs comprise a collection of private investment funds and insurance companies. Compl. at ¶¶ 25-27, *Perry Capital LLC v. Lew*, No. 13-1025 (D.D.C. July 7, 2013), ECF No. 1 ("*Perry* Compl."); Compl. at ¶¶ 18-28, *Fairholme Funds, Inc., v. FHFA*, No. 13-1053 (D.D.C. July 10, 2013), ECF No. 1 ("*Fairholme* Compl."); Compl. at ¶¶ 15-19, *Arrowood Indem. Co. v. Fannie Mae*, No. 13-1439 (D.D.C. Sept. 20, 2013), ECF No. 1 ("*Arrowood* Compl.").

Fannie Mae and Freddie Mac are government-sponsored enterprises ("GSEs"),[1] born from statutory charters issued by Congress. *See* Federal National Mortgage Association Charter Act, 12 U.S.C. §§ 1716-1723; Federal Home Loan Mortgage Corporation Act, 12 U.S.C. §§ 1451-1459. Congress created the GSEs in order to, among other goals, "promote access to mortgage credit throughout the Nation . . . by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing." 12 U.S.C. § 1716(3). In other words, the GSEs' shared purpose was to make it easier (*i.e.*, less risky) for local banks and other lenders to offer mortgages to prospective home buyers. The GSEs sought to accomplish this objective by purchasing mortgage loans from lenders, thus relieving lenders of default risk and "freeing up lenders' capital to make additional loans." *See* Treasury Defs.'s Mot. to Dismiss, or, in the Alternative, for Summ. J. at 6 (D.D.C. Jan. 17, 2014) ("Treasury Mot.").[2] In order to finance this operation, the GSEs would, primarily,

[1] While Fannie Mae and Freddie Mac are not the only GSEs, *see, e.g.*, Federal Home Loan Banks, for convenience, this Memorandum Opinion will employ the term "GSE" to refer to Fannie Mae and Freddie Mac exclusively.

[2] Rather than list each of the numerous dockets on which the briefs in this matter have been filed, this Memorandum Opinion will cite the name of the brief, the date on which it was filed on all relevant dockets, and the short form citation by which the brief will be referenced thereinafter.

pool the many mortgage loans they purchased into various mortgage-backed securities and sell these securities to investors. *See, e.g.*, Individual Pls.'s Opp'n and Cross-Mot. for Summ. J. at 4 (D.D.C. Mar. 21, 2014) ("Individual Pls.'s Opp'n").

Fannie Mae and Freddie Mac are considered government-*sponsored*, rather than government-*owned*, because both congressionally chartered entities were eventually converted, by statute, into publicly traded corporations. Housing and Urban Development Act, Pub. L. No. 90-448, § 802, 82 Stat. 536-538 (1968); Financial Institutions Reform, Recovery and Enforcement Act, Pub. L. No. 101-73, § 731, 103 Stat. 432-433 (1989). Yet despite this historically market-driven ownership structure, "the GSEs have benefitted from a public perception that the federal government had implicitly guaranteed the securities they issued; this perception allowed the GSEs to purchase more mortgages and [mortgage-backed securities], at cheaper rates, than would otherwise prevail in the private market." Treasury Mot. at 6-7.

By 2008, the United States economy faced dire straits, in large part due to a massive decline within the national housing market. *See* Individual Pls.'s Opp'n at 7. "As a result of the housing crisis, the value of the [GSEs'] assets . . . deteriorated and the [GSEs] suffered . . . credit losses in their portfolios." FHFA Mot. to Dismiss, or, in the Alternative, for Summ. J. at 7 (D.D.C. Jan. 17, 2014) ("FHFA Mot.").

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. *See* Individual Pls.'s Opp'n at 6; Pub. L. No. 110-289, 122 Stat. 2654. HERA established FHFA as an independent agency to supervise and regulate the GSEs. 12 U.S.C. § 4511. HERA further granted FHFA's director the authority to appoint the agency as conservator or receiver for the GSEs. 12 U.S.C.

§ 4617(a). Of most relevance to the present litigation, HERA empowered FHFA, as conservator or receiver, to "immediately succeed to—(i) all rights, titles, powers, and privileges of the [GSE], and of any stockholder, officer, or director of such [GSE] with respect to the [GSE] and the assets of the [GSE]." 12 U.S.C. § 4617(b)(2)(A)(i). The statute also set forth a "[l]imitation on court action," noting that, "[e]xcept as provided in this section or at the request of the Director, no court may take any action to restrain or affect the exercise of powers or functions of [FHFA] as a conservator or a receiver." 12 U.S.C. § 4617(f). Moreover, apparently recognizing that Treasury (*i.e.*, taxpayer) funds may soon be necessary to capitalize the struggling GSEs,[3] Congress, under HERA, amended the GSEs' charters to temporarily authorize Treasury to "purchase any obligations and other securities issued by the [GSEs]." 12 U.S.C. § 1455(*l*)(1)(A) (Freddie Mac); 12 U.S.C. § 1719(g)(1)(A) (Fannie Mae).[4] This provision also provided that the "Secretary of the Treasury may, at any time, exercise any rights received in connection with such purchases." 12 U.S.C. § 1719(g)(2)(A). Treasury's authority to invest in the GSEs expired on December 31, 2009. 12 U.S.C. § 1719(g)(4).

Following the GSEs' unsuccessful effort to "raise capital in the private markets," FHFA Mot. at 7-8, FHFA placed the GSEs into conservatorship on September 6, 2008. *See, e.g.*, Class Pls.'s Opp'n at 7 (D.D.C. Mar. 21, 2014) ("Class Pls.'s Opp'n"). One day later, Treasury, pursuant to 12 U.S.C. § 1719(g), entered into Senior Preferred Stock Purchase Agreements ("PSPAs") with each of the GSEs. Individual Pls.'s Opp'n at 8. Under the initial PSPAs,

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[3] The purpose of HERA's provision authorizing Treasury to invest in the GSEs was, in part, to "prevent disruptions in the availability of mortgage finance"—disruptions presumably due to the challenges confronting the GSEs in 2008. *See* 12 U.S.C. § 1455(*l*)(1)(B); 12 U.S.C. § 1719(g)(1)(B) ("Emergency determination required[.] In connection with any use of this [purchasing] authority, the [Treasury] Secretary must determine that such actions are necessary to—(i) provide stability to the financial markets; (ii) prevent disruptions in the availability of mortgage finance; and (iii) protect the taxpayer.").

[4] Since 12 U.S.C. § 1455(*l*) and 12 U.S.C. § 1719(g) are identical provisions, this Memorandum Opinion, hereinafter, will refer only to the Fannie Mae provision, § 1719(g).

Treasury committed to provide up to $100 billion in funding to each GSE "to ensure that their assets were equal to their liabilities"—*i.e.*, to "cure [the GSEs'] negative net worth"—at the end of any fiscal quarter. *Id.*; FHFA Mot. at 11. On May 6, 2009, Treasury and the GSEs, through FHFA, entered into the First Amendment to the PSPAs, whereby Treasury doubled its funding cap to $200 billion for each GSE. Individual Pls.'s Opp'n at 11. On December 24, 2009, the parties executed the Second Amendment, which permitted the GSEs to continue to "draw unlimited sums from Treasury [as required to cure any quarterly negative net worth] until the end of 2012," and then, as of December 31, 2012, permanently fixed the funding cap for each GSE (at an amount that, in the end, totaled greater than $200 billion per GSE), in accordance with an agreed-upon formula. *Id.* at 11-12; FHFA Mot. at 12; *see also* Treasury AR at 190-91, 196-97.[5]

In exchange for its funding commitment, Treasury received senior preferred stock in each GSE, which entitled Treasury to four principal contractual rights under the PSPAs. *See, e.g.*, Treasury AR at 14. First, Treasury received a senior liquidation preference[6] of $1 billion for each GSE *plus* a dollar-for-dollar increase each time the GSEs drew upon Treasury's funding commitment. Individual Pls.'s Opp'n at 8-9 (citing Treasury AR at 100, 133). Second, the PSPAs entitled Treasury to dividends equivalent to 10% of Treasury's existing liquidation preference, paid quarterly.[7] *Id.* at 9 (citing AR at 32-33, 67-68); Treasury Mot. at 13. Third,

[5] Citations to the administrative record filed by the Treasury defendants, *e.g.*, Administrative R., *In re Fannie Mae/Freddie Mac*, No. 13-1288 (D.D.C. Dec. 17, 2013), ECF No. 6, are noted as " Treasury AR." Citations to the document compilation regarding the Third Amendment filed by the FHFA defendants, *e.g., In re Fannie Mae/Freddie Mac*, ECF No. 7, are noted as "FHFA Docs."

[6] "A liquidation preference is a priority right to receive distributions from the [GSEs'] assets in the event they are dissolved." Individual Pls.'s Opp'n at 5.

[7] Given the Court's ruling to grant the defendants' motion to dismiss, there is no need to evaluate the merits of the defendants' decision to execute the Third Amendment instead of selecting other options in lieu of the cash dividend that, under the PSPAs, was equal to 10% of Treasury's liquidation preference. Nevertheless, the Court notes its disagreement with the plaintiffs' characterization of one purported alternative to the Third Amendment. The plaintiffs claim that the GSEs "had no obligation to pay the 10 percent dividend in cash," and instead could simply opt to pay a 12% dividend that would be added to the outstanding liquidation preference rather than be paid in cash each quarter. Individual Pls.'s Opp'n at 9, 66-67. However, the plaintiffs' contention that paying 10% in cash or

Treasury received warrants to acquire up to 79.9% of the GSEs' common stock at a nominal price. Individual Pls.'s Opp'n at 9; *e.g.*, Treasury AR at 15, 43. Fourth, beginning on March 31, 2010, Treasury would be entitled to a periodic commitment fee "to fully compensate [Treasury] for the support provided by the ongoing [funding] [c]ommitment." Treasury AR at 22, 56. The amount of the periodic commitment fee was to be determined by mutual agreement, and Treasury reserved the right to waive the fee for one year at a time "based on adverse conditions in the United States mortgage market." *Id.* Treasury waived the commitment fee in 2010 and 2011, and later, under the Third Amendment, the fee was suspended. Treasury Mot. at 14, 18.

As of August 8, 2012, Treasury had provided $187.5 billion in funding to the GSEs,[8] and, thus, held a total $189.5 billion senior liquidation preference between both GSEs, including the

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adding 12% to the liquidation preference was merely a matter of choice, Class Pls.'s Opp'n at 11, directly contravenes the unambiguous language of the contract. The relevant provisions, which are identical, in Treasury's respective stock certificates with each of the GSEs, state:

> "'Dividend Rate' means 10.0%; provided, however, that if at any time the [GSE] 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%."

Treasury AR at 33, 67-68 (Treasury Senior Preferred Stock Certificates § 2(c)) (emphasis added). The provision makes clear that 10% cash dividends were "required by" the stock certificates, and that 12% dividends deferred to the liquidation preference were only triggered upon a "failure" to meet the 10% cash dividend requirement. Thus, classifying the 12% dividend feature as a "penalty," as Treasury does, is surely more accurate than classifying it as a "right." *Compare* Treasury Defs.'s Reply at 49-50 (D.D.C. May 2, 2014) ("Treasury Reply"), *with* Individual Pls.'s Opp'n at 9. The plaintiffs cannot gloss over this distinction by repetitively using the phrase "in kind" to describe the 12% dividend feature. *See* Individual Pls.'s Opp'n at 9, 66-67, 80-81; Class Pls.'s Opp'n at 16. Inclusion of "in kind" within § 2(c) would have slightly improved the plaintiffs' argument that the contract expressly permitted the GSEs to simply choose between a 10% cash dividend or 12% dividend deferred to the liquidation preference. But, as plaintiffs are certainly aware, "in kind" appears nowhere within the stock certificates' dividends provision. *See* Treasury AR at 33, 67-68.

With regard to the two other hypothetical alternatives presented by the individual plaintiffs—Treasury accepting lower dividends or allowing the GSEs to use excess profits to pay down the liquidation preference and, thus, the basis for the 10% dividend—the Court has no occasion to determine whether the plaintiffs' arguments demonstrate arbitrary and capricious decisionmaking or only amount to second-guessing decisionmakers charged with exercising predictive judgments. *Compare* Individual Pls.'s Opp'n at 79-82, *with* FHFA Defs.'s Reply at 52-58 (D.D.C. May 2, 2014) ("FHFA Reply").

[8] A figure that is unchanged through 2013. *See* Treasury AR 4351.

initial $1 billion liquidation preferences from each GSE. Therefore, "the GSEs' dividend obligations to Treasury were nearly $19 billion per year." Treasury Mot. at 16.

On August 17, 2012, Treasury and the GSEs, through FHFA, agreed to the Third Amendment to the PSPA, which is the focus of this litigation. The Third Amendment "replaced the previous dividend formula with a requirement that the GSEs pay, as a dividend, the amount by which their net worth for the quarter exceeds a capital buffer of $3 billion. The capital buffer gradually declines over time by $600 million per year, and is entirely eliminated in 2018." Treasury Mot. at 18. In simpler terms, the amendment "requires Fannie Mae and Freddie Mac to pay a quarterly dividend to Treasury equal to the *entire net worth* of each Enterprise, minus a small reserve that shrinks to zero over time." Class Pls.'s Opp'n at 3. These dividend payments do not reduce Treasury's outstanding liquidation preferences. *See* Individual Pls.'s Opp'n at 16.

The plaintiffs cite multiple justifications offered publicly by the defendants for this "net worth sweep." *See* Individual Pls.'s Opp'n at 16-17. First, Treasury asserted that the amendment will end "the circular practice of the Treasury advancing funds to the [GSEs] simply to pay dividends back to Treasury." *Id.* at 16 (citing Press Release, Treasury Dep't Announces Further Steps to Expedite Wind Down of Fannie Mae and Freddie Mac (Aug. 17, 2012), *available at* http://www.treasury.gov/press-center/press-releases/Pages/tg1684.aspx); *see also* Treasury Mot. at 2, 5, 50; FHFA Mot. at 3, 15-16. However, the plaintiffs counter that in 2012, the GSEs were once again profitable and, pertinently, able to pay the 10% dividend without drawing additional funds from Treasury. *Id.* at 14-15; *but see Fairholme* Compl. at ¶ 26 (stating that "approximately $26 billion" of Treasury's current liquidation preference "were required simply to pay the 10% dividend payments owed to Treasury"). Second, quoting from the same Treasury press release, the plaintiffs note Treasury's statement that the net worth sweep is consistent with the Obama Administration's "commitment . . . that the GSEs will be wound down and will not be allowed to retain profits, rebuild capital, and return to the market in their prior form." *Id.* at 16-17. Third, according to the press release, the net worth sweep would "make sure that every dollar of earnings that Fannie Mae and Freddie Mac generate will be used to benefit taxpayers for their investment in those firms." *Id.* at 17.

Under the Third Amendment net worth sweep, the GSEs paid Treasury nearly $130 billion in 2013.[9] Treasury AR at 4352. As mentioned above, under the former dividend arrangement requiring payment equivalent to 10% of Treasury's existing liquidation preference, the GSEs would have owed nearly $19 billion. Through 2013, the cumulative draws of Treasury funding taken by the GSEs remained $187.5 billion, *id.* at 4351, and the cumulative dividends paid to Treasury by the GSEs totaled $185.2 billion, *id.* at 4352.

Notwithstanding the plaintiffs' attempt to downplay the need for a GSE bailout in the first place, *see, e.g.*, Individual Pls.'s Opp'n at 6, 10-11, the plaintiffs do not contest the initial PSPA or subsequent two amendments to the PSPA, *see, e.g.*, Class Pls.'s Opp'n at 11, but rather only challenge the Third Amendment to the PSPA. The class plaintiffs have brought claims of breach of contract, regarding allegedly promised dividends and liquidation preferences, breach of the implied covenant of good faith and fair dealing, and an unconstitutional taking, as well as derivative claims of breach of fiduciary duty. The *Perry* plaintiff has brought claims under the Administrative Procedure Act ("APA"). The *Arrowood* plaintiffs have also brought APA claims, as well as claims of breach of contract, regarding allegedly promised dividends and liquidation preferences, and breach of the implied covenant of good faith and fair dealing. The *Fairholme* plaintiffs have brought the same claims as the *Perry* and *Arrowood* plaintiffs with an additional

[9] Though this figure includes the outlier $59.3 billion dividend paid by Fannie Mae in the second quarter and $30.4 billion dividend paid by Freddie Mac in the fourth quarter. Treasury AR 4352.

claim of breach of fiduciary duty against FHFA. The parties dispute whether the *Fairholme* plaintiffs' fiduciary duty claim is direct or derivative. *See infra* n.24.

On January 17, 2014, the defendants moved to dismiss the complaints against the Third Amendment for lack of jurisdiction under Federal Rule of Civil Procedure 12(b)(1) and for failure to state a claim under Rule 12(b)(6). In the alternative, the defendants moved for summary judgment pursuant to Rule 56. In their opposition, filed March 21, 2014, the individual plaintiffs presented a cross-motion for summary judgment.

II. LEGAL STANDARD

"Federal courts are of limited jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Under Rule 12(b)(1), the plaintiffs bear the burden of demonstrating that subject matter jurisdiction exists. *Khadr v. United States*, 529 F.3d 1112, 1115 (D.C. Cir. 2008). The Court must "assume the truth of all material factual allegations in the complaint and construe the complaint liberally, granting [the] plaintiff[s] the benefit of all inferences that can be derived from the facts alleged." *Am. Nat. Ins. Co. v. F.D.I.C.*, 642 F.3d 1137, 1139 (D.C. Cir. 2011) (internal quotation marks and citation omitted). But "[b]ecause subject-matter jurisdiction focuses on the [C]ourt's power to hear the claim . . . , the [C]ourt must give the plaintiff[s'] factual allegations closer scrutiny when resolving a Rule 12(b)(1) motion than would be required for a Rule 12(b)(6) motion for failure to state a claim." *Youming Jin v. Ministry of State Sec.*, 475 F. Supp. 2d 54, 60 (D.D.C. 2007). Furthermore, when evaluating a Rule 12(b)(1) motion to dismiss, "it has been long accepted that the [Court] may make appropriate inquiry beyond the pleadings to satisfy itself on authority to entertain the case." *Haase v. Sessions*, 835 F.2d 902, 906 (D.C. Cir. 1987) (internal quotation marks and citation omitted).

A motion to dismiss is also appropriate when the complaint fails "to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). The Court does not "require heightened fact pleading of specifics, but only enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Once again, "the complaint is construed liberally in the plaintiffs' favor, and [the Court] grant[s] plaintiffs the benefit of all inferences that can be derived from the facts alleged. However, the [C]ourt need not accept inferences drawn by plaintiffs if such inferences are unsupported by the facts set out in the complaint. Nor must the [C]ourt accept legal conclusions cast in the form of factual allegations. *Kowal v. MCI Commc'ns Corp.*, 16 F.3d 1271, 1276 (D.C. Cir. 1994) (internal quotation marks and citation omitted). "If, on a motion under Rule 12(b)(6) . . . , matters outside the pleadings are presented to and not excluded by the [C]ourt, the motion must be treated as one for summary judgment under Rule 56." Fed. R. Civ. P. 12.

III. ANALYSIS

A. HERA Bars the Plaintiffs' Prayers for Declaratory, Injunctive, and Other Equitable Relief against FHFA and Treasury

By this Court's calculation, twenty-four of the thirty-one substantive prayers for relief[10] requested by the plaintiffs across their five complaints seek declaratory, injunctive, or other equitable relief against FHFA or Treasury. *See also* FHFA Mot. at 22 n.13. Such relief runs up against HERA's anti-injunction provision, which declares that "no court may take any action to restrain or affect the exercise of powers or functions of [FHFA] as a conservator or a receiver." 12 U.S.C. § 4617(f).

[10] This thirty-one prayers for relief figure does not include the two prayers for "reasonable costs, including attorneys' fees, incurred in bringing this action" and "such other and further relief as this Court deems just and proper" that appear in each of the five complaints at issue here. *See, e.g.*, *Fairholme* Compl. at ¶ 146(i) and (j).

While case law adjudicating HERA-related disputes is generally sparse, "[c]ourts interpreting the scope of [§] 4617(f) have relied on decisions addressing the nearly identical jurisdictional bar applicable to the Federal Deposit Insurance Corporation ('FDIC') conservatorships contained in 12 U.S.C. § 1821(j)."[11] *Natural Res. Def. Council, Inc. v. FHFA*, 815 F. Supp. 2d 630, 641 (S.D.N.Y. 2011), *aff'd sub nom. Town of Babylon v. FHFA*, 699 F.3d 221 (2d Cir. 2012). Congress passed the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Pub. L. No. 101-73, 103 Stat. 183, during the savings and loan crisis to enable the FDIC (and, formerly, the Resolution Trust Corporation ("RTC")) to serve as a conservator or receiver for troubled financial institutions. It was with this backdrop that the Court of Appeals for the District of Columbia Circuit, in *Freeman v. FDIC*, explained that the language of § 1821(j) "does indeed effect a sweeping ouster of courts' power to grant equitable remedies." 56 F.3d 1394, 1399 (D.C. Cir. 1995).[12] The Circuit held that the FIRREA provision precludes courts from granting "non-monetary remedies, including injunctive relief [] [and] declaratory relief" that would "effectively 'restrain' the [agency] from" exercising its statutorily authorized responsibilities. *Id.* (quoting 12 U.S.C. § 1821(j)). As the parties both agree, an equivalent bar on jurisdiction derives from HERA's substantially identical anti-injunction provision. *E.g.*, Individual Pls.'s Opp'n at 31-32.

Like a number of its sister circuits, however, this Circuit has established that, if the agency "has acted or proposes to act beyond, or contrary to, its statutorily prescribed,

[11] Section 1821(j) reads: ". . . 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).

[12] "Although this limitation on courts' power to grant equitable relief may appear drastic, it fully accords with the intent of Congress at the time it enacted FIRREA in the midst of the savings and loan insolvency crisis to enable the FDIC and the [RTC] to expeditiously wind up the affairs of literally hundreds of failed financial institutions throughout the country." *Id.* at 1398. Whether or not FHFA is "winding up the affairs of" the GSEs, the Circuit's interpretation of congressional intent to grant the FDIC enormous discretion to act as a conservator or receiver during the savings and loan crisis of 1989 applies with equal force to the mortgage finance crisis of 2008.

constitutionally permitted, powers or functions," then 12 U.S.C. § 4617(f) shall not apply. *Nat'l Trust for Historic Pres. v. FDIC*, 21 F.3d 469, 472 (D.C. Cir. 1994) (Wald, J., concurring) (internal quotation marks and citation omitted) (referring to 12 U.S.C. § 1821(j)); *see also Leon Cnty., Fla. v. FHFA*, 700 F.3d 1273, 1278 (11th Cir. 2012) ("'[I]f the FHFA were to act beyond statutory or constitutional bounds in a manner that adversely impacted the rights of others, § 4617(f) would not bar judicial oversight or review of its actions.'") (quoting *In re Freddie Mac Derivative Litig.*, 643 F. Supp. 2d 790, 799 (E.D. Va. 2009)); *Cnty. of Sonoma v. FHFA*, 710 F.3d 987, 992 (9th Cir. 2013) ("[T]he anti-judicial review provision is inapplicable when FHFA acts beyond the scope of its conservator power."). Thus, the question for this Court is whether the plaintiffs sufficiently plead that FHFA acted beyond the scope of its statutory "powers or functions . . . as a conservator" when the agency executed the Third Amendment to the PSPAs with Treasury. 12 U.S.C. § 4617(f). If not, the Court must dismiss all of the defendants' claims for declaratory, injunctive, or other equitable relief.[13]

1. Section 4617(f) Bars Claims of Arbitrary and Capricious Conduct, under APA § 706(2)(A), Which Seek Declaratory, Injunctive, or Other Equitable Relief

While there is a "strong presumption that Congress intends judicial review of administrative action," *Bowen v. Mich. Acad. of Family Physicians*, 476 U.S. 667, 670 (1986), that presumption is "defeated if the substantive statute precludes review." *Heckler v. Chaney*, 470 U.S. 821, 843 (1985) (citing 5 U.S.C. § 701(a)(1)). The plaintiffs do not discuss the applicability of 5 U.S.C. § 701(a)(1) of the APA to the present case in any of their oppositions, except to cite *Reno v. Catholic Soc. Servs.*, 509 U.S. 43, 63-64 (1993), in the individual plaintiffs' opposition and reply briefs for the proposition that the Court can preclude APA review

[13] As the Court will explain below, this is true regardless of whether the defendants have levied some of their non-monetary claims against Treasury instead of FHFA.

"only if presented with clear and convincing evidence" of congressional intent to preclude such review. *E.g.*, Individual Pls.'s Reply to Defs.'s Mot. for Summ. J. at 15-16 (D.D.C. June 2, 2014) ("Individual Pls.'s Reply"). The individual plaintiffs are correct in that the "presumption of judicial review [under the APA] is, after all, a presumption, and like all presumptions used in interpreting statutes, may be overcome by, *inter alia*, specific language . . . that is a reliable indicator of congressional intent . . . to preclude judicial review." *Bowen*, 476 U.S. at 673 (internal quotation marks and citation omitted). HERA's express anti-injunction provision, which, as explained below, necessarily covers litigation arising out of contracts executed by FHFA in accordance with its duties as a conservator, qualifies as a reliable indicator of congressional intent to preclude review of non-monetary APA claims brought against both FHFA and Treasury. Importantly, when applying FIRREA's anti-injunction provision, 12 U.S.C § 1821(j), this Circuit has only considered whether the FDIC acted beyond "its statutorily prescribed, constitutionally permitted, powers or functions" under FIRREA, specifically, and not whether it acted beyond any of its more general APA obligations under 5 U.S.C. § 702(2). *See Nat'l Trust*, 21 F.3d at 472 (Wald, J., concurring and further noting that, "given the breadth of the statutory language [of § 1821(j)], untempered by any persuasive legislative history pointing in a different direction, the statute would appear to bar a court from acting in virtually all circumstances"); *Freeman*, 56 F.3d at 1398-99; *MBIA Ins. Corp. v. FDIC*, 816 F. Supp. 2d 81, 103 (D.D.C. 2011), *aff'd*, 708 F.3d 234 (D.C. Cir. 2013); *see also Leon Cnty.*, 700 F.3d at 1278-79. In other words, this Circuit, like the APA itself, implicitly draws a distinction between acting beyond the scope of the constitution or a statute, *see* § 702(2)(B) and (C), and acting within the scope of a statute, but doing so arbitrarily and capriciously, *see* § 702(2)(A). This distinction arises directly from the text of § 4617(f), which prohibits the Court from restraining "the *exercise* of powers or functions of [FHFA]"—*i.e.*, restraining *how* FHFA employs its powers or functions—but does not prohibit review based upon the statutory or constitutional origin of the powers or functions themselves. 12 U.S.C. § 4617(f) (emphasis added). Consequently, it does appear that § 4617(f) bars all declaratory, injunctive, or other equitable relief stemming from claims of arbitrary and capricious decisionmaking, under APA § 706(2)(A). Thus, the two counts in each of the *Perry*, *Fairholme*, and *Arrowood* Complaints, and related prayers for relief, that claim APA violations for arbitrary and capricious conduct by both Treasury and FHFA are hereby dismissed pursuant to Rule 12(b)(1).[14]

2. Section 4617(f) Applies to Treasury's Authority under HERA

As a threshold matter, the plaintiffs contend that § 4617(f) does not bar claims against Treasury because the provision only governs claims against FHFA. However, the defendants' argument that granting relief against the counterparty to a contract with FHFA would directly restrain FHFA's ability as a conservator vis-à-vis that contract is based on sound reasoning. *See, e.g.*, Treasury Reply at 12-13 (collecting cases outside of this Circuit). Conduct by a counterparty that is required under a contract with FHFA does not merely constitute "a peripheral connection to FHFA's activities as the [GSEs'] conservator." *See* Individual Pls.'s Opp'n at 29. To the contrary, such interdependent, contractual conduct is directly connected to FHFA's activities as a conservator. A plaintiff is not entitled to use the technical wording of her

[14] The class, *Arrowood*, and *Fairholme* plaintiffs each present a claim of breach of the implied covenant of good faith and fair dealing that closely parallels the individual plaintiffs' APA claims for arbitrary and capricious conduct. *See, e.g.*, *In re Fannie Mae/Freddie Mac* Am. Compl. at ¶ 161 (". . . Fannie Mae, acting through FHFA, acted arbitrarily and unreasonably and not in good faith or with fair dealing toward the members of the Fannie Preferred Class."). Given the breadth of HERA and this Circuit's wariness toward evaluating *how* FHFA carries out its conservatorship responsibilities, *any* claim—APA- or contract-based—dependent upon allegations of arbitrary and capricious behavior coupled with a request for equitable relief probably should be summarily dismissed under § 4617(f). Yet regardless of whether the Circuit sees fit to establish a categorical rule, the plaintiffs' claims of breach of the implied covenant which seek equitable relief are still generally dismissed on § 4617(f) grounds because the Court finds that FHFA acted within its statutory authority under HERA. *See infra* Section III(A)(4). And because some plaintiffs include within their breach of the implied covenant allegations a request for monetary relief, dismissal is also proper on ripeness and failure to state a claim grounds. *See infra* Section III(C).

complaint—*i.e.*, bringing a claim against a counterparty when the contract in question is intertwined with FHFA's responsibilities as a conservator—as an end-run around HERA. Therefore, § 4617(f) applies generally to litigation concerning a contract signed by FHFA pursuant to its powers as a conservator.

Additionally, when the counterparty to FHFA's contract—Treasury—is also a government entity operating based on authority derived from HERA, *e.g.* 12 U.S.C. § 1719(g) (temporarily authorizing Treasury to purchase GSE securities), HERA's anti-injunction provision may be logically extended to that government counterparty. Likewise, if FHFA, as a conservator or receiver, signs a contract with another government entity that is acting beyond the scope of its HERA powers, then FHFA is functionally complicit in its counterparty's misconduct, and such unlawful actions may be imputed to FHFA. Here, as noted above, there can be little doubt that enjoining Treasury from partaking in the Third Amendment would restrain FHFA's uncontested authority to determine how to conserve the viability of the GSEs. Accordingly, the Court must decide whether Treasury acted in contradiction of its temporary power, under HERA, to invest in the GSEs.

The individual plaintiffs argue that Treasury acted beyond the scope of HERA because the Third Amendment constitutes the purchase of new GSE securities after HERA's December 31, 2009 sunset provision and because Treasury violated the APA by acting arbitrarily and capriciously when entering into the net worth sweep. Here, given § 4617(f)'s bar on non-monetary claims of arbitrary and capricious decisionmaking under the APA, the Court must only consider whether Treasury purchased new securities through the Third Amendment.

3. *Treasury's Execution of the Third Amendment Does Not Constitute the Purchase of New Securities in Contravention of HERA*

The individual plaintiffs argue that Treasury violated the sunset provision associated with its authority to purchase GSE securities under 12 U.S.C. § 1719(g) because the Third Amendment was not an "exercise of rights" under the statute and because the Third Amendment was effectively a purchase of new securities after December 31, 2009. Individual Pls.'s Opp'n at 37. Both claims are unpersuasive.

Asserting that the Third Amendment was not the exercise of a right, as allegedly required for any "market participa[tion]" after 2009, the individual plaintiffs state that, "[a]s of 2010, Treasury's authority as a market participant was limited to 'hold[ing], exercis[ing] any rights received in connection with, or sell[ing] any obligations or securities purchased'" from the GSEs. Individual Pls.'s Opp'n at 36-37 (quoting 12 U.S.C. § 1719(g)(2)(D)). But this contention overreads the provision governing the application of the statutory expiration date to purchased securities. While § 1719(g)(2)(D) notes that holding securities, exercising any rights under the securities contract, or selling securities are specifically *exempt* from the sunset provision, the existence of that provision does not therefore preclude other non-security-purchasing activities otherwise permitted under an already agreed-upon, pre-2010 investment contract with the GSEs.[15] To then say that the purchase authority sunset provision also categorically prohibits any provision within Treasury's contracts with the GSEs that requires "mutual assent" is to reach too far. *Cf.* Individual Pls.'s Opp'n at 38. Thus, whether or not amending the PSPA is a "right," as understood under § 1719(g), is irrelevant, as long as the Third Amendment did not constitute a purchase of new securities.

[15] While legislative history on this issue is unrevealing, the Court can easily imagine that Congress, with its exclusion from the sunset provision of Treasury's ability to "exercise any rights received in connection with . . . securities purchased," was contemplating an investment agreement whereby Treasury maintained future rights to purchase more GSE securities.

Here, Treasury purchased one million senior preferred shares in each GSE in exchange for a number of contractual entitlements. *E.g.*, Treasury AR at 21-22 (Fannie Mae PSPA). This "purchase" of GSE securities required Treasury to provide the GSEs with a funding commitment. While in all three amendments that followed this purchase Treasury never received additional GSE shares, under the first two amendments, Treasury provided the GSEs with an expanded funding commitment. The individual plaintiffs cite the "Action Memorandum for [Treasury] Secretary Geithner," which invokes Treasury's statutory purchasing authority under § 1719(g) as a justification for the funding expansion, as evidence that the Third Amendment was also a purchase of securities. Individual Pls.'s Reply at 21 (Treasury AR at 181-88). The Court, however, does not accept that a reference to Treasury's general purchasing authority in a memorandum to Secretary Geithner regarding the Second Amendment means that the Second Amendment (and First Amendment, for that matter) was, in fact, a purchase of new obligations or securities according to § 1719(g)(1)(a). While Treasury's funding commitment is the currency by which Treasury purchased shares, which came with additional rights for Treasury, in the original PSPAs, no new shares or obligations were purchased during the first two amendments. Treasury's receipt of "valuable consideration"—*i.e.*, the potential for increased liquidation preferences as the GSEs drew more funding—for these amendments does not, on its own, constitute the purchase of new GSE securities under § 1719(g)(1)(a).[16] *Cf.* Individual Pls.'s Reply at 21.

Yet regardless of whether the first two amendments to the PSPAs should be considered a purchase of new securities, the Court finds that Treasury did not purchase new securities under

[16] Similarly, the fact that Treasury, prior to executing the First and Second Amendments, made § 1719(g)(1)(B) "emergency determinations" generally required before purchasing new securities does not, alone, signify the purchase of new securities. *See* Treasury Reply at 37-38 (determinations made "because [Treasury] was pledging additional taxpayer funds to the GSEs").

the Third Amendment. Under the Third Amendment—unlike the first two amendments—Treasury *neither* granted the GSEs additional funding commitments *nor* received an increased liquidation preference. Instead, Treasury agreed to a net worth sweep in exchange for eliminating the cash dividend equivalent to 10% of the GSEs' liquidation preference. This net worth sweep represented a new formula of dividend compensation for a $200 billion-plus investment Treasury had already made. As FHFA further claims, the agency executed the Third Amendment to ameliorate the existential challenge of paying the dividends it *already* owed pursuant to the GSE securities Treasury purchased through the PSPA; it did not do so in order to sell more GSE securities. FHFA Mot. at 3 ("The [GSEs] were unable to meet their 10% dividend obligations without drawing more from Treasury, causing a downward spiral of repaying *preexisting obligations* to Treasury through additional draws from Treasury.") (emphasis added). Notwithstanding plaintiffs' contentions regarding the "fundamental change doctrine," Treasury's own tax regulations, or otherwise, the present fact pattern strikes the Court as straightforward, at least in the context of the applicability of § 1719(g)'s sunset provision. Without providing an additional funding commitment or receiving new securities from the GSEs as consideration for its Third Amendment to the already existing PSPAs, Treasury cannot be said to have purchased new securities under § 1719(g)(1)(a). Treasury may have amended the compensation structure of its investment in a way that plaintiffs find troubling, but doing so did not violate the purchase authority sunset provision. § 1719(g)(4).

4. FHFA Acted within Its Statutory Authority

The individual plaintiffs put forth a number of claims that FHFA violated HERA by entering into the Third Amendment.[17] These arguments concern both FHFA's conduct and the purported reasons *for* FHFA's conduct—the *what* and the *why*, so to speak.[18]

At bottom, the Third Amendment sweeps nearly all GSE profit dollars to Treasury. The result for non-Treasury shareholders is virtually no likelihood of dividend payments (given the lack of profits along with Treasury's discretion to pay dividends, *see, e.g.* Treasury AR at 58 (Freddie Mac PSPA § 5.1)) and a decrease in the potential liquidation preference they would receive if the company liquidated during a period of profitability. Both parties essentially admit this same depiction in their briefs, biased adjectives aside. Looking past the financial engineering involved in the PSPAs and subsequent amendments, the question for this Court, simply, is whether the net worth sweep amendment represents conduct that exceeds FHFA's authority under HERA—a statute of exceptional scope that gave immense discretion to FHFA as a conservator. It is surely true that "FHFA cannot evade judicial scrutiny by merely labeling its actions with a conservator stamp." *Leon Cnty. v. FHFA*, 700 F.3d 1273, 1278 (11th Cir. 2012). Yet construing the allegations in a light most favorable to the plaintiffs, the Court finds that the plaintiffs fail to demonstrate by a preponderance of the evidence—if at all—that FHFA's execution of the Third Amendment violated HERA. *See, e.g.*, *Pitney Bowes, Inc. v. U.S. Postal Serv.*, 27 F. Supp. 2d 15, 19 (D.D.C. 1998) ("The plaintiff bears the burden of persuasion to establish subject matter jurisdiction by a preponderance of the evidence."). As such, the plaintiffs cannot overcome § 4617(f)'s jurisdictional bar on equitable relief.

[17] The class plaintiffs appear to adopt the individual plaintiffs' briefing on this issue. *See* Class Pls.'s Opp'n at 25.

[18] The Court has already dismissed, *supra*, claims of arbitrary and capricious decisionmaking brought pursuant to 5 U.S.C. 706(2)(A). This subsection, then, will address all other claims for equitable relief against FHFA.

a. *FHFA's Justifications for Executing the Third Amendment and, Consequently, the Accompanying Administrative Record, Are Irrelevant for § 4617(f) Analysis*

The extraordinary breadth of HERA's statutory grant to FHFA as a conservator or receiver for the GSEs, likely due to the bill's enactment during an unprecedented crisis in the housing market, *Cf. Freeman*, 56 F.3d at 1398, coupled with the anti-injunction provision, narrows the Court's jurisdictional analysis to *what* the Third Amendment entails, rather than *why* FHFA executed the Third Amendment. *See also id.* (the anti-injunction provision applies "unless [the conservator] has acted . . . beyond, or contrary to, its statutorily prescribed, constitutionally permitted, powers or functions."). Nevertheless, the individual plaintiffs focus a sizable portion of their opposition and reply briefs on disputing FHFA's *justifications* for the Third Amendment. *See* Individual Pls.'s Opp'n at 58-73; Individual Pls.'s Reply at 31-39. Similarly, the individual plaintiffs argue that FHFA violated HERA by not producing the full administrative record. Individual Pls.'s Opp'n at 46-51; Individual Pls.'s Reply at 26-29. Both sets of claims ask the Court, directly or indirectly, to evaluate FHFA's rationale for entering into the Third Amendment—a request that contravenes § 4617(f).

Claims that FHFA's varying explanations for entering into the Third Amendment reveal that the agency's conduct went beyond its statutory authority under HERA—which are merely extensions of the individual plaintiffs' arbitrary and capricious arguments under a different subheading—share the same fate as the plaintiff's APA arbitrary and capricious claims. Once again, to determine whether it has jurisdiction to adjudicate claims for equitable relief against FHFA as a conservator, the Court must look at *what* has happened, not *why* it happened. For instance, the Court will examine whether the Third Amendment *actually* resulted in a *de facto* receivership, *infra*; not what FHFA has publicly stated regarding any power it may or may not have, as conservator, to prepare the GSEs for liquidation, *see* Individual Pls.'s Opp'n at 58-66. FHFA's underlying motives or opinions—*i.e.*, whether the net worth sweep would arrest a downward spiral of dividend payments (*see also supra* n.7), increase payments to Treasury, or keep the GSEs in a holding pattern, Individual Pls.'s Opp'n at 66-73—do not matter for the purposes of § 4617(f). *Cf. Leon Cnty., Fla. v. FHFA*, 816 F. Supp. 2d 1205, 1208 (N.D. Fla. 2011) *aff'd*, 700 F.3d 1273 (11th Cir. 2012) ("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."). Moreover, contrary to the individual plaintiffs' assertion, *id.* at 46-51, and consistent with the Court's ruling regarding the bar on arbitrary and capricious review under § 4617(f), *supra*, the Court need not view the full administrative record to determine whether the Third Amendment, *in practice*, exceeds the bounds of HERA.

Generally, "[i]t is not [the Court's] place to substitute [its] judgment for FHFA's," *Cnty. of Sonoma*, 710 F.3d at 993, let alone in the face of HERA's "sweeping ouster of courts' power to grant equitable remedies," *Freeman*, 56 F.3d at 1398. *See also MBIA Ins. Corp.*, 816 F. Supp. 2d at 103 ("In seeking injunctive or declaratory relief, it is not enough for [the plaintiffs] to allege that [conservator] came to the wrong conclusion . . . ."). 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. *See* 12 U.S.C. § 4617(f). Therefore, the Court will only consider FHFA's actual conduct.

b. FHFA Has Not Violated 12 U.S.C. § 4617(a)(7)

The individual plaintiffs briefly argue that FHFA violated HERA's prescription "not [to] be subject to the direction or supervision of any other agency of the United States . . . in the exercise of the rights, powers, and privileges of the Agency." 12 U.S.C. § 4617(a)(7); *see* Individual Pls.'s Opp'n at 51; *Fairholme* and *Arrowood* Plaintiffs' Supplemental Opp'n at 7-10 (D.D.C. Mar. 21, 2014) ("Sup. Opp'n"); Individual Pls.'s Reply at 13, 40. However, "records" showing that Treasury "invented the net-worth sweep concept with no input from FHFA" do not come close to a reasonable inference that "FHFA considered itself bound to do whatever Treasury ordered." *See* Individual Pls.'s Opp'n at 51. The plaintiffs cannot transform subjective, conclusory allegations into objective facts. *See* Sup. Opp'n at 9-10 (claiming that "[o]nly a conservator that has given up the will to exercise its independent judgment could agree to forfeit so much"). Notwithstanding the plaintiffs' perspective that the Third Amendment was a "one-sided deal" favoring Treasury, the amendment was executed by two sophisticated parties, and there is nothing in the pleadings or the administrative record provided by Treasury that hints at coercion actionable under § 4617(a)(7). *See* Individual Pls.'s Opp'n at 51 (citing Treasury AR at 3775-802, 3833-62, 3883-94, 3895-903). Undoubtedly, many negotiations arise from one party conjuring up an idea, and then bringing their proposal to the other party. This claim does not pass muster under either Rule 12(b)(1) or Rule 12(b)(6).

c. FHFA Has Not Placed the GSEs in De Facto *Liquidation*

The individual plaintiffs further contend that the Third Amendment amounts to a *de facto* liquidation, which exceeds FHFA's statutory authority as a conservator. By entering into an agreement that sweeps away nearly all GSE profits, they argue, FHFA has forsaken its statutory responsibility to "rehabilitate" the GSEs and, instead, has effectively placed the GSEs in receivership. Individual Pls.'s Opp'n at 55-58; *see* 12 U.S.C. § 4617(a)(2). But FHFA counters that full-scale rehabilitation is not the only possible statutory duty of a conservator—that the statute also permits a conservator to "reorganize" or "wind up" the affairs of a GSE. FHFA Mot. at 30 (citing 12 U.S.C. § 4617(a)(2)). The Court has no occasion to decide whether the conservator is empowered to wind down the GSEs. It is unnecessary to engage in a lengthy debate over statutory interpretation because the facts, as stated in the plaintiffs' pleadings, belie the individual plaintiffs' claims of *de facto* liquidation under receivership authority.

Here, the Court need not look further than the current state of the GSEs to find that FHFA has acted within its broad statutory authority as a conservator. Four years ago, on the brink of collapse, the GSEs went into conservatorship under the authority of FHFA. *E.g.*, *Fairholme* Compl. at ¶ 3. Today, both GSEs continue to operate, and have now regained profitability. *E.g.*, *Fairholme* Compl at ¶¶ 8, 60, 63 ("Fannie and Freddie are now immensely profitable."); *cf. id.* at ¶ 14 (noting that prior to the Third Amendment, "[t]he conservatorship of Fannie and Freddie achieved the purpose of restoring the Companies to financial health"). Unquestionably, the plaintiffs take great issue with FHFA's conduct between and since these two bookend facts. However, when the Court is asked to determine whether FHFA acted beyond, or contrary to, its responsibilities as conservator under a statute that grants the agency expansive discretion to act as it sees fit, it is the current state of affairs that must weigh heaviest on this analysis. If the Third Amendment were really part of a scheme to liquidate the GSEs, then the GSEs would, presumably, be in liquidation rather than still be "immensely profitable." *See Fairholme* Compl. at ¶ 60. There is no dispute that the Third Amendment substantially changed the flow of profits, directing billions of dollars into Treasury's coffers.[19] But that alteration, alone, is in no way sufficient to reclassify a conservatorship into a receivership.[20]

The individual plaintiffs cite no precedent stating that a net worth sweep, or some equivalent, is functionally akin to liquidation. The case law cited in their opposition actually supports the position that FHFA is acting as a conservator. Individual Pls.'s Opp'n at 52-54 (collecting cases). In sum, these cases stand for the proposition that a conservator should "carry on the business of the institution," *MBIA Ins. Corp. v. FDIC*, 708 F.3d 234, 236 (D.C. Cir. 2013), and "take actions necessary to restore a financially troubled institution to solvency," *McAllister v. RTC*, 201 F.3d 570, 579 (5th Cir. 2000). Here, the GSEs maintain an operational mortgage finance business and are, once again, profitable—two facts indicative of a successful

[19] It is worth noting that Treasury's insistence on receiving cash dividends, as required under the PSPAs, rather than accepting a 12% dividend deferred to the liquidation preference, suggests that Treasury believed there was no intention to imminently liquidate the GSEs. *See* Treasury Reply at 49-50; *see also supra* n.7. A belief that there was no planned liquidation—and thus no forthcoming receipt of liquidation payments—would mean that adding owed dividends to Treasury's ever-growing liquidation preference would produce increased risk for the taxpayer.

[20] The individual plaintiffs specifically argue that the net worth sweep exceeds FHFA's authority as a conservator because it (1) depletes available capital; (2) "eliminates the possibility of normal business operations"; and (3) carries an ultimate intent to wind down the GSEs. Individual Pls.'s Opp'n at 56-58. First, the original dividend distribution scheme under the PSPAs also depleted the GSEs' capital. Dividends distributed to security holders, by nature, constitute a depletion of available capital. Second, there is no HERA provision that requires a conservator to abide by every public statement it has made. To the contrary, HERA permits a conservator wide latitude to flexibly operate the GSEs over time. *See* 12 U.S.C. § 4617(b)(2) Third, even if FHFA has explicitly stated an intent to eventually wind down the GSEs, such an intent is not automatically inconsistent with acting as a conservator. There 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. FHFA can lawfully take steps to maintain operational soundness and solvency, conserving the assets of the GSEs, until it decides that the time is right for liquidation. *See* 12 U.S.C. § 4617(b)(2)(D) ("[p]owers as conservator").

Moreover, since the Third Amendment remains consistent with FHFA's wide-ranging authority as a conservator, there is no need for the Court to further resolve whether the amendment falls within FHFA's authority to "transfer or sell any asset" under § 4617(b)(2)(G). *Compare* FHFA Mot. at 27-29 *and* FHFA Reply at 5-7, *with* Individual Pls.'s Opp'n at 63-66 *and* Individual Pls.'s Reply at 31-33. The plaintiffs essentially argue that the Third Amendment runs counter to FHFA's power to transfer assets *because* FHFA is not seeking to "rehabilitate" the GSEs when making this transfer. Individual Pls.'s Opp'n at 64-66. Yet, as explained, the Court finds the plaintiffs' premise—that FHFA's conduct is inconsistent with a conservatorship—to be lacking. Therefore, whether or not FHFA classifies the Third Amendment as a transfer of assets is of no moment. The breadth of Congress' grant of authority to FHFA under HERA means that the Court's analysis must center much more on the ends than the means.

conservatorship.[21] Thus, the plaintiffs plead no facts demonstrating that FHFA has exceeded its statutory authority as a conservator.

Given that § 4617(f) bars subject matter jurisdiction[22] over all declaratory, injunctive, and other equitable relief requested against the defendants that would restrain the conservator's ability to "exercise [its statutory] powers or functions," all claims related to these prayers for relief must be dismissed pursuant to Rule 12(b)(1). Included are the individual plaintiffs' APA claims against both FHFA and Treasury,[23] the *Fairholme* plaintiffs' claim of breach of fiduciary duty against FHFA, and any part of the plaintiffs' claims of breach of the implied covenant of good faith and fair dealing which request declaratory relief.

B. HERA Bars the Plaintiffs' Derivative Claims against FHFA and Treasury

The class plaintiffs bring derivative claims against both FHFA and Treasury on behalf of Fannie Mae and Freddie Mac. *In re Fannie Mae/Freddie Mac* Am. Compl. at ¶¶ 72-79 (Fannie Mae); *In re Fannie Mae/Freddie Mac* Derivative Compl. at ¶¶ 175-82 (Freddie Mac).[24] Under

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[21] Indeed, the GSE's current profitability is the fundamental justification for the plaintiffs' prayers for equitable and monetary relief. In other words, this litigation only exists *because* the GSEs have, under FHFA's authority, progressed from insolvency to profitability.

[22] The Court acknowledges that there appears to be some confusion over whether Rule 12(b)(1) or Rule 12(b)(6) applies to § 4617(f). This Circuit has framed FIRREA's substantially identical anti-injunction provision, 12 U.S.C. § 1821(j), as a bar on *relief*. *See Freeman*, 56 F.3d at 1396, 1398, 1406; *see also MBIA Ins. Corp.*, 816 F. Supp. 2d at 104, 106 (explicitly dismissing claims on § 1821(j) grounds pursuant to Rule 12(b)(6)). However, recent rulings by courts in the Second, Ninth, and Eleventh Circuits framing § 4617(f) as a *jurisdictional* bar, *see Town of Babylon*, 699 F.3d at 227-28; *Cnty. of Sonoma*, 710 F.3d at 990, 994-95; *Leon Cnty.*, 700 F.3d at 1275 n.1, 1276, coupled with the parties in this case doing the same, *see, e.g.*, Individual Pls.'s Opp'n at 31-32 ("HERA's jurisdictional bar"); FHFA Mot. at 28 ("[t]he jurisdictional bar of Section 4617(f)"), leads the Court to believe that the breadth of § 4617(f) better represents a jurisdictional bar, with related claims subject to dismissal under Rule 12(b)(1), than a bar on relief. But regardless of the proper basis for dismissal, the Court would dismiss the plaintiffs' claims for equitable relief under 12(b)(1) *or* 12(b)(6).

[23] Accordingly, the *Perry* Complaint is dismissed in its entirety.

[24] The Court need not determine whether the individual plaintiffs' APA claims should be considered derivative, since all such claims are dismissed pursuant to § 4617(f). *Compare* Treasury Mot. at 30-33, *with* Individual Pls.'s Reply at 9-11.

Similarly, the *Fairholme* plaintiffs' fiduciary duty claim against FHFA, which seeks only equitable relief, is also dismissed pursuant to § 4617(f). *See* Sup. Opp'n at 13 ("The Fairholme Plaintiffs, moreover, have expressly limited their fiduciary duty claim to seek only 'equitable and declaratory relief' aimed at unwinding the Sweep Amendment

HERA, FHFA "shall, as conservator or receiver, and by operation of law, immediately succeed to (i) all rights, titles, powers, and privileges of the [GSE], and of any stockholder . . . ." 12 U.S.C. § 4617(b)(2)(A)(i).[25] The Circuit has held that "[t]his language plainly transfers shareholders' ability to bring derivative suits—a 'right[ ], title[ ], power[ ], [or] privilege[ ]'—to FHFA." *Kellmer v. Raines*, 674 F.3d 848, 850 (D.C. Cir. 2012).

1. An Exception to HERA's Bar on Shareholder Derivative Claims Would Contravene the Plain Language of the Statute

The plaintiffs argue that, despite the general bar against derivative suits, they have standing to sue derivatively because FHFA, due to a conflict of interest, would be unwilling to sue itself or Treasury.[26] Class Pls.'s Opp'n at 32-35; Sup. Opp'n at 14-16. In passing, *Kellmer* notes the existence, among other circuits, of an exception to the equivalent bar on shareholder

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and eliminating its harmful effect on Plaintiffs' interests in Fannie and Freddie.") (internal quotations and citation to Complaint omitted). As such, there is no requirement for the Court to decide whether such claims are derivative or direct. However, if such a determination were necessary, the Court notes that it would find that the *Fairholme* plaintiffs' fiduciary duty claim is derivative in nature and, therefore, barred under § 4617(b)(2)(A)(i) as well. Without resolving whether Delaware and/or Virginia law applies to the *Fairholme* plaintiffs' fiduciary duty claim, the Court—like both parties—will briefly utilize the analysis established by the Supreme Court of Delaware in *Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, 845 A.2d 1031 (Del. 2004). To determine whether a shareholder's claim is derivative or direct, the Court asks: "(1) who suffered the alleged harm (the corporation or the suing stockholders, individually); and (2) who would receive the benefit of any recovery or other remedy (the corporation or the stockholders, individually)?" *Id.* at 1033. Regardless of whether the *Fairholme* plaintiffs plead injuries to both the GSEs and the individual plaintiff shareholders, *see* FHFA Reply at 23; *but see* Sup. Opp'n at 12-13, the claim qualifies as derivative, not direct, under *Tooley*'s second prong. Here, recovery or relief will not flow "directly to the stockholders." *Tooley*, 845 A.2d at 1036. Instead, the equitable relief *Fairholme* seeks—"namely, vacating the Third Amendment and returning its resulting dividends from Treasury to the Enterprises (*Fairholme* Compl. ¶ 146(d)-(e))—would flow first and foremost to the [GSEs]." *FHFA Reply* at 24. That relief will *not* flow directly to the *Fairholme* plaintiffs is especially true since, after signing the PSPAs, Treasury effectively maintained discretion over GSE dividend payments, *see, e.g.*, Treasury AR at 24 (Fannie Mae PSPA § 5.1), and the GSEs, still in conservatorship, are not liquidating assets pursuant to any liquidation preferences.

Finally, Treasury's argument that the plaintiffs lack prudential standing, Treasury Mot. at 34-36, does not require consideration here. *Cf. Louisiana Envtl. Action Network v. Browner*, 87 F.3d 1379, 1384 (D.C. Cir. 1996) ("[The Court has] no difficulty dismissing a case based on one jurisdictional bar rather than another. . . . Because issues of standing, ripeness, and other such 'elements' of justiciability are each predicate to any review on the merits, a court need not identify all such elements that a complainant may have failed to show in a particular case.").

[25] The statute also provides that FHFA may, as conservator, ". . . operate the [GSE] with all the powers of the shareholders." 12 U.S.C. § 4617(b)(2)(B)(i).

[26] "The party invoking federal jurisdiction bears the burden of establishing [standing]." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992).

derivative actions brought against the FDIC under the substantially similar FIRREA provision, 12 U.S.C. § 1821(d)(2)(A), for instances of "manifest conflict of interest." *Kellmer*, 674 F.3d at 850. The defendants are right, however, that this Circuit has not adopted such an exception. *E.g.*, Treasury Mot. at 31. While *Kellmer* concerned a suit against officers and directors rather than one against FHFA and Treasury, *see* Class Pls.'s Opp'n at 31, the Circuit's holding puts no limitations on HERA's rule against shareholder derivative suits. Based on the Circuit's discussion of the text of 12 U.S.C. § 4617(b)(2)(A)(i), it stands to reason that if the *Kellmer* Court had occasion to consider the purported conflict of interest exception, it would not have found that such an exception exists.

The idea of an exception to HERA's rule against derivative suits comes from two cases, both considering FIRREA § 1821(d)(2)(A). First, the Federal Circuit held that, notwithstanding the "general proposition" that the FDIC assumed "the right to control the prosecution of legal claims on behalf of the insured depository institution now in its receivership," a plaintiff has standing to bring a derivative suit when the FDIC has a "manifest conflict of interest"—*i.e.*, when the plaintiffs ask the receiver to bring a suit based on a breach allegedly caused by the receiver. *First Hartford Corp. Pension Plan & Trust v. United States*, 194 F.3d 1279, 1295-96 (Fed. Cir. 1999). Then, the Ninth Circuit "adopt[ed] the *First Hartford* exception" in *Delta Savings Bank v. United States*, 265 F.3d 1017 (9th Cir. 2001), for instances of conflict of interest between sufficiently "interdependent entities." *Id.* at 1021-23.[27]

It strikes this Court as odd that 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

[27] The Court can reasonably presume the Ninth Circuit's exception would also apply to instances where a plaintiff demands that the FDIC sue itself.

around FHFA's conservatorship authority by means of the shareholder derivative suits that the statute explicitly bars. "To resolve this [oddity, however,] we need only heed Professor Frankfurter's timeless advice: '(1) Read the statute; (2) read the statute; (3) read the statute!'" *Kellmer*, 674 F.3d at 850 (second internal quotation marks omitted) (citing Henry J. Friendly, *Mr. Justice Frankfurter and the Reading of Statutes, in* Benchmarks 196, 202 (1967)). The Circuit tells the Court that HERA, by its unambiguous text, removes the power to bring derivative suits from shareholders and gives it to FHFA. *Id.* (citing § 4617(b)(2)(A)).[28] As the *basis* for its exception to the rule against shareholder derivative suits, the Federal Circuit explained that "the very object of the derivative suit mechanism is to permit shareholders to file suit on behalf of a corporation when the managers or directors of the corporation, perhaps due to a conflict of interest, are unable or unwilling to do so, despite it being in the best interests of the corporation." *First Hartford*, 194 F.3d at 1295; *see also* Class Pls.'s Opp'n at 32 (quoting the same). Yet the 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. Derivative suits largely exist so that shareholders can protect a corporation from those who run it—and HERA takes the right to such suits away from shareholders.[29] How, then, can a court base the exception to a rule barring shareholder

[28] *See also La. Mun. Police Emps. Ret. Sys. v. FHFA*, 434 F. App'x 188, 191 (4th Cir. 2011) (affirming and quoting *In re Freddie Mac Derivative Litig.*, 643 F. Supp. 2d 790, 795 (E.D. Va. 2009) ("[T]he plain meaning of the statute is that *all* rights previously held by Freddie Mac's stockholders, including the right to sue derivatively, now belong exclusively to the [Agency]."")).

[29] "Indeed, as the Supreme Court has explained, 'the purpose of the derivative action was to place in the hands of the individual shareholder a means to protect the interests of the corporation from the misfeasance and malfeasance of faithless directors and managers.'" *First Hartford*, 194 F.3d at 1295 (quoting *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 95 (1991)).

derivative suits on the purpose of the "derivative suit mechanism" that rule seeks to bar? *See First Hartford*, 194 F.3d at 1295. Such an exception would swallow the rule.[30]

By looking outside HERA's statutory language to find an exception to the rule against derivative suits that is based on the reason the judicial system permits derivative suits in the first place, a court would effectively be asserting its disagreement with the breadth of HERA's text. HERA provides no qualification for its bar on shareholder derivative suits, and neither will this Court. § 4617(b)(2)(A) (the conservator "shall . . . immediately succeed to . . . *all* rights, titles, powers, and privileges . . . of any stockholder) (emphasis added).[31] It is a slippery slope for the Court to poke holes in, or limit, the plain language of a statute, especially when, as here, the plaintiffs have not asked the Court to weigh in on the statute's constitutionality. Therefore, the Court finds that HERA's plain language bars shareholder derivative suits, without exception.

2. Even If the Exception Applies, There Is No Conflict of Interest between FHFA and Treasury

Even assuming *arguendo* that the *First Hartford* and *Delta Savings* exceptions to HERA's prohibition on shareholder derivative suits applied to HERA § 4617(b)(2)(A)(i), there is no conflict of interest between FHFA and Treasury, and the class plaintiffs' fiduciary duty claims against Treasury would be dismissed. The *First Hartford* decision would not apply to the

[30] The Court further notes that the *First Hartford* and *Delta Savings* decisions both involved the FDIC in receivership. Applying an exception to the statutory rule against derivative suits makes still less sense in the conservatorship context, where FHFA enjoys even greater power free from judicial intervention. Consistent with congressional intent to decrease restrictions governing the emergency scenario during which FHFA would need to conserve the viability of the GSEs, under HERA, court involvement on issues brought by outside stakeholders, and not by the GSEs themselves, *cf.* § 4617(a)(5), is most available throughout the *receivership* claims process. *E.g.*, § 4617(b)(5), (6).

[31] The Court respectfully disagrees with the Ninth Circuit's argument that "strict adherence to an absolute rule would be at least impracticable, and arguably absurd." *Delta Sav. Bank v. United States*, 265 F.3d 1017, 1023-24 (9th Cir. 2001). This Court believes that an unequivocal, "absolute rule" against shareholder derivative suits enacted by Congress during a time of economic crises requires "strict adherence." HERA's anti-injunction provision, § 4617(f), is illustrative of Congress' intention to transfer "all" shareholder rights to the conservator so that it could work, unimpeded, to save the GSEs from impending collapse, without a concern for preserving any such shareholder rights to derivative suits.

Treasury fiduciary duty claims because the plaintiffs are not demanding that FHFA sue itself or sue another government entity on account of FHFA's own breach, 194 F.3d at 1295—the plaintiffs' claims against Treasury are due to Treasury's alleged breach. *E.g.*, *In re Fannie Mae/Freddie Mac* Am. Compl. at ¶¶ 177-79. In *Delta Savings*, the Ninth Circuit's finding of a "manifest conflict of interest" was not just based on the presence of two government entities, but rather two sufficiently *interrelated* government agencies. 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; it is the nature of the [Office of Thrift Supervision ('OTS')]–FDIC relationship that raises the conflict here."). As the *Delta Savings* Court explained, the FDIC and the OTS were "interrelated agencies with overlapping personnel, structures, and responsibilities." *Id.* at 1021-22. The relationship between FHFA and Treasury fails the Ninth Circuit's interrelatedness test. The class plaintiffs point to no "operational or managerial overlap," and the agencies do not "share a common genesis." *Id.* at 1022-23. Unlike OTS, which supervised thrift institutions and retained the ability to "choose the FDIC to be the conservator," *id.* at 1023, Treasury plays no role in choosing FHFA to act as a conservator for the GSEs. While Treasury and FHFA, *inter alia*, have jointly proposed regulations, *e.g.*, Credit Risk Retention, 78 Fed. Reg. 183 (proposed Sept. 20, 2013), the fact that both entities exist within the financial regulation space cannot, on its own, satisfy *Delta Savings*' narrowly applied interrelatedness test. *See* 265 F.3d at 1022-1023.

Furthermore, the Court understands that Treasury represented the only feasible entity—public or private—capable of injecting sufficient liquidity into and serving as a backstop for the GSEs within the short timeframe necessary to preserve their existence in September 2008. There was no other investment partner at FHFA's disposal. *See* FHFA Mot. at 7-8. In fact, Congress expressly foresaw the need for a Treasury-FHFA relationship, specifically authorizing Treasury to invest in the GSEs. 12 U.S.C. § 1719(g); *see also* 12 U.S.C. § 4617(b)(5)(D)(iii)(I) (Congress highlighted Treasury's potential role as creditor to the GSEs by explicitly creating an exception to FHFA's authority, as receiver, to disallow creditor claims made by Treasury).[32] A relationship-based conflict of interest analysis, *see Delta Sav. Bank*, 265 F.3d at 1023, does not require the Court to ignore the harsh economic realities facing the GSEs—and the national financial system if the GSEs collapsed—when FHFA and Treasury executed the PSPAs in 2008. Courts, generally, should be wary of labeling a transaction with an investor of last resort as a conflict of interest.[33]

Thus, the class plaintiffs' derivative claims, on behalf of the GSEs, for breach of fiduciary duty by FHFA and Treasury, are dismissed pursuant to Rule 12(b)(1) for lack of standing.[34]

C. The Plaintiffs' Breach of Contract and Breach of the Implied Covenant of Good Faith and Fair Dealing Claims for Monetary Damages Must Also Be Dismissed

The plaintiffs further request monetary damages for claims of breach of contract and breach of the implied covenant of good faith and fair dealing, specifically regarding the dividends and liquidation preference provisions within their respective GSE stock certificates. *See In re Fannie Mae/Freddie Mac* Am. Compl. at 64 (¶ 7); *Arrowood* Compl. at 52 (¶ E);[35]

[32] Notably, Congress omitted Treasury from its list of potential credit providers exempt from FDIC's authority to disallow claims under FIRREA. *See* 12 U.S.C. § 1821(d)(5)(D)(iii)(I).

[33] A recent ruling by Judge Jackson provides additional persuasive reasoning that, even if the conflict of interest exception existed in this Circuit, the FHFA-Treasury relationship does not constitute such a conflict. *Gail C. Sweeney Estate Marital Trust v. U.S. Treasury Dep't*, No. 13-0206, 2014 WL 4661983 (D.D.C. Sept. 19, 2014).

[34] "[T]he defect of standing is a defect in subject matter jurisdiction." *Haase v. Sessions*, 835 F.2d 902, 906 (D.C. Cir. 1987).

[35] It is unclear to the Court whether the *Arrowood* plaintiffs incorporate their claim of breach of the implied covenant into their request for monetary relief, *Arrowood* Compl. at 52 (¶ E). Yet, regardless of the *Arrowood* plaintiff's intention, the claim is dismissed. If the claim of breach of the implied covenant is included within ¶ E,

Fairholme Compl. at ¶ 146(h). As the class plaintiffs correctly assert, HERA's anti-injunction provision, § 4617(f), does not bar requests for *monetary* relief. *See* Class Pls.'s Opp'n at 21-22 (citing, among other cases, *Hindes v. FDIC*., 137 F.3d 148, 161 (3d Cir. 1998); *Willow Grove, Ltd. v. Fed. Nat'l Mortg. Ass'n*, No. 13-0723, 2013 WL 6865127, at *2 (D. Colo. Dec. 31, 2013)); *see also Freeman*, 56 F.3d at 1399 (concluding that FIRREA § 1821(j) precluded nonmonetary remedies, but noting that "aggrieved parties will [still] have opportunities to seek money damages"). Nevertheless, the plaintiffs' contract-based claims seeking monetary damages must also be dismissed under the threshold analyses required by Rule 12(b)(1) and Rule 12(b)(6).

1. The Plaintiffs' Liquidation Preference Claims Are Not Ripe

FHFA's entrance into the Third Amendment, allegedly in contravention of the GSEs' existing contract—*i.e.*, stock certificates—with the plaintiffs, constitutes a decision by an administrative agency. *See* 12 U.S.C. § 4511(a) ("There is established the Federal Housing Finance Agency, which shall be an independent agency of the Federal Government."). While the class and *Arrowood* plaintiffs also include the GSEs as targets of their claims of breach of contract and breach of the implied covenant, the action in question was undeniably one taken by FHFA. As such, the ripeness doctrine, which is most often applied to pre-enforcement review of agency determinations, may also govern the Court's assessment of subject matter jurisdiction here.[36] "Ripeness entails a functional, not a formal, inquiry." *Pfizer Inc. v. Shalala*, 182 F.3d 975, 980 (D.C. Cir. 1999). "Determining whether administrative action is ripe for judicial

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then the claim is dismissed pursuant to Rule 12(b)(1) and Rule 12(b)(6). *See infra*. If the *Arrowood* plaintiffs only intended to seek declaratory relief for the alleged breach of the implied covenant, then Count VI of the *Arrowood* Complaint is dismissed, under HERA § 4617(f), pursuant to Rule 12(b)(1). *See supra* Section III(A).

[36] "The question of ripeness goes to [the Court's] subject matter jurisdiction . . . ." *Duke City Lumber Co.* v. *Butz*, 539 F.2d 220, 221 n.2 (D.C. Cir. 1976).

review requires us to evaluate (1) the fitness of the issues for judicial decision and (2) the hardship to the parties of withholding court consideration." *Nat'l Park Hospitality Ass'n v. Dep't of Interior*, 538 U.S. 803, 808 (2003) (citing *Abbott Labs. v. Gardner*, 387 U.S. 136, 149 (1967)). "A claim is not ripe for adjudication if it rests upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" *Texas v. United States*, 523 U.S. 296, 300 (1998) (quoting *Thomas v. Union Carbide Agric. Products Co.*, 473 U.S. 568, 580-81).

An analysis of the plaintiffs' contentions regarding the liquidation preference written into their preferred stock certificates is uncomplicated. The certificates grant the plaintiffs "a priority right to receive distributions from the Companies' assets in the event they are dissolved." Individual Pls.'s Opp'n at 5.[37] Therefore, by definition, the GSEs owe a liquidation preference payment to a preferred shareholder only during liquidation. It follows that there can be no loss of a liquidation preference prior to the time that such a preference can, contractually, be paid. Here, the GSEs remain in conservatorship, not receivership, and there is no evidence of *de facto* liquidation.[38] *See supra* Section III(A)(4)(c).

The question for the Court cannot be whether the Third Amendment diminishes an *opportunity* for liquidation preferences at some point in the future, but rather whether the plaintiffs have suffered an injury to their right to a liquidation preference in fact and at present. Yet the individual plaintiffs assert that the Third Amendment "has clearly injured Plaintiffs in a direct and personal way" because "[t]heir right to an opportunity to benefit from the liquidation

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[37] The common stockholders among the class plaintiffs similarly claim deprivation "of any possibility of receiving dividends or a liquidation preference." *E.g.*, *In re Fannie Mae/Freddie Mac* Am. Compl. at ¶ 155.

[38] The *Arrowood* and *Fairholme* plaintiffs' citation to *Quadrangle Offshore (Cayman), LLC v. Kenetech Corp.*, No. 16362, 1998 WL 778359 (Del. Ch. Oct. 21, 1998) is, thus, inapposite, since that case concerns what the plaintiffs would aptly classify as *de facto* liquidation. *See* Sup. Opp'n at 41-42, 45 ("In *Quadrangle*, the defendant company had pursued no business and sold most of its assets to pay creditors, but because the company did not formally declare that it was in liquidation, it did not pay the preferred shareholders their contractually-specified liquidation preference.").

preferences in their preferred stock—once valuable—is now worthless . . . ." Individual Pls.'s Opp'n at 36. But, just as there was a Third Amendment, the Court cannot definitively say there will be no Fourth or Fifth Amendment that will transform the current "opportunity to benefit from the liquidation preferences in [the plaintiffs'] preferred stock." A ripeness requirement prevents the Court from deciding a case "contingent [on] future events that may not occur as anticipated, or indeed may not occur at all." *Texas v. United States*, 523 U.S. at 300. Indeed, the purpose of the ripeness doctrine is to ensure the Court hears only an "actual case or controversy." *Cf. Pfizer*, 182 F.3d at 980. Thus, the plaintiffs' liquidation preference claims are not fit for a judicial decision until liquidation occurs.[39]

Given that the plaintiffs maintain no current right to a liquidation preference while the GSEs are in conservatorship, the plaintiffs are no worse off today than they were before the Third Amendment. Therefore, there is no hardship imposed on the plaintiffs by withholding court consideration until this contingent right matures at the moment of liquidation. Once again, any present injury is, at most, a decrease in share value, which can only be claimed as part of a derivative action that would be barred by HERA. *See supra* n.39. "Moreover, no irremediable adverse consequences flow from requiring a later challenge to" the Third Amendment with regard to liquidation preferences since, as the defendants acknowledge, FHFA Mot. at 34-35, the right to a liquidation preference can be adjudicated during the statutorily prescribed receivership claims process. *Toilet Goods Ass'n, Inc. v. Gardner*, 387 U.S. 158, 164 (1967); *see also* 12

[39] Even if the plaintiffs could presently claim damages as a result of a prospective contractual breach regarding the plaintiff shareholders' liquidation preference, this claim would, at best, be one of damage to the price of their GSE shares, as valued by the market "based in part on the existence of their attendant . . . liquidation rights." Class Pls.'s Opp'n at 37-38. Such claims are considered derivative under Delaware law, and would be barred under HERA § 4617(b)(2)(A)(i), *supra* Section III(B). *E.g.*, *Labovitz v. Wash. Times Corp.*, 172 F.3d 897, 904-05 (D.C. Cir. 1999) ("the loss [plaintiffs] suffered in share value is a derivative harm") (citing *Kramer v. W. Pac. Indus., Inc.*, 546 A.2d 348, 353 (Del. 1988), for the proposition that "Delaware courts have long recognized that actions charging mismanagement which depress[ ] the value of stock [allege] a wrong to the corporation; *i.e.*, the stockholders collectively, to be enforced by a derivative action") (internal quotation marks and citation omitted).

U.S.C. § 4617(b)(2)(K)(i), (b)(3)-(10). Until then, the plaintiffs have no direct claims to liquidation preference-related damages that are ripe for judicial review, and their existing claims must be dismissed under Rule 12(b)(1).[40]

In addition, for largely the same reasons that lead the Court to conclude that the plaintiffs' liquidation preference claims lack ripeness, the plaintiffs' breach of contract and breach of implied covenant claims regarding liquidation preferences fail to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). The right to this elevated preference for asset distribution, given to preferred shareholders under GSE stock certificates, is only triggered during liquidation. Consequently, the plaintiffs' direct breach of contract claims for injuries related to their liquidation preference rights can provide them no "plausible" relief against FHFA—or against the GSEs, for that matter—until the agency places the GSEs into receivership and commences the dissolution process. *See Twombly*, 550 U.S. at 570; *see also supra* n.39 (the plaintiffs' attempt to amorphously straddle the line between direct injury to their contingent right to a liquidation preference and derivative injury to the present "value" of their GSE holdings further demonstrates the uncertainty of their claims). The Court's reasoning requiring dismissal

[40] FHFA and Treasury further argue that, under 12 U.S.C. § 4617(e)(2), which limits the maximum liability of FHFA during receivership, the plaintiffs liquidation preference claims are limited "to the amount that shareholders would have received had the GSEs' assets and liabilities been liquidated at the time the conservator was appointed in September 2008." Treasury Mot. at 28, 34. The Court is unable to identify any case law discussing this HERA provision, though a number of courts, including a handful within this Circuit, have examined FIRREA's similar provision capping liability, 12 U.S.C. § 1821(i)(2). *E.g.*, *Bank of Am., N.A. v. F.D.I.C.*, 962 F. Supp. 2d 165, 173 (D.D.C. 2013) ("12 U.S.C. § 1821(i)(2) unequivocally limits the maximum liability of the FDIC to the amount a claimant would have received in liquidation under the distribution scheme set forth in FIRREA."). The Tenth Circuit has noted that § 1821(i)(2) limits creditor claims against the agency to the "pro rata share of the assets which would have been available *on the day the institution was placed in receivership*." *Castleglen, Inc. v. RTC*, 984 F.2d 1571, 1583 (10th Cir. 1993) (emphasis added). Identifying the point at which to measure FHFA's maximum liability as "the day the institution was placed in receivership"—as opposed to the day the GSEs were placed in conservatorship, like the defendants suggest here—is consistent with the fact that this maximum liability is set only in reference to "a claim against the *receiver* or the regulated entity for which such *receiver* is appointed." 12 U.S.C. § 1821(i)(2) (emphasis added). As such, § 4617(e)(2) "has no relevance outside of receivership," and provides the court with no guidance regarding potential damages—or lack thereof—from claims made against FHFA as a conservator or against the GSEs while in conservatorship. *See* Individual Pls.'s Opp'n at 23; *see also* Class Pls.'s Opp'n at 39.

of such breach of contract claims also requires dismissal of the plaintiffs' claims of breach of the implied covenant of good faith and fair dealing, insofar as such claims request monetary relief. "Although an implied covenant of good faith and honest conduct exists in every contract, . . . such subjective standards cannot override the literal terms of an agreement." *Gilbert v. El Paso Co.*, 575 A.2d 1131, 1143 (Del. 1990). As mentioned, the stock certificates, on their face, only require liquidation preference payments when the GSEs enter liquidation. Since no liquidation has occurred, the plaintiffs' implied covenant claims relating to liquidation preference rights cannot stand at this time.

2. The Plaintiffs' Dividend Claims Fail to State a Claim upon Which Relief Can Be Granted

The stock certificates upon which the plaintiffs base their claims of breach of contract and breach of the implied covenant state that "holders of outstanding shares of . . . 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, non-cumulative cash dividends . . . ." *E.g.*, Individual Pls.'s Opp'n Ex. A at A-1 (Fannie Mae Preferred Stock Series S); Ex. B at A-1 (Freddie Mac Preferred Stock) (emphasis added). The "right" to dividends to which the plaintiffs refer throughout their briefs, then, is, in actuality, wholly dependent upon the discretion of the GSEs' board of directors. As the individual plaintiffs stress, "[a] contractual 'right' is an entitlement to certain performance from the counter-party, and it is 'exercised' through unilateral action that does not require negotiation or mutual assent." Individual Pls.'s Opp'n at 38. Here, the payment of a dividend expressly requires "mutual assent," since, under the contract, plaintiffs cannot receive such payment without board approval.

This Court—like many courts over the past two centuries—agrees with the defendants that shareholders do not have a present or absolute right to dividends which are subject to the discretion of the board. FHFA Mot. at 41-42. As Justice Holmes fittingly explained eighty-four years ago, an investment in stock "presupposes that the business is to go on, and therefore even if there are net earnings, the holder of stock, preferred as well as common, is entitled to have a dividend declared only out of such part of them as can be applied to dividends consistently with a wise administration of a going concern." *Wabash Ry. Co. v. Barclay*, 280 U.S. 197, 203-04 (1930) (further noting that dividend payments are "in the first instance at least a matter for the directors to determine").[41]

The history of case law finding no contractual right to discretionary dividends is only bolstered by the specific facts of this case. Under HERA, FHFA succeeded to all rights and powers of the board of directors. *See* 12 U.S.C. § 4617(b)(2)(A)(i) ("[FHFA] shall, as conservator or receiver, and by operation of law, immediately succeed to—(i) all rights, titles, powers, and privileges of the [GSEs], and of any . . . director of such regulated entity with respect to the regulated entity and *the assets of the [GSEs]*.") FHFA's power over the assets of the GSEs surely includes the power to declare discretionary dividends from the surplus assets of the GSEs. Consistent with FHFA's assumption of the board's power, FHFA's director, James Lockhart, stated that "the common stock and preferred stock dividends will be eliminated." *In re Fannie Mae/Freddie Mac* Am. Compl. at ¶ 53 (quoting Statement of FHFA Director James B. Lockhart at News Conference Announcing Conservatorship of Fannie Mae and Freddie Mac

[41] *See also New York, L.E. & W.R. Co. v. Nickals*, 119 U.S. 296, 305-07 (1886) (By qualifying dividend payments with "as declared by the board" language, the preferred stock contract did "not intend[] to confer upon the former an absolute right to a dividend in any particular year. . . . We are of opinion that . . . preferred stockholders . . . are not entitled, of right, to dividends, payable out of the net profits accruing in any particular year, unless the directors of the company formally declare, or ought to declare, a dividend payable out of such profits."); *In re Terex Corp.*, No. 91-3864, 1993 WL 7519, at *1 (6th Cir. Jan. 12, 1993) ("The decision to pay (or not to pay) a dividend was within the sole discretion of Metropolitan's board of directors; accordingly, Terex had no contractual right to receive a dividend for any given year."); *Crawford Drug Stores v. United States*, 220 F.2d 292, 296 (10th Cir. 1955) ("[I]n ordinary circumstances the holder of preferred stock has no such absolute right to the payment of dividends."); *Comm'r of Internal Revenue v. Meridient & Thirteenth Realty Co.*, 132 F.2d 182, 187 (7th Cir. 1942) (unlike a creditor's absolute right to interest, "[s]tockholders have no absolute right to dividends until they are declared").

(Sept. 7, 2008), *available at* http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-FHFA-Director-James-B--Lockhart-at-News-Conference-Annnouncing-Conservatorship-of-Fannie-Mae-and-Freddie-Mac.aspx). Once the agency executed the PSPAs, however, FHFA effectively transferred discretionary power over dividend issuance to Treasury. *See* Treasury AR at 24, 58 (Fannie Mae and Freddie Mac PSPAs § 5.1, requiring Treasury's written consent for declaration of any dividends, "preferred or otherwise"). Thus, not only do the plaintiffs lack a right to dividend payments under their original stock certificates, but FHFA—the primary target of the plaintiffs' breach of contract and breach of the implied covenant claims concerning dividends—no longer has exclusive discretion to issue such dividends.

Without a contractual right to dividends, the plaintiffs cannot state a claim for breach of contract specifically based on their alleged dividend entitlements. *See In re Fannie Mae/Freddie Mac* Am. Compl. at ¶¶ 155, 161, 167; *Fairholme* Compl. at ¶ 122.[42] And when the contract is unambiguous regarding a lack of contractual right, there cannot be a coinciding claim of breach of the implied covenant of good faith and fair dealing. *Dave Greytak Enters, Inc. v. Mazda Motors of Am., Inc.*, 622 A.2d 14, 23 (Del. Ch. 1992), *aff'd sub nom. David Greytak Enters., Inc. v. Mazda Motors of Am., Inc.*, No. 64, 1992 WL 135147 (Del. 1992) ("[W]here the subject at issue is expressly covered by the contract, or where the contract is intentionally silent as to that subject, the implied duty to perform in good faith does not come into play."); *see also Dunlap v. State Farm Fire & Cas. Co.*, 878 A.2d 434, 441 (Del. 2005) ("Existing contract terms control, however, such that implied good faith cannot be used to circumvent the parties' bargain, or to create a free-floating duty . . . unattached to the underlying legal document.") (internal quotation

[42] While the *Arrowood* Complaint does not specify dividends and liquidation preferences as the "rights" affected by the Third Amendment, *see Arrowood* Compl. ¶¶ 135-38, other sections of the Complaint clarify that dividends and liquidation preferences are the rights for which the *Arrowood* plaintiffs seek monetary damages. *See, e.g.*, *id*. at ¶ 7.

marks and citation omitted); *QVT Fund LP v. Eurohypo Capital Funding LLC I*, No. 5881, 2011 WL 2672092, at *14 (Del. Ch. July 8, 2011) ("If the contract clearly delineates the parties' rights, there is no room for the implied covenant because it cannot override the express terms of a contract.") (internal quotation marks and citation omitted).[43] As such, the plaintiffs' claims for breach of contract[44] and breach of the implied covenant regarding the dividend provisions of the plaintiffs' stock certificates must be dismissed pursuant to Rule 12(b)(6).

Even if the implied covenant was applicable to this case—and it is not—the plaintiffs would have failed to plead such a cause of action. The Court has ruled that the plaintiffs fail to demonstrate through their pleadings that FHFA violated its statutory authority under HERA by entering into the Third Amendment with Treasury. *See supra* Section III(A)(4). Yet the plaintiffs attempt to brand agency actions that fall within FHFA's statutorily established powers to succeed to all the rights of shareholders and stabilize the GSEs as performed in "bad faith." *E.g.*, *In re Fannie Mae/Freddie Mac* Am. Compl. at ¶¶ 90-91, 161. But the plaintiffs cannot overcome FHFA's sweeping congressional mandate with conclusory statements regarding the Third Amendment's effect on the plaintiffs' *prospective*—and not present—rights to dividends and liquidation preferences. *E.g.*, *Arrowood* Compl. at ¶¶ 96, 141.[45] Furthermore, the class and

[43] The individual plaintiffs' citation to *QVT Fund*, Sup. Opp'n at 40-41, 44-45, is distinguishable from this case. In *QVT Fund*, the plaintiffs claim that the alleged breach of an "implied obligation"—which the Court of Chancery deemed sufficiently pleaded—is the reason why *mandatory* dividend payments were not triggered. *See* 2011 WL 2672092, at *14-15. Here, no contractual obligation—implicit or explicit—exists that could transform unmistakably discretionary dividends into mandatory dividends.

[44] The Court rejects the individual plaintiffs' additional contention that the Third Amendment "effectively converted [Treasury's stock] into common stock," which would "represent a distribution to the common shareholder ahead of and in violation of the contractual rights of Plaintiffs and other preferred shareholders." Sup. Opp'n at 30. Here, the characteristics of preferred stock "that distinguish that stock from common stock"—*e.g.*, senior-most dividend and liquidation rights—remain "expressly and clearly stated" under the Third Amendment. *See Elliot Assocs., L.P. v. Avatex Corp.*, 715 A.2d 843, 852 (Del. 1998); *see also* FHFA Reply at 35-37.

[45] Since the plaintiffs have not demonstrated, through their pleadings, that FHFA acted in bad faith, Delaware case law under which discretionary dividends will only be compelled in the rare instance of a judicial finding of "fraud or gross abuse of discretion" by the board of directors is inapposite. *See, e.g.*, *Gabelli & Co. v. Liggett Grp. Inc.*, 479 A.2d 276, 280 (Del. 1984); *Moskowitz v. Bantrell*, 190 A.2d 749, 750 (Del. 1963).

Arrowood plaintiffs fail to plead claims of breach of the implied covenant against the GSEs, since the plaintiffs attribute all alleged "arbitrar[y] and unreasonabl[e]" conduct only to FHFA, as a conservator that assumed all rights of the GSEs, and not to the GSEs themselves.[46] *E.g., In re Fannie Mae/Freddie Mac* Am. Compl. at ¶¶ 161, 167, 173; *see also* FHFA Reply at 32-33.[47]

D. The Class Plaintiffs Fail to Plead That the Third Amendment Is an Unconstitutional Taking

Finally, the class plaintiffs claim that the Third Amendment effected an unconstitutional taking of their alleged dividend entitlements and liquidation rights without just compensation. U.S. Const. amend. V ("nor shall private property be taken for public use, without just compensation"); *see In re Fannie Mae/Freddie Mac* Am. Compl. at ¶¶ 110-16, 183-92. Takings claims are reviewed as either physical or regulatory takings. A "paradigmatic" physical taking "is a direct government appropriation or physical invasion of private property." *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 537 (2005). Since the class plaintiffs do not allege a physical taking, the Court must decide whether they adequately plead a taking as a result of government regulation. Class Pls.'s Opp'n at 67-70. Before determining which takings rubric to utilize for its analysis, a court must first evaluate whether a plaintiff has a cognizable property interest protected by the Fifth Amendment. *See, e.g.*, *Conti v. United States*, 291 F.3d 1334, 1339 (Fed.

Additionally, even if the plaintiffs presented allegations of "gross abuse of discretion" resulting in *present* damage to the "value" of the plaintiffs' investment, such claims would be considered derivative and barred under HERA § 4617(b)(2)(A)(i). *See supra* n.39; *cf. U.S. v. Byrum*, 408 U.S. 125, 141 (1972) ("Although vested with broad discretion in determining whether, when, and what amount of dividends shall be paid, that discretion is subject to legal restraints. If, in obedience to the will of the majority stockholder, corporate directors disregard the interests of shareholders by accumulating earnings to an unreasonable extent, they are vulnerable to a derivative suit.")

[46] The *Fairholme* plaintiffs bring their claims only against FHFA. *See Fairholme* Compl. Count VI.

[47] The reasoning of this section would also apply to dividend and liquidation preference claims for non-monetary relief *even if* § 4617(f) did not bar such claims. "In assessing whether a declaratory judgment action is ripe, courts must determine 'whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.'" *RDP Technologies, Inc. v. Cambi AS*, 800 F. Supp. 2d 127, 136 (D.D.C. 2011) (quoting *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 (2007)).

Cir. 2002); *Nat'l Leased Hous. Ass'n v. U.S. Dep't of Hous. & Urban Dev.*, No. 03-1509, 2007 WL 148829, at *11 (D.D.C. Jan. 16, 2007). Here, the class plaintiffs do not allege a cognizable property interest and, as such, fail to state a claim against FHFA and Treasury for a violation of the Fifth Amendment's Takings Clause.

1. The Jurisdictional Defect in the Class Plaintiffs' Pleadings Is Not Dispositive of Their Takings Claims

As an initial matter, the defendants argue that the class plaintiffs' takings claims belong in the Court of Federal Claims rather than in this Court. Pursuant to the so-called "Big" Tucker Act, 28 U.S.C. § 1491(a)(1), the Court of Claims maintains exclusive jurisdiction over claims against the United States that exceed $10,000. Under the "Little" Tucker Act, 28 U.S.C. § 1346(a)(2), the Court of Claims shares concurrent jurisdiction with federal district courts over claims against the United States not exceeding $10,000. In this Circuit, for complaints that include *potential* claims over $10,000, Little Tucker Act jurisdiction is only satisfied by a "clearly and adequately expressed" waiver of such claims. *See Waters v. Rumsfeld*, 320 F.3d 265, 271-272 (D.C. Cir. 2003) ("[F]or a district court to maintain jurisdiction over a claim that might otherwise exceed $10,000, a plaintiff's waiver of amounts over that threshold must be clearly and adequately expressed.") (internal quotation marks and citation omitted). Here, the class plaintiffs argue that "expressly limit[ing] the prospective takings class to individuals who suffered losses less than $10,000" is an adequate alternative to waiver, and that waiver is "premature" until the class certification phase. Class Pls.'s Opp'n at 53. Yet the plaintiffs' refusal to clearly and adequately waive claims exceeding $10,000 in either their pleadings or subsequent opposition brief contravenes Circuit precedent. *See Goble v. Marsh*, 684 F.2d 12, 15-16 (D.C. Cir. 1982); *Stone v. United States*, 683 F.2d 449, 454 n.8 (D.C. Cir. 1982) ("Generally a plaintiffs' waiver should be set forth in the initial pleadings."). Nevertheless, the

Circuit has also made clear its preference that the District Court should not transfer a case that is defective on Little Tucker Act grounds to the Court of Claims "without first giving [the plaintiffs] an opportunity to amend their complaints to effect an adequate waiver." *Goble*, 684 F.2d at 17.

Thus, while the class plaintiffs' takings pleading is inadequate for jurisdiction in this Court under the "Little" Tucker Act, in keeping with the tenor of Circuit case law, the Court would generally provide the class plaintiffs "an opportunity to amend their complaints to effect an adequate waiver." *Id*. However, doing so here is unnecessary, since the Court finds that the class plaintiffs' takings claims are dismissed on alternative grounds.

2. The Class Plaintiffs Fail to Plead a Cognizable Property Interest

Any property rights that the class plaintiffs claim can only arise from their GSE stock certificates. Yet "existing rules," "understandings," or "background principles" derived from legislation enacted prior to the share purchase inhere in the plaintiffs' title to the stock certificates and "define the range of interests that qualify for protection as 'property' under the Fifth" Amendment. *Lucas v. S. Carolina Coastal Council*, 505 U.S. 1003, 1028-30 (1992); *see also Am. Pelagic Fishing Co., L.P. v. United States*, 379 F.3d 1363, 1379 (Fed. Cir. 2004).[48] Since 1992, when Congress established FHFA's predecessor, the Office of Federal Housing Enterprise Oversight ("OFHEO"), the GSEs have been subject to regulatory oversight, including the specter of conservatorship or receivership under which the regulatory agency succeeds to "all rights" of the GSEs and shareholders. *See* Federal Housing Enterprises Financial Safety and Soundness Act of 1992, Pub. L. No. 102-550, §§ 1301-1395, 106 Stat. 3672, 3941-4012 (establishing OFHEO); 12 U.S.C. § 4617(b)(2)(i). This enduring regulatory scheme governing

[48] Given the extensive history of Takings Clause jurisprudence within the Court of Appeals for the Federal Circuit, the Court will look to such cases for guidance.

the GSEs at the time the class plaintiffs purchased their shares represents the "background principle" that inheres in the stock certificates.

The defendants argue that the plaintiffs fail to plead a cognizable property interest, for takings purposes, because the GSEs—and, therefore, the plaintiff shareholders—lack the right to exclude the government from their property. Treasury Mot. at 59-60; FHFA Mot. at 60-62; *but see* Class Pls.'s Opp'n at 61-65. The Court agrees. "[T]he 'right to exclude' is doubtless . . . 'one of the most essential sticks in the bundle of rights that are commonly characterized as property.'" *Yee v. City of Escondido*, 503 U.S. 519, 528 (1992) (quoting *Kaiser Aetna v. United States*, 444 U.S. 164, 176 (1979)). The defendants analogize the "federal oversight and regulation" to which the GSEs have been subject to that of regulated financial institutions. *See* Treasury Mot. at 59. Utilizing this analogy, the defendants cite Federal Circuit case law for the proposition that the plaintiff shareholders have no present cognizable property interest in the dividends or liquidation preferences referenced in their stock certificates.

In two cases involving statutorily regulated financial institutions, placed under the authority of either the FDIC or RTC, the Federal Circuit found that the shareholders of these institutions lacked the requisite property interests to support a takings claim. *Golden Pac. Bancorp v. United States*, 15 F.3d 1066 (Fed. Cir. 1994); *Cal. Hous. Sec., Inc. v. United States*, 959 F.2d 955 (Fed. Cir. 1992).[49] On account of the existing regulatory structure permitting the appointment of a conservator or receiver, the financial institutions "lacked the fundamental right to exclude the government from its property at those times when the government could legally impose a conservatorship or receivership on [the institutions]." *Golden Pac.*, 15 F.3d at 1073

[49] The fact that the *California Housing* Court only considered the "permanent physical occupation" rubric of regulatory takings analysis from *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982), which would not apply to the present facts, has no effect on its holding regarding the threshold determination of a cognizable property interest.

(quoting *Cal. Hous.*, 959 F.2d at 958) (internal quotation marks omitted). And the result of this "regulated environment" is imputed to the shareholders of the financial institution, who thus hold "less than the full bundle of property rights." *Id.* (internal quotation marks omitted).

The Court finds this reasoning to be persuasive. By statutory definition, the GSEs are subject to governmental control at the discretion of FHFA's director. 12 U.S.C. § 4617(a)(2). Therefore, the GSE shareholders necessarily lack the right to exclude the government from their investment when FHFA places the GSEs under governmental control—*e.g.*, into conservatorship.[50] This conclusion is especially true since the statute explicitly grants FHFA the power to assume "all rights . . . of the regulated entity, and of any stockholder . . . ." *See* 12 U.S.C. § 4617(b)(2)(i).[51]

Without disputing the broader analogy that the defendants draw between regulated financial institutions and the GSEs,[52] the class plaintiffs seek to distinguish the Federal Circuit decisions based on *why* FHFA and Treasury entered into the Third Amendment. *Id.* at 63. But motives are irrelevant, for takings purposes, if the plaintiffs possess no cognizable property interests in the first place. *Golden Pacific* and *California Housing* stand for the general notion that investors have no right to exclude the government from their alleged property interests when the regulated institution in which they own shares is placed into conservatorship or receivership.

[50] The Court notes that FHFA overreads the Federal Circuit holdings. Unlike FHFA's contention that "shareholders had no cognizable property interest within the meaning of the Takings Clause *before* conservatorship," FHFA Mot. at 61, the shareholders only lose their cognizable property interests "when [the GSEs are] in conservatorship," Treasury Mot. at 58.

[51] The class plaintiffs' alarmist assertion that a holding like the one at present "would mean that the defendants could expropriate all of the shares in the most profitable and stable financial institutions in the country without triggering the Takings Clause" is unwarranted. Class Pls.'s Opp'n at 63-64. There is no right to exclude, and therefore no cognizable property interest upon which to state a takings claim, only when the government may "legally impose a conservatorship"—*i.e.*, when necessary to stabilize a stressed financial institution. *See Cal. Hous.*, 959 F.2d at 958; 12 U.S.C. § 4617(a)(2).

[52] *See* Class Pls.'s Opp'n at 61-62 ("Those cases hold that shareholders in regulated financial institutions are on notice that government regulators may place the institution into conservatorship or receivership if they conclude that the institution is insolvent or being operated in an unsafe and unsound manner, and therefore those shareholders lack the 'right to exclude' the government in such circumstances.")

See Cal. Hous., 959 F.2d at 958 (no right to exclude when a conservatorship or receivership is legally imposed). Whether the defendants executed the Third Amendment to generate profits for taxpayers or to escape a "downward spiral" of the GSEs seeking funding in order to pay owed dividends back to Treasury, it does not change the fact that it was executed during a period of conservatorship and, thus, after the plaintiffs' property interests—whatever they may have been prior to the Third Amendment—were extinguished. Unless the plaintiffs can demonstrate that FHFA could not legally impose a conservatorship upon the GSEs at the time of the Third Amendment, allegations of mischievous intentions during a conservatorship do not revive already eliminated cognizable property interests. *See id*. And here, the class plaintiffs only plead that the Third Amendment was inconsistent with FHFA's responsibilities *as* conservator—not that FHFA lacked any legal right to *be* a conservator on August 17, 2012. *E.g.*, *In re Fannie Mae/Freddie Mac* Am. Compl. at ¶¶ 92-101 (alleging that "the Third Amendment was inconsistent and in conflict with FHFA's statutory responsibilities as a conservator"); *see also* 12 U.S.C. § 4617(a)(2) ("[FHFA] may, *at the discretion of the Director*, be appointed conservator or receiver for the purpose of reorganizing, rehabilitating, or winding up the affairs of a regulated entity.") (emphasis added). Given that the class plaintiffs cannot repair the overarching threshold defect of having no cognizable property interest at stake, their takings claim must be dismissed under Rule 12(b)(6). *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) ("[O]nly a complaint that states a plausible claim for relief survives a motion to dismiss.").[53]

[53] In consideration of the class plaintiffs' takings claims concerning dividends, specifically, the Court further acknowledges the multitude of federal cases, in different contexts, finding a lack of a cognizable property interest when another party maintains *discretion* to grant a plaintiff's alleged property interest. *E.g.*, *Toxco, Inc. v. Chu*, 801 F. Supp. 2d 1, 10 (D.D.C. 2011) ("[I]f the government is vested with complete discretion as to whether or not it must undertake any of its contractual obligations, the plaintiff does not have a constitutional property interest in that contract.") (citing *Enplanar, Inc. v. Marsh*, 11 F.3d 1284, 1295-96 (5th Cir. 1994); *Christ Gatzonis Elec. Contractor, Inc. v. N.Y. City Sch. Constr. Auth.*, 23 F.3d 636, 640 (2d Cir. 1994)); *Barrington Cove Ltd. P'ship v. R.I. Hous. & Mortg. Fin. Corp.*, 246 F.3d 1, 5-6 (1st Cir. 2001) (finding that a plaintiff has no cognizable property interest in "'promised' federal income tax credits" because a state agency maintained "absolute discretion to

3. *The Class Plaintiffs Further Fail to Plead a Regulatory Taking*

Even if the class plaintiffs could claim a cognizable property interest—and they cannot—their claims would still fail on a motion to dismiss under existing Supreme Court regulatory takings precedent. "The general rule at least is that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking." *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922). The Supreme Court has developed a series of analytical rubrics under which courts are to determine "whether a regulation 'reaches a certain magnitude' in depriving an owner of the use of property." *See Dist. Intown Props. Ltd. P'ship v. D.C.*, 198 F.3d 874, 878 (D.C. Cir. 1999) (quoting *Mahon*, 260 U.S. at 413). There are two principal "narrow categories" of *per se* takings. *See Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 538 (2005). First, "a permanent physical occupation authorized by government is a taking without regard to the public interests that it may serve." *Loretto*, 458 U.S. at 426. Here, the government has not physically occupied the plaintiffs' property.[54] Second, a government regulation that deprives an owner of "*all* economically beneficial uses" of his property is also a taking. *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1019 (1992). Regardless of whether *Lucas* only applies to real property, *compare* Treasury Mot. at 61, *with* Class Pls.'s Opp'n at 67-68, the

determine whether" such tax credits are awarded); *Nello L. Teer Co. v. Orange Cnty.*, No. 92-2240, 1993 WL 177872, at *2 (4th Cir. 1993) ("Under our precedents, if a local zoning authority possesses any significant discretion in granting a permit, there is no cognizable property interest in the issuance of that permit.") (internal quotation marks, alteration, and citation omitted). The logic of these decisions would appear to extend to dividends that are issued at the "sole discretion" of a GSE board—or, in this case, the regulatory entity that has succeeded to all the rights of the board. Much like how plaintiffs cannot claim that discretionary dividends amount to a contractual right, the class plaintiffs cannot contend that such dividend provisions constitute a cognizable property interest.

[54] The Supreme Court has also held that "when the government commands the relinquishment of funds linked to a specific, identifiable property interest such as a bank account or parcel of real property, 'a *per se* [takings] approach' is the proper mode of analysis." *Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586, 2600 (2013) (citing *Brown v. Legal Found. of Wash.*, 538 U.S. 216, 235 (2003)). Despite citing this language in their opposition brief, Class Pls.'s Opp'n at 67, the class plaintiffs have not alleged that the government has commanded them to *relinquish* any funds—or property, for that matter—already owned or possessed. *See* Treasury Reply at 56 ("The plaintiffs' claim, instead, is that the value of their expectation of dividends or a liquidation preference has been diminished . . . .").

plaintiffs cannot find relief under a "total wipeout" theory. *See* Class Pls.'s Opp'n at 67-68. The plaintiffs maintain "economically beneficial use" of their shares, since the stock very much remains a tradable equity. Indeed, GSE shares are traded daily on public over-the-counter (OTC) exchanges.[55] And given the Court's rejection of the plaintiffs' alleged present rights to dividends and liquidation payments, it is clear that the government has not "seized [the plaintiffs'] private property and kept that property for itself." Class Pls.'s Opp'n at 67.

A regulatory taking, on the other hand, is evaluated under the "ad hoc" inquiry set forth in *Penn Central Transp. Co. v. New York City*, 438 U.S. 104 (1978). *Id.* at 124. *Penn Central* identified three "factors that have particular significance" in evaluating regulatory takings claims: (1) "[t]he economic impact of the regulation on the claimant"; (2) "the extent to which the regulation has interfered with distinct investment-backed expectations"; and (3) "the character of the governmental action." *Id.* A plaintiff is not required to demonstrate favorable results under all three *Penn Central* factors in order for the Court to find a taking—it is a balancing test. *See Dist. Intown Props.*, 198 F.3d at 878-79 (*Penn Central* submits "three primary factors [to be] weigh[ed] in the balance"). While regulatory takings require a "more fact specific inquiry", *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 332 (2002), no supplementation of the factual record could alter dismissal here.

At present, the Third Amendment has had no economic impact on the plaintiffs' alleged dividend or liquidation preference rights. In view of the unambiguous language of the stock certificate's dividend provision coupled with Treasury's discretion to pay dividends under the PSPAs, the plaintiffs cannot show that the Third Amendment rendered their prospects of

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[55] That the plaintiffs retained value in their market traded shares is consistent with the statement from Freddie Mac's Form 8-K filing on September 8, 2011, which the class plaintiffs quote in the Amended Complaint. *See In re Fannie Mae/Freddie Mac* Am. Compl. at ¶ 53 ("The holders of Freddie Mac's existing common stock and preferred stock . . . will retain all their rights in the financial worth of those instruments, *as such worth is determined by the market*.") (emphasis added) (quoting Freddie Mac 2011 8-K (Sept. 11, 2008)).

receiving dividends any less discretionary than they were prior to the amendment. Additionally, since liquidation preference rights only ripen *during liquidation*, any impact on such rights is, at best, theoretical while the GSEs remain in conservatorship.

"A 'reasonable investment-backed expectation' must be more than a 'unilateral expectation or an abstract need.'" *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1005 (1984) (quoting *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 161 (1980)). "In determining whether a reasonable investment-backed expectation exists, one relevant consideration is the extent of government regulation within an industry." *Ascom Hasler Mailing Sys., Inc. v. U.S. Postal Serv.*, 885 F. Supp. 2d 156, 195 (D.D.C. 2012) (collecting cases). For decades—and at the time each of the class plaintiffs purchased their GSE stock—the GSEs have been under the watchful eye of regulatory agencies and subject to conservatorship or receivership largely at the government's discretion. *See supra* Section III(D)(2).[56] As the Federal Circuit's holdings in *California Housing* and *Golden Pacific* elucidate, by lacking the right to exclusive possession of their stock certificates—and therefore lacking a cognizable property interest—at the time of the Third Amendment, the plaintiff shareholders could not have "developed a historically rooted expectation of compensation" for any possible seizures that occurred during FHFA's conservatorship. *See Cal. Hous.*, 959 F.2d at 958. The plaintiffs "voluntarily entered into [investment contracts with] the highly regulated" GSEs. *See Golden Pac.*, 15 F.3d at 1073.[57] In fact, a number of the class plaintiffs purchased their shares mere

[56] Furthermore, as FHFA cogently explains, "[b]ecause the [GSEs] benefited from preferential tax treatment, far lower capital requirements, and a widely perceived government guarantee, [the] [p]laintiffs should have anticipated that the [GSEs] would be subject to . . . regulation." FHFA Mot. at 61 n.37 (citation omitted). The tradeoff when investing in government-sponsored entities that receive meaningfully different benefits than private corporations is increased regulation and the prospect of a government takeover.

[57] Both Fannie Mae and Freddie Mac preferred stock certificates provide notice that "[t]he ability of the Board of Directors to declare dividends may be restricted by [FHFA's predecessor] OFHEO." *See* Individual Pls.'s Opp'n Ex. A at 20 (Fannie Mae Preferred Stock Series S); Ex. B at 27 (Freddie Mac Preferred Stock).

months before or shortly after FHFA exercised its statutory authority to place the GSEs into conservatorship. *E.g.*, *In re Fannie Mae/Freddie Mac* Am. Compl. at ¶¶ 30-35; *In re Fannie Mae/Freddie Mac* Derivative Compl. at ¶¶ 20-21. There can be no doubt that the plaintiff shareholders understood the risks intrinsic to investments in entities as closely regulated as the GSEs, and, as such, have not now been deprived of any *reasonable* investment-backed expectations.

Looking to the character of the governmental action in dispute, the *Penn Central* Court explained that "[a] 'taking' may more readily be found when the interference with property can be characterized as a physical invasion by government than when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good." 438 U.S. at 124. Here, the plaintiffs do not plead a physical invasion of their property. Whether the regulatory action taken by FHFA and Treasury when executing the Third Amendment "promote[s] the common good" or advances a public purpose, however, is in dispute. The Supreme Court in *Kelo v. City of New London*, a public use case, reaffirmed that courts should take a deferential stance regarding what constitutes a legitimate public purpose. 545 U.S. 469, 487-88 (2005) ("When the legislature's purpose is legitimate and its means are not irrational, our cases make clear that empirical debates over the wisdom of takings . . . are not to be carried out in the federal courts."); *see also Hilton Washington Corp. v. D.C.*, 777 F.2d 47, 49-50 (D.C. Cir. 1985) (looking only for a "valid public purpose" when examining *Penn Central*'s "character of the governmental action" factor). The plaintiffs would be hard pressed to argue that actions taken to "benefit taxpayers" do not qualify as a legitimate public purpose. *E.g.*, Class Pls.'s Opp'n at 15. To reach this conclusion with certainty, however, the Court would likely need to permit additional fact-finding. Nevertheless, more discovery is unnecessary because *Penn Central*'s first two factors weigh strongly enough against the plaintiffs' takings claims that dismissal would be proper in this case. *See Monsanto*, 467 U.S. at 1005 ("[T]he force of [the reasonable investment-backed expectations] factor [here] is so overwhelming . . . that it disposes of the taking question . . . .").

4. Claims of an Unconstitutional Taking of Liquidation Rights Are Not Ripe

Moreover, the Court would also dismiss the class plaintiffs' takings claims, at least in relation to liquidation preference rights, on ripeness grounds. As mentioned above, "[a] claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." *Texas v. United States*, 523 U.S. at 300 (internal quotation marks and citation omitted). Liquidation preferences only entitle a preferred stockholder to payment in the event of liquidation. Consistent with the Court's reasoning discussed *supra*, Section III(C)(1), the government cannot take a property right that has not yet matured. This Court's findings concerning cognizable property interests aside, a claim of an unconstitutional taking of liquidation preference rights may only be brought once a liquidation process has commenced.[58]

[58] Regarding another possible basis for dismissal, the Court appreciates the logical appeal of FHFA's comparison of the *Omnia* Court's finding that consequential—rather than direct—injuries to a third party do not entitle that third party to a takings remedy and the alleged injury caused to the plaintiffs here by the Third Amendment agreement between FHFA and Treasury. FHFA Mot. at 62-63; FHFA Reply at 40-45 (citing *Omnia Commercial Co. v. United States*, 261 U.S. 502 (1923)); *but see* Class Pls.'s Opp'n at 70-72. However, the Court is wary of applying to the present facts a decision that came just five months after the concept of a regulatory taking was born, *see Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922), and many decades before the Supreme Court began actively developing its regulatory takings jurisprudence. *See Lingle*, 544 U.S. at 536-40 (outlining the evolution of regulatory takings case law since the Supreme Court's *Penn Central* decision in 1978).

The Court need not address whether the class plaintiffs' takings claims are further barred because FHFA is not the United States for takings purposes, FHFA Mot. at 59-60, or because Treasury entered into the Third Amendment as a "market participant," Treasury Mot. at 64-65. Such additional arguments are unnecessary to consider in order to resolve the takings issue at the motion to dismiss stage.

IV. CONCLUSION

It is understandable for the Third Amendment, which sweeps nearly all GSE profits to Treasury, to raise eyebrows, or even engender a feeling of discomfort. But any sense of unease over the defendants' conduct is not enough to overcome the plain meaning of HERA's text. Here, the plaintiffs' true gripe is with the language of a statute that enabled FHFA and, consequently, Treasury, to take unprecedented steps to salvage the largest players in the mortgage finance industry before their looming collapse triggered a systemic panic. Indeed, the plaintiffs' grievance is really with Congress itself. It was Congress, after all, that parted the legal seas so that FHFA and Treasury could effectively do whatever they thought was needed to stabilize and, if necessary, liquidate, the GSEs. Recognizing its role in the constitutional system, this Court does not seek to evaluate the merits of whether the Third Amendment is sound financial—or even moral—policy. The Court does, however, find that HERA's unambiguous statutory provisions, coupled with the unequivocal language of the plaintiffs' original GSE stock certificates, compels the dismissal of all of the plaintiffs' claims.

Thus, for the foregoing reasons, the Court GRANTS the defendants' motions to dismiss and DENIES the individual plaintiffs' cross-motion for summary judgment.

A separate Order consistent with this Memorandum Opinion shall issue this date.

9-30-14
Date

Royce C. Lamberth
ROYCE C. LAMBERTH
United States District Judge

FILED
SEP 30 2014
Clerk, U.S. District & Bankruptcy Courts for the District of Columbia

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PERRY CAPITAL LLC, **Plaintiff,** **v.** **JACOB J. LEW, *et al.*,** **Defendant.**	**Civil No. 13-1025 (RCL)**
FAIRHOLME FUNDS, INC., *et al.*, **Plaintiff,** **v.** **FEDERAL HOUSING FINANCE AGENCY, *et al.*,** **Defendant.**	**Civil No. 13-1053 (RCL)**
ARROWOOD INDEMNITY COMPANY, *et al.*, **Plaintiff,** **v.** **FEDERAL NATIONAL MORTGAGE ASSOCATION, *et al.*,** **Defendant.**	**Civil No. 13-1439 (RCL)**

In re Fannie Mae/Freddie Mac Senior Preferred Stock Purchase Agreement Class Action Litigations	)	**Miscellaneous No. 13-1288 (RCL)**
This Memorandum Opinion relates to: ALL CASES	)	CLASS ACTION

ORDER

Before the Court are the defendants' respective motions to dismiss and, in the alternative, for summary judgment [*Perry* 31, 32], [*Fairholme* 27, 28], [*Arrowood* 35, 36], [*In re Fannie Mae/Freddie Mac* 19, 20], the class action plaintiffs' ("class plaintiffs") opposition to the defendants' motions to dismiss [*In re Fannie Mae/Freddie Mac* 33], the *Perry*, *Fairholme*, and *Arrowood* plaintiffs' (collectively, "individual plaintiffs") opposition to the defendants' motions to dismiss and cross-motion for summary judgment [*Perry* 37, 38], [*Fairholme* 38, 40], [*Arrowood* 44, 46], the *Fairholme* and *Arrowood* plaintiffs' supplemental memorandum in support of the individual plaintiffs' opposition to the defendants' motions to dismiss and cross-motion for summary judgment [*Fairholme* 39], [*Arrowood* 45], the defendants' respective reply briefs to the class and individual plaintiffs' oppositions to the motions to dismiss [*Perry* 40, 42], [*Fairholme* 43, 45], [*Arrowood* 48, 50], [*In re Fannie Mae/Freddie Mac* 36, 38] and identical opposition briefs to the individual plaintiffs' cross-motion for summary judgment [*Perry* 41, 43], [*Fairholme* 44, 46], [*Arrowood* 49, 51], and the individual plaintiffs' reply to the defendants' opposition to the cross-motion [*Perry* 47], [*Fairholme* 51], [*Arrowood* 54]. For the reasons explained in the accompanying Memorandum Opinion issued this date, it is hereby

ORDERED that the defendants' motions to dismiss [*Perry* 31, 32], [*Fairholme* 27, 28], [*Arrowood* 35, 36], [*In re Fannie Mae/Freddie Mac* 19. 20] are **GRANTED** and the individual plaintiffs' cross-motion for summary judgment [*Perry* 37], [*Fairholme* 39, 40], [*Arrowood* 45, 46] are **DENIED**.

These cases are hereby **DISMISSED**.

It is **SO ORDERED** this 30th day of September 2014.

ROYCE C. LAMBERTH
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED
SEP 30 2014
Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

PERRY CAPITAL LLC, **Plaintiff,** **v.** **JACOB J. LEW, *et al.*,** **Defendant.**	**Civil No. 13-1025 (RCL)**
FAIRHOLME FUNDS, INC., *et al.*, **Plaintiff,** **v.** **FEDERAL HOUSING FINANCE AGENCY, *et al.*,** **Defendant.**	**Civil No. 13-1053 (RCL)**
ARROWOOD INDEMNITY COMPANY, *et al.*, **Plaintiff,** **v.** **FEDERAL NATIONAL MORTGAGE ASSOCATION, *et al.*,** **Defendant.**	**Civil No. 13-1439 (RCL)**

In re Fannie Mae/Freddie Mac Senior Preferred Stock Purchase Agreement Class Action Litigations	)	**Miscellaneous No. 13-1288 (RCL)**
This Memorandum Opinion relates to: ALL CASES	)	CLASS ACTION

ORDER

Before the Court is the *Fairholme* plaintiffs' motion [*Fairholme* 31, 32] for supplementation of the administrative record, limited discovery, suspension of briefing on the defendants' dispositive motions, and a status conference, to which all other plaintiffs join [*Arrowood* 40], [*In re Fannie Mae/Freddie Mac* 23], [*Perry* 49], the defendants' respective opposition briefs [*Fairholme* 33, 34] to the *Fairholme* plaintiffs' motion and responses [*Arrowood* 41, 42], [*In re Fannie Mae/Freddie Mac* 24, 25] to the *Arrowood* and class action plaintiffs' notices of joinder, and the *Fairholme* plaintiffs' reply [*Fairholme* 36] thereto, to which the class action plaintiffs join [*In re Fannie Mae/Freddie Mac* 29]. For the reasons explained in the Memorandum Opinion dismissing the plaintiffs' cases issued this date, the plaintiffs' motion for supplementation of the administrative record, limited discovery, suspension of briefing on the defendants' dispositive motions, and a status conference is hereby **DENIED** as moot.

It is **SO ORDERED** this 30th day of September 2014.

Royce C. Lamberth
ROYCE C. LAMBERTH
United States District Judge

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

PERRY CAPITAL LLC, Plaintiff, v. JACOB J. LEW, in his official capacity as the Secretary of the Department of the Treasury, EDWARD DEMARCO, in his official capacity as Acting Director of the Federal Housing Finance Agency, DEPARTMENT OF THE TREASURY, and FEDERAL HOUSING FINANCE AGENCY, Defendants.	Civil Action No. 1:13-cv-1025-RCL

NOTICE OF APPEAL

Notice is hereby given this 2nd day of October, 2014, that Perry Capital LLC appeals to the United States Court of Appeals for the District of Columbia Circuit from: (1) the Memorandum Opinion (Dkt. No. 51) entered on September 30, 2014; (2) the Order Granting Defendants' Motions to Dismiss and Denying Plaintiffs' Cross-Motion for Summary Judgment (Dkt. No. 52) entered on September 30, 2014; (3) the Order Denying Motion for Supplementation of the Administrative Record, Limited Discovery, Suspension of Briefing on the Defendants' Dispositive Motions, and a Status Conference (Dkt. No. 53) entered on September 30, 2014; and (4) all other orders and rulings adverse to Perry Capital LLC in this case.

Respectfully Submitted,

Dated: October 2, 2014

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APPEAL,TYPE−C

U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:13−cv−01053−RCL

FAIRHOLME FUNDS, INC. et al v. FEDERAL HOUSING FINANCE AGENCY, et al
Assigned to: Judge Royce C. Lamberth
Cases: 1:13−cv−01169−RCL
1:13−cv−01025−RCL
1:13−cv−01184−RCL
1:13−cv−01149−RCL
1:13−cv−01208−RCL
1:14−cv−01404−RCL
1:13−cv−01421−RCL
1:13−cv−01439−RCL
1:13−cv−01443−RCL
1:13−cv−01094−RCL
Cause: 05:702 Administrative Procedure Act

Date Filed: 07/10/2013
Jury Demand: None
Nature of Suit: 890 Other Statutory Actions
Jurisdiction: U.S. Government Defendant

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V.

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Date Filed	#	Page	Docket Text
07/10/2013	1		COMPLAINT against All Defendants (Filing fee $ 400 receipt number 0090−3393808) filed by ADMIRAL INSURANCE COMPANY, PREFERRED EMPLOYERS INSURANCE COMPANY, BERKLEY INSURANCE COMPANY, BERKLEY REGIONAL INSURANCE COMPANY, MIDWEST EMPLOYERS CASUALTY INSURANCE COMPANY, FAIRHOLME FUND, CAROLINA CASUALTY INSURANCE COMPANY, ACADIA INSURANCE COMPANY, FAIRHOLME FUNDS, INC., NAUTILUS INSURANCE COMPANY, ADMIRAL INDEMNITY COMPANY. (Attachments: # 1 Civil Cover Sheet, # 2 Exhibit Rule 7.1 Corporate Disclosure Statement, # 3 Summons, # 4 Exhibit Notice of Related Cases)(Cooper, Charles). (Entered: 07/10/2013)
07/10/2013	2		NOTICE OF RELATED CASE by All Plaintiffs. Case related to Case No. 13−1025. (Cooper, Charles) (Entered: 07/10/2013)
07/10/2013	3		LCvR 7.1 CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests by ACADIA INSURANCE COMPANY, ADMIRAL INDEMNITY COMPANY, ADMIRAL INSURANCE COMPANY, BERKLEY INSURANCE COMPANY, BERKLEY REGIONAL INSURANCE COMPANY, CAROLINA CASUALTY INSURANCE COMPANY, Fairholme Fund, Fairholme Funds, Inc., MIDWEST EMPLOYERS CASUALTY INSURANCE COMPANY, NAUTILUS INSURANCE COMPANY, PREFERRED EMPLOYERS INSURANCE COMPANY (Cooper, Charles) (Entered: 07/10/2013)
07/11/2013	4		NOTICE of Appearance by David Henry Thompson on behalf of All Plaintiffs (Thompson, David) (Entered: 07/11/2013)
07/12/2013	5		NOTICE of Appearance by Vincent J. Colatriano on behalf of All Plaintiffs (Colatriano, Vincent) (Entered: 07/12/2013)
07/12/2013	6		ELECTRONIC SUMMONS (5) Issued as to EDWARD DEMARCO, DEPARTMENT OF TREASURY, FEDERAL HOUSING FINANCE AGENCY, U.S. Attorney and U.S. Attorney General (Attachments: # 1 Summons)(sth,) (Entered: 07/12/2013)
07/19/2013	7		RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. DEPARTMENT OF TREASURY served on 7/15/2013 (Cooper, Charles) Modified on 7/22/2013 (rdj). (Entered: 07/19/2013)
07/19/2013	8		RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. DEPARTMENT OF TREASURY served on 7/15/2013 (Cooper, Charles) Modified on 7/22/2013 (rdj). (Entered: 07/19/2013)
07/19/2013	9		RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. DEPARTMENT OF TREASURY served on 7/15/2013 (Cooper, Charles) Modified on 7/22/2013 (rdj). (Entered: 07/19/2013)
07/19/2013	10		

			RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the United States Attorney. Date of Service Upon United States Attorney on 7/16/2013. Answer due for ALL FEDERAL DEFENDANTS by 9/14/2013. (Cooper, Charles) (Entered: 07/19/2013)
07/19/2013	11		RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on United States Attorney General. Date of Service Upon United States Attorney General 07/16/2013. (Cooper, Charles) (Entered: 07/19/2013)
07/31/2013	12		NOTICE of Appearance by Joel L. McElvain on behalf of DEPARTMENT OF TREASURY (McElvain, Joel) (Entered: 07/31/2013)
07/31/2013	13		NOTICE of Appearance by Thomas David Zimpleman on behalf of DEPARTMENT OF TREASURY (Zimpleman, Thomas) (Entered: 07/31/2013)
08/12/2013	14		NOTICE of Appearance by Peter A. Patterson on behalf of All Plaintiffs (Patterson, Peter) (Entered: 08/12/2013)
08/26/2013	15		NOTICE of Appearance by Asim Varma on behalf of EDWARD DEMARCO, FEDERAL HOUSING FINANCE AGENCY (Varma, Asim) (Entered: 08/26/2013)
08/26/2013	16		NOTICE of Appearance by Howard Neil Cayne on behalf of EDWARD DEMARCO, FEDERAL HOUSING FINANCE AGENCY (Cayne, Howard) (Entered: 08/26/2013)
08/26/2013	17		NOTICE of Appearance by David Block Bergman on behalf of EDWARD DEMARCO, FEDERAL HOUSING FINANCE AGENCY (Bergman, David) (Entered: 08/26/2013)
09/09/2013	18		STIPULATION *as to Briefing Schedule* by DEPARTMENT OF TREASURY. (Attachments: # 1 Text of Proposed Order)(McElvain, Joel) (Entered: 09/09/2013)
09/10/2013			MINUTE ORDER: It is hereby ORDERED that all deadlines in this case shall be STAYED until further notice while the Court reviews all of the pending motions in all of the related pending cases. Signed by Judge Robert L. Wilkins on 9/10/2013. (tcb) (Entered: 09/10/2013)
09/23/2013			MINUTE ORDER: All briefing (including responses to pending motions) and obligations to answer, or otherwise respond to complaints, are hereby stayed until further notice of the court. Signed by Judge Robert L. Wilkins on 9/23/2013. (tcb). (Entered: 09/23/2013)
10/09/2013	19		PRELIMINARY CASE MANAGEMENT ORDER No. 1IN THE FANNIE MAE/FREDDIE MAC SENIOR PREFERRED STOCK PURCHASEAGREEMENT LITIGATIONS; On July 7, 2013, an investment manager filed a complaint in this court against a number of parties, including the Department of the Treasury (Treasury) and the Federal Housing Finance Agency (FHFA), in its capacity as the conservator for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac). Perry Capital LLC v. Lew, 13−cv−1025. All parties shall appear for a status hearing in this matter on November 12, 2013 at 2:00 pm to discuss the issues specified in this Order. Other than this Joint Status Report, all briefing (including responses to pending motions) and

			obligations to answer, or otherwise respond to complaints, are still stayed until further notice of the Court. (SEE ORDER FOR FULL DETAILS). Signed by Judge Robert L. Wilkins on 10/9/2013. (tcb) (Entered: 10/09/2013)
11/06/2013	20		STATUS REPORT by FAIRHOLME FUND, FAIRHOLME FUNDS, INC. (Attachments: # 1 Exhibit A − Stipulation and Proposed Order re: Consolidation, # 2 Exhibit B − Proposed Order re: Joint Status Report)(Cooper, Charles) (Entered: 11/06/2013)
11/12/2013			Minute Entry for proceedings held before Judge Robert L. Wilkins: Status Conference held and concluded on 11/12/2013. Plaintiff's Motion to Appoint Counsel; Heard and the Court to grant. Parties to submit a Word version of the proposed order to the Court. Motions Hearing set for 6/23/2014 at 9:30 AM in Courtroom 27A before Judge Robert L. Wilkins. (Court Reporter Patty Gels) (tcb). (Entered: 11/12/2013)
11/13/2013			Set/Reset Hearings: Motion Hearing set for 6/23/2014 at 9:30 AM in Courtroom 27A before Judge Robert L. Wilkins. (tcb) (Entered: 11/13/2013)
11/18/2013	21		ORDER REGARDING BRIEFING SCHEDULE IN ALL CASES: Upon consideration of the Joint Status Report submitted on November 6, 2013 and pursuant to the Federal Rule of Civil Procedure 42, it is hereby ORDERED that the above captioned cases proceed according to the following schedule: Interim co−lead class counsel file a consolidated class action complaint due by 12/3/2013. Defendants file the administrative record due by 12/17/2013.. Defendants file dispositive motions due by 1/17/2014. Plaintiffs file oppositions to defendants motions and cross−motions due by 2/19/2014. Defendants file replies in support of their motions and oppositions to plaintiffs cross motions due by 4/2/2014. Plaintiffs file replies in support of their cross motions due by 5/2/2014. Hearing on defendants dispositive motions and plaintiffs cross−motions set for 6/23/2014 at 9:30 AM in Courtroom 27A before Judge Robert L. Wilkins.(SEE ORDER FOR FULL DETAILS). Signed by Judge Robert L. Wilkins on 11/18/2013. (tcb) (Entered: 11/18/2013)
12/06/2013	22		STATUS REPORT by FAIRHOLME FUND, FAIRHOLME FUNDS, INC. (Cooper, Charles) (Entered: 12/06/2013)
12/17/2013	23		ADMINISTRATIVE RECORD by DEPARTMENT OF TREASURY. (Attachments: # 1 Exhibit Administrative Record part 1, # 2 Exhibit Administrative Record part 2, # 3 Exhibit Administrative Record part 3, # 4 Exhibit Administrative Record part 4, # 5 Exhibit Administrative Record part 5, # 6 Exhibit Administrative Record part 6, # 7 Exhibit Administrative Record part 7, # 8 Exhibit Administrative Record part 8, # 9 Exhibit Administrative Record part 9, # 10 Exhibit Administrative Record part 10, # 11 Exhibit Administrative Record part 11, # 12 Exhibit Administrative Record part 12, # 13 Exhibit Administrative Record part 13, # 14 Exhibit Administrative Record part 14)(McElvain, Joel) (Entered: 12/17/2013)
12/17/2013	24		NOTICE *OF FILING DOCUMENT COMPILATION REGARDING THIRD AMENDMENT TO SENIOR PREFERRED STOCK PURCHASE AGREEMENTS* by EDWARD DEMARCO, FEDERAL HOUSING FINANCE AGENCY (Attachments: # 1 Index, # 2 Exhibit Part 1, # 3 Exhibit Part 2, # 4 Exhibit Part 3, # 5 Exhibit Part 4, # 6 Exhibit Part 5, # 7 Exhibit

			Part 6, # 8 Exhibit Part 7, # 9 Exhibit Part 8, # 10 Exhibit Part 9, # 11 Exhibit Part 10, # 12 Exhibit Part 11, # 13 Exhibit Part 12, # 14 Exhibit Part 13, # 15 Exhibit Part 14, # 16 Exhibit Part 15, # 17 Exhibit Part 16, # 18 Exhibit Part 17)(Varma, Asim) (Entered: 12/17/2013)
12/19/2013	25		ERRATA *with Respect to Administrative Record* by DEPARTMENT OF TREASURY. (Attachments: # 1 Exhibit Freddie Mac 2010 Form 10−K (0640−1063), # 2 Exhibit Freddie Mac First Quarter 2011 Form 10−Q (1231−1461), # 3 Exhibit Freddie Mac Second Quarter 2011 Form 10−Q (1647−1892), # 4 Exhibit Freddie Mac Third Quarter 2011 Form 10−Q (2114−2357), # 5 Exhibit Freddie Mac 2011 Form 10−K (2765−3247), # 6 Exhibit Freddie Mac First Quarter 2012 Form 10−Q (3532−3774))(McElvain, Joel) (Entered: 12/19/2013)
01/06/2014			MINUTE ORDER: It is hereby ORDERED that Defendants briefs in support of their dispositive motion in the three non−consolidated actions (Perry Capital LLC v. Lew, et al., No. 13−cv−1025 (RLW), Fairholme Funds, Inc., et al. v. Federal Housing Finance Agency, et al., No. 13−cv−1053 (RLW), and Arrowood Indemnity Co., et al. v. Federal National Mortgage Association, et al., No. 13−cv−1439 (RLW)) shall not exceed 130 pages. It is further ORDERED that Plaintiffs briefs in support of their opposition to Defendants dispositive motion and in support of any cross−motion for summary judgment shall not exceed 150 pages. Should Plaintiffs conclude, after reviewing Defendants filings and conferring in good faith, that an adequate response requires more than 150 pages, Plaintiffs counsel shall promptly inform the Court and file an appropriate motion. These page limits are inclusive of any supplemental briefs to be filed by the parties. Signed by Judge Robert L. Wilkins on 1/6/2014. (tcb) (Entered: 01/06/2014)
01/08/2014	26		Unopposed MOTION for Leave to File Excess Pages by DEPARTMENT OF TREASURY (McElvain, Joel) (Entered: 01/08/2014)
01/09/2014			MINUTE ORDER: Defendant's 26 Unopposed MOTION for Leave to File Excess Pages is hereby GRANTED. Counsel for Defendants is admonished to comply with the local rules in the future and submit a proposed order with ALL motions pursuant to Local Rule 7(c). Signed by Judge Robert L. Wilkins on 1/9/2014. (tcb) (Entered: 01/09/2014)
01/17/2014	27		MOTION to Dismiss *or, in the Alternative, for Summary Judgment* by DEPARTMENT OF TREASURY (Attachments: # 1 Memorandum in Support, # 2 Text of Proposed Order)(McElvain, Joel). Added MOTION for Summary Judgment on 1/21/2014 (znmw,). (Entered: 01/17/2014)
01/17/2014	28		MOTION to Dismiss *All Claims and, in the Alternative, for Summary Judgment as to Plaintiffs Arbitrary and Capricious Claims and Memorandum in Support* by FEDERAL HOUSING FINANCE AGENCY (Attachments: # 1 Text of Proposed Order)(Cayne, Howard). Added MOTION for Summary Judgment on 1/21/2014 (znmw,). (Entered: 01/17/2014)
01/17/2014	29		MOTION to Take Judicial Notice by EDWARD DEMARCO, FEDERAL HOUSING FINANCE AGENCY (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Text of Proposed Order)(Cayne, Howard) (Entered: 01/17/2014)
01/22/2014			

			Case reassigned by consent to Judge Royce C. Lamberth. Judge Robert L. Wilkins has been elevated to U.S. Court of Appeals for D.C. and is no longer assigned to the case. (gt,) (Entered: 01/22/2014)
01/30/2014	30		STIPULATION *To Conform Briefing Schedule on Defendants' Motion for Judicial Notice to Briefing Schedule Established for Defendants' Dispositive Motions* by FAIRHOLME FUND, FAIRHOLME FUNDS, INC. (Thompson, David) (Entered: 01/30/2014)
02/12/2014	31		MOTION for Supplementation of the Administrative Records, for Limited Discovery, for Suspension of Briefing on Defendants' Dispositive Motions, and for a Status Conference by FAIRHOLME FUND, FAIRHOLME FUNDS, INC (Attachments: # 1 Text of Proposed Order)(Cooper, Charles). Added MOTION for Discovery, MOTION for Hearing, MOTION for Leave to File Supplement on 2/13/2014 (znmw,). (Entered: 02/12/2014)
02/12/2014	32		MEMORANDUM re 31 MOTION for Supplementation of the Administrative Records, for Limited Discovery, for Suspension of Briefing on Defendants' Dispositive Motions, and for a Status Conference filed by FAIRHOLME FUNDS, INC, FAIRHOLME FUND by FAIRHOLME FUND, FAIRHOLME FUNDS, INC. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4 (Declaration of Vincent J. Colatriano))(Cooper, Charles) (Entered: 02/12/2014)
03/04/2014	33		Memorandum in opposition to re 31 MOTION for Suspension of Briefing on Defendants' Dispositive Motions MOTION for Discovery MOTION for Hearing MOTION for Leave to File filed by DEPARTMENT OF TREASURY. (McElvain, Joel) (Entered: 03/04/2014)
03/04/2014	34		Memorandum in opposition to re 31 MOTION for Suspension of Briefing on Defendants' Dispositive Motions MOTION for Discovery MOTION for Hearing MOTION for Leave to File filed by EDWARD DEMARCO, FEDERAL HOUSING FINANCE AGENCY. (Cayne, Howard) (Entered: 03/04/2014)
03/05/2014	35		NOTICE *of Filing of Discovery Order Issued by United States Court of Federal Claims* by FAIRHOLME FUND, FAIRHOLME FUNDS, INC (Attachments: # 1 Exhibit A)(Cooper, Charles) (Entered: 03/05/2014)
03/13/2014	36		REPLY to opposition to motion re 31 MOTION for Suspension of Briefing on Defendants' Dispositive Motions MOTION for Discovery MOTION for Hearing MOTION for Leave to File filed by FAIRHOLME FUND, FAIRHOLME FUNDS, INC. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(Cooper, Charles) (Entered: 03/13/2014)
03/18/2014	37		Memorandum in opposition to re 29 MOTION to Take Judicial Notice filed by FAIRHOLME FUND, FAIRHOLME FUNDS, INC. (Attachments: # 1 Exhibit Order [Proposed By Plaintiffs] On Defendants' Motion For Judicial Notice)(Thompson, David) (Entered: 03/18/2014)
03/21/2014	38		Memorandum in opposition to re 28 MOTION to Dismiss *All Claims and, in the Alternative, for Summary Judgment as to Plaintiffs Arbitrary and Capricious Claims and Memorandum in Support* MOTION for Summary Judgment filed by ACADIA INSURANCE COMPANY, ADMIRAL INDEMNITY COMPANY, ADMIRAL INSURANCE COMPANY,

			BERKLEY INSURANCE COMPANY, BERKLEY REGIONAL INSURANCE COMPANY, CAROLINA CASUALTY INSURANCE COMPANY, FAIRHOLME FUND, FAIRHOLME FUNDS, INC, MIDWEST EMPLOYERS CASUALTY INSURANCE COMPANY, NAUTILUS INSURANCE COMPANY, PREFERRED EMPLOYERS INSURANCE COMPANY (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5)(Cooper, Charles) Modified on 3/24/2014 (jf,). (Entered: 03/21/2014)
03/21/2014	39		SUPPLEMENTAL MEMORANDUM to re 28 MOTION to Dismiss *All Claims and, in the Alternative, for Summary Judgment as to Plaintiffs Arbitrary and Capricious Claims and Memorandum in Support* MOTION for Summary Judgment, 27 MOTION to Dismiss *or, in the Alternative, for Summary Judgment* MOTION for Summary Judgment −− *Plaintiffs' Suppl. Memorandum on APA, Fiduciary Duty, and Contract Claims* filed by FAIRHOLME FUND, FAIRHOLME FUNDS, INC. (Attachments: # 1 Exhibit 1)(Cooper, Charles) (Entered: 03/21/2014)
03/21/2014	40		Cross MOTION for Summary Judgment by ACADIA INSURANCE COMPANY, ADMIRAL INDEMNITY COMPANY, ADMIRAL INSURANCE COMPANY, BERKLEY INSURANCE COMPANY, BERKLEY REGIONAL INSURANCE COMPANY, CAROLINA CASUALTY INSURANCE COMPANY, FAIRHOLME FUND, FAIRHOLME FUNDS, INC, MIDWEST EMPLOYERS CASUALTY INSURANCE COMPANY, NAUTILUS INSURANCE COMPANY, PREFERRED EMPLOYERS INSURANCE COMPANY. (See Docket Entry 38 to view document) (jf,) (Entered: 03/24/2014)
04/10/2014	41		NOTICE *of Filing of Discovery Order Issued by United States Court of Federal Claims* by ACADIA INSURANCE COMPANY, ADMIRAL INDEMNITY COMPANY, ADMIRAL INSURANCE COMPANY, BERKLEY INSURANCE COMPANY, BERKLEY REGIONAL INSURANCE COMPANY, CAROLINA CASUALTY INSURANCE COMPANY, FAIRHOLME FUND, FAIRHOLME FUNDS, INC, MIDWEST EMPLOYERS CASUALTY INSURANCE COMPANY, NAUTILUS INSURANCE COMPANY, PREFERRED EMPLOYERS INSURANCE COMPANY (Attachments: # 1 Exhibit A)(Cooper, Charles) (Entered: 04/10/2014)
05/02/2014	42		STIPULATION *Regarding Enlargement of Page Limits* by DEPARTMENT OF TREASURY. (McElvain, Joel) (Entered: 05/02/2014)
05/02/2014	43		REPLY to opposition to motion re 27 MOTION to Dismiss or, in the Alternative, for Summary Judgment filed by DEPARTMENT OF TREASURY. (McElvain, Joel) Modified on 5/5/2014 to correct docket link (jf,). (Entered: 05/02/2014)
05/02/2014	44		Memorandum in opposition to re 40 MOTION for Summary Judgment filed by DEPARTMENT OF TREASURY. (McElvain, Joel) (Entered: 05/02/2014)
05/02/2014	45		REPLY to opposition to motion re 28 MOTION to Dismiss *All Claims and, in the Alternative, for Summary Judgment as to Plaintiffs Arbitrary and Capricious Claims and Memorandum in Support* MOTION for Summary Judgment filed by EDWARD DEMARCO, FEDERAL HOUSING

			FINANCE AGENCY. (Cayne, Howard) (Entered: 05/02/2014)
05/02/2014	46		Memorandum in opposition to re 40 MOTION for Summary Judgment filed by EDWARD DEMARCO, FEDERAL HOUSING FINANCE AGENCY. (Cayne, Howard) (Entered: 05/02/2014)
05/02/2014	47		REPLY to opposition to motion re 29 MOTION to Take Judicial Notice filed by EDWARD DEMARCO, FEDERAL HOUSING FINANCE AGENCY. (Cayne, Howard) (Entered: 05/02/2014)
05/05/2014	48		NOTICE OF RELATED CASE by DEPARTMENT OF TREASURY. Case related to Case No. 4:14−cv−42 (S.D. Iowa). (McElvain, Joel) (Entered: 05/05/2014)
05/05/2014	49		NOTICE OF RELATED CASE by EDWARD DEMARCO, FEDERAL HOUSING FINANCE AGENCY. Case related to Case No. 4:14−cv−0042 (S.D. Iowa). (Varma, Asim) (Entered: 05/05/2014)
06/02/2014	50		STIPULATION *Regarding Enlargement of Page Limits* by ACADIA INSURANCE COMPANY, ADMIRAL INDEMNITY COMPANY, ADMIRAL INSURANCE COMPANY, BERKLEY INSURANCE COMPANY, BERKLEY REGIONAL INSURANCE COMPANY, CAROLINA CASUALTY INSURANCE COMPANY, FAIRHOLME FUND, FAIRHOLME FUNDS, INC, MIDWEST EMPLOYERS CASUALTY INSURANCE COMPANY, NAUTILUS INSURANCE COMPANY, PREFERRED EMPLOYERS INSURANCE COMPANY. (Cooper, Charles) (Entered: 06/02/2014)
06/02/2014	51		REPLY to opposition to motion re 40 MOTION for Summary Judgment *on Administrative Procedure Act Claims* filed by ACADIA INSURANCE COMPANY, ADMIRAL INDEMNITY COMPANY, ADMIRAL INSURANCE COMPANY, BERKLEY INSURANCE COMPANY, BERKLEY REGIONAL INSURANCE COMPANY, CAROLINA CASUALTY INSURANCE COMPANY, FAIRHOLME FUND, FAIRHOLME FUNDS, INC, MIDWEST EMPLOYERS CASUALTY INSURANCE COMPANY, NAUTILUS INSURANCE COMPANY, PREFERRED EMPLOYERS INSURANCE COMPANY. (Cooper, Charles) (Entered: 06/02/2014)
06/05/2014			MINUTE ORDER postponing the motions hearing set by the 11/12/2013 Minute Entry until further order of the Court. Signed by Judge Royce C. Lamberth on June 5, 2014. (lcrcl5) (Entered: 06/05/2014)
08/12/2014	52		NOTICE of Appearance by Howard C. Nielson, Jr on behalf of All Plaintiffs (Nielson, Howard) (Entered: 08/12/2014)
08/26/2014	53		NOTICE OF SUPPLEMENTAL AUTHORITY by EDWARD DEMARCO, FEDERAL HOUSING FINANCE AGENCY (Attachments: # 1 Exhibit A (S.D. Iowa Order))(Cayne, Howard) (Entered: 08/26/2014)
09/03/2014	54		REPONSE re 53 NOTICE OF SUPPLEMENTAL AUTHORITY filed by ACADIA INSURANCE COMPANY, ADMIRAL INDEMNITY COMPANY, ADMIRAL INSURANCE COMPANY, BERKLEY INSURANCE COMPANY, BERKLEY REGIONAL INSURANCE COMPANY, CAROLINA CASUALTY INSURANCE COMPANY,

			FAIRHOLME FUND, FAIRHOLME FUNDS, INC, MIDWEST EMPLOYERS CASUALTY INSURANCE COMPANY, NAUTILUS INSURANCE COMPANY, PREFERRED EMPLOYERS INSURANCE COMPANY. (Attachments: # 1 Exhibit Transcript of July 10, 2014 Hearing in S.D. Iowa)(Cooper, Charles) Modified on 9/4/2014 to correct event(rdj). (Entered: 09/03/2014)
09/30/2014	55		ORDER on DEFENDANTS' MOTION FOR JUDICIAL NOTICE granting in part and denying in part (33) Motion to Take Judicial Notice in case 1:13−cv−01025−RCL; granting in part and denying in part (29) Motion to Take Judicial Notice in case 1:13−cv−01053−RCL; granting in part and denying in part (37) Motion to Take Judicial Notice in case 1:13−cv−01439−RCL; granting in part and denying in part (21) Motion to Take Judicial Notice in case 1:13−mc−01288−RCL. Signed by Judge Royce C. Lamberth on 9/30/2014. (tg,) (Entered: 09/30/2014)
09/30/2014	56	21	MEMORANDUM OPINION. Signed by Judge Royce C. Lamberth on 9/30/2014. (tg,) (Entered: 09/30/2014)
09/30/2014	57	18	ORDER GRANTING the defendants' motions to dismiss and DENYING the plaintiffs' cross−motion for summary judgment. Signed by Judge Royce C. Lamberth on 9/30/2014. (tg,) (Entered: 09/30/2014)
09/30/2014	58	73	ORDER denying 31 Motion for supplementation of the administrative record, limited discovery, suspension of briefing on thedefendants' dispositive motions, and a status conference as moot due to the dismissal of this case pursuant to the Court's Order 57 issued this date. Signed by Judge Royce C. Lamberth on 9/30/2014. (ztg,) (Entered: 09/30/2014)
10/10/2014	59	16	NOTICE OF APPEAL TO DC CIRCUIT COURT as to 57 Order, 56 Memorandum &Opinion, 58 Order on Motion for Miscellaneous Relief, Order on Motion for Discovery, Order on Motion for Hearing, Order on Motion for Leave to File,,,, by ACADIA INSURANCE COMPANY, ADMIRAL INDEMNITY COMPANY, ADMIRAL INSURANCE COMPANY, BERKLEY INSURANCE COMPANY, BERKLEY REGIONAL INSURANCE COMPANY, CAROLINA CASUALTY INSURANCE COMPANY, FAIRHOLME FUND, FAIRHOLME FUNDS, INC, MIDWEST EMPLOYERS CASUALTY INSURANCE COMPANY, NAUTILUS INSURANCE COMPANY, PREFERRED EMPLOYERS INSURANCE COMPANY. Filing fee $ 505, receipt number 0090−3867937. Fee Status: Fee Paid. Parties have been notified. (Cooper, Charles) (Entered: 10/10/2014)

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

FAIRHOLME FUNDS, INC., et al., *Plaintiffs*, v. THE FEDERAL HOUSING FINANCE AGENCY, et al., *Defendants*.	)	No. 13-cv-1053-RCL

NOTICE OF APPEAL

Notice is hereby given this 10th day of October, 2014, that all plaintiffs in this action (Fairholme Funds, Inc.; The Fairholme Fund; Berkley Insurance Company; Acadia Insurance Company; Admiral Indemnity Company; Admiral Insurance Company; Berkley Regional Insurance Company; Carolina Casualty Insurance Company; Midwest Employers Casualty Insurance Company; Nautilus Insurance Company; Preferred Employers Insurance Company) appeal to the United States Court of Appeals for the District of Columbia Circuit from: (1) the Memorandum Opinion (Doc. 56) entered on September 30, 2014; (2) the Order Granting Defendants' Motion to Dismiss and Denying Plaintiffs' Cross-Motion for Summary Judgment (Doc. 57) entered on September 30, 2014; (3) the Order Denying Motion for Supplementation of the Administrative Record, Limited Discovery, Suspension of Briefing on the Defendants' Dispositive Motions, and a Status Conference (Doc. 58) entered on September 30, 2014; and (4) all other rulings adverse to plaintiffs in this case.

Dated: October 10, 2014

Respectfully submitted,

/s/ Charles J. Cooper
Charles J. Cooper (Bar No. 248070)
ccooper@cooperkirk.com
Vincent J. Colatriano (Bar No. 429562)
David H. Thompson (Bar No. 450503)
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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PERRY CAPITAL LLC, **Plaintiff,** **v.** **JACOB J. LEW, *et al.*,** **Defendant.**	**Civil No. 13-1025 (RCL)**
FAIRHOLME FUNDS, INC., *et al.*, **Plaintiff,** **v.** **FEDERAL HOUSING FINANCE AGENCY, *et al.*,** **Defendant.**	**Civil No. 13-1053 (RCL)**
ARROWOOD INDEMNITY COMPANY, *et al.*, **Plaintiff,** **v.** **FEDERAL NATIONAL MORTGAGE ASSOCATION, *et al.*,** **Defendant.**	**Civil No. 13-1439 (RCL)**

In re Fannie Mae/Freddie Mac Senior Preferred Stock Purchase Agreement Class Action Litigations	**Miscellaneous No. 13-1288 (RCL)**
This Memorandum Opinion relates to: ALL CASES	CLASS ACTION

ORDER

Before the Court are the defendants' respective motions to dismiss and, in the alternative, for summary judgment [*Perry* 31, 32], [*Fairholme* 27, 28], [*Arrowood* 35, 36], [*In re Fannie Mae/Freddie Mac* 19, 20], the class action plaintiffs' ("class plaintiffs") opposition to the defendants' motions to dismiss [*In re Fannie Mae/Freddie Mac* 33], the *Perry*, *Fairholme*, and *Arrowood* plaintiffs' (collectively, "individual plaintiffs") opposition to the defendants' motions to dismiss and cross-motion for summary judgment [*Perry* 37, 38], [*Fairholme* 38, 40], [*Arrowood* 44, 46], the *Fairholme* and *Arrowood* plaintiffs' supplemental memorandum in support of the individual plaintiffs' opposition to the defendants' motions to dismiss and cross-motion for summary judgment [*Fairholme* 39], [*Arrowood* 45], the defendants' respective reply briefs to the class and individual plaintiffs' oppositions to the motions to dismiss [*Perry* 40, 42], [*Fairholme* 43, 45], [*Arrowood* 48, 50], [*In re Fannie Mae/Freddie Mac* 36, 38] and identical opposition briefs to the individual plaintiffs' cross-motion for summary judgment [*Perry* 41, 43], [*Fairholme* 44, 46], [*Arrowood* 49, 51], and the individual plaintiffs' reply to the defendants' opposition to the cross-motion [*Perry* 47], [*Fairholme* 51], [*Arrowood* 54]. For the reasons explained in the accompanying Memorandum Opinion issued this date, it is hereby

ORDERED that the defendants' motions to dismiss [*Perry* 31, 32], [*Fairholme* 27, 28], [*Arrowood* 35, 36], [*In re Fannie Mae/Freddie Mac* 19. 20] are **GRANTED** and the individual plaintiffs' cross-motion for summary judgment [*Perry* 37], [*Fairholme* 39, 40], [*Arrowood* 45, 46] are **DENIED**.

These cases are hereby **DISMISSED**.

It is **SO ORDERED** this 30th day of September 2014.

Royce C. Lamberth
ROYCE C. LAMBERTH
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PERRY CAPITAL LLC, **Plaintiff,** **v.** **JACOB J. LEW, *et al.*,** **Defendants.**	**Civil No. 13-1025 (RCL)**
FAIRHOLME FUNDS, INC., *et al.*, **Plaintiffs,** **v.** **FEDERAL HOUSING FINANCE AGENCY, *et al.*,** **Defendants.**	**Civil No. 13-1053 (RCL)**
ARROWOOD INDEMNITY COMPANY, *et al.*, **Plaintiffs,** **v.** **FEDERAL NATIONAL MORTGAGE ASSOCATION, *et al.*,** **Defendants.**	**Civil No. 13-1439 (RCL)**

In re Fannie Mae/Freddie Mac Senior Preferred Stock Purchase Agreement Class Action Litigations	)	**Miscellaneous No. 13-1288 (RCL)**
This Memorandum Opinion relates to: ALL CASES	)	CLASS ACTION

MEMORANDUM OPINION

Before the Court are motions to dismiss or, in the alternative, for summary judgment, filed by the defendants United States Department of the Treasury ("Treasury") and Federal Housing Finance Agency ("FHFA"), as well as a cross-motion for summary judgment on Administrative Procedure Act ("APA") claims filed by the *Perry*, *Fairholme*, and *Arrowood* plaintiffs (collectively, "individual plaintiffs"). Upon consideration of the defendants' respective motions to dismiss, the individual plaintiffs' cross-motion for summary judgment, the various opposition and reply briefs thereto filed by the defendants, the individual plaintiffs, and the class action plaintiffs ("class plaintiffs"), the applicable law, and the entire record herein, the Court will GRANT the defendants' motions to dismiss and DENY the individual plaintiffs' cross-motion for summary judgment.

I. BACKGROUND

This matter is brought before the Court by both a class action lawsuit and a set of three individual lawsuits. These four lawsuits contain numerous overlapping, though not identical, claims. The purported class plaintiffs consist of private individual and institutional investors who own either preferred or common stock in the Federal National Mortgage Association ("Fannie Mae") or the Federal Home Loan Mortgage Corporation ("Freddie Mac"). Am. Compl. at ¶¶ 30-44, *In re Fannie Mae/Freddie Mac Senior Preferred Stock Purchase Agreement Class*

Action Litigs., No. 13-1288 (D.D.C. Dec. 3, 2013), ECF No. 4 ("*In re Fannie Mae/Freddie Mac* Am. Compl."); Derivative Compl. at ¶¶ 19-21, *In re Fannie Mae/Freddie Mac*, No. 13-1288 (D.D.C. July 30, 2014), ECF No. 39 ("*In re Fannie Mae/Freddie Mac* Derivative Compl."). The individual plaintiffs comprise a collection of private investment funds and insurance companies. Compl. at ¶¶ 25-27, *Perry Capital LLC v. Lew*, No. 13-1025 (D.D.C. July 7, 2013), ECF No. 1 ("*Perry* Compl."); Compl. at ¶¶ 18-28, *Fairholme Funds, Inc., v. FHFA*, No. 13-1053 (D.D.C. July 10, 2013), ECF No. 1 ("*Fairholme* Compl."); Compl. at ¶¶ 15-19, *Arrowood Indem. Co. v. Fannie Mae*, No. 13-1439 (D.D.C. Sept. 20, 2013), ECF No. 1 ("*Arrowood* Compl.").

Fannie Mae and Freddie Mac are government-sponsored enterprises ("GSEs"),[1] born from statutory charters issued by Congress. *See* Federal National Mortgage Association Charter Act, 12 U.S.C. §§ 1716-1723; Federal Home Loan Mortgage Corporation Act, 12 U.S.C. §§ 1451-1459. Congress created the GSEs in order to, among other goals, "promote access to mortgage credit throughout the Nation . . . by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing." 12 U.S.C. § 1716(3). In other words, the GSEs' shared purpose was to make it easier (*i.e.*, less risky) for local banks and other lenders to offer mortgages to prospective home buyers. The GSEs sought to accomplish this objective by purchasing mortgage loans from lenders, thus relieving lenders of default risk and "freeing up lenders' capital to make additional loans." *See* Treasury Defs.'s Mot. to Dismiss, or, in the Alternative, for Summ. J. at 6 (D.D.C. Jan. 17, 2014) ("Treasury Mot.").[2] In order to finance this operation, the GSEs would, primarily,

[1] While Fannie Mae and Freddie Mac are not the only GSEs, *see, e.g.*, Federal Home Loan Banks, for convenience, this Memorandum Opinion will employ the term "GSE" to refer to Fannie Mae and Freddie Mac exclusively.

[2] Rather than list each of the numerous dockets on which the briefs in this matter have been filed, this Memorandum Opinion will cite the name of the brief, the date on which it was filed on all relevant dockets, and the short form citation by which the brief will be referenced thereinafter.

pool the many mortgage loans they purchased into various mortgage-backed securities and sell these securities to investors. *See, e.g.*, Individual Pls.'s Opp'n and Cross-Mot. for Summ. J. at 4 (D.D.C. Mar. 21, 2014) ("Individual Pls.'s Opp'n").

Fannie Mae and Freddie Mac are considered government-*sponsored*, rather than government-*owned*, because both congressionally chartered entities were eventually converted, by statute, into publicly traded corporations. Housing and Urban Development Act, Pub. L. No. 90-448, § 802, 82 Stat. 536-538 (1968); Financial Institutions Reform, Recovery and Enforcement Act, Pub. L. No. 101-73, § 731, 103 Stat. 432-433 (1989). Yet despite this historically market-driven ownership structure, "the GSEs have benefitted from a public perception that the federal government had implicitly guaranteed the securities they issued; this perception allowed the GSEs to purchase more mortgages and [mortgage-backed securities], at cheaper rates, than would otherwise prevail in the private market." Treasury Mot. at 6-7.

By 2008, the United States economy faced dire straits, in large part due to a massive decline within the national housing market. *See* Individual Pls.'s Opp'n at 7. "As a result of the housing crisis, the value of the [GSEs'] assets . . . deteriorated and the [GSEs] suffered . . . credit losses in their portfolios." FHFA Mot. to Dismiss, or, in the Alternative, for Summ. J. at 7 (D.D.C. Jan. 17, 2014) ("FHFA Mot.").

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. *See* Individual Pls.'s Opp'n at 6; Pub. L. No. 110-289, 122 Stat. 2654. HERA established FHFA as an independent agency to supervise and regulate the GSEs. 12 U.S.C. § 4511. HERA further granted FHFA's director the authority to appoint the agency as conservator or receiver for the GSEs. 12 U.S.C.

§ 4617(a). Of most relevance to the present litigation, HERA empowered FHFA, as conservator or receiver, to "immediately succeed to—(i) all rights, titles, powers, and privileges of the [GSE], and of any stockholder, officer, or director of such [GSE] with respect to the [GSE] and the assets of the [GSE]." 12 U.S.C. § 4617(b)(2)(A)(i). The statute also set forth a "[l]imitation on court action," noting that, "[e]xcept as provided in this section or at the request of the Director, no court may take any action to restrain or affect the exercise of powers or functions of [FHFA] as a conservator or a receiver." 12 U.S.C. § 4617(f). Moreover, apparently recognizing that Treasury (*i.e.*, taxpayer) funds may soon be necessary to capitalize the struggling GSEs,[3] Congress, under HERA, amended the GSEs' charters to temporarily authorize Treasury to "purchase any obligations and other securities issued by the [GSEs]." 12 U.S.C. § 1455(*l*)(1)(A) (Freddie Mac); 12 U.S.C. § 1719(g)(1)(A) (Fannie Mae).[4] This provision also provided that the "Secretary of the Treasury may, at any time, exercise any rights received in connection with such purchases." 12 U.S.C. § 1719(g)(2)(A). Treasury's authority to invest in the GSEs expired on December 31, 2009. 12 U.S.C. § 1719(g)(4).

Following the GSEs' unsuccessful effort to "raise capital in the private markets," FHFA Mot. at 7-8, FHFA placed the GSEs into conservatorship on September 6, 2008. *See, e.g.*, Class Pls.'s Opp'n at 7 (D.D.C. Mar. 21, 2014) ("Class Pls.'s Opp'n"). One day later, Treasury, pursuant to 12 U.S.C. § 1719(g), entered into Senior Preferred Stock Purchase Agreements ("PSPAs") with each of the GSEs. Individual Pls.'s Opp'n at 8. Under the initial PSPAs,

[3] The purpose of HERA's provision authorizing Treasury to invest in the GSEs was, in part, to "prevent disruptions in the availability of mortgage finance"—disruptions presumably due to the challenges confronting the GSEs in 2008. *See* 12 U.S.C. § 1455(*l*)(1)(B); 12 U.S.C. § 1719(g)(1)(B) ("Emergency determination required[.] In connection with any use of this [purchasing] authority, the [Treasury] Secretary must determine that such actions are necessary to—(i) provide stability to the financial markets; (ii) prevent disruptions in the availability of mortgage finance; and (iii) protect the taxpayer.").

[4] Since 12 U.S.C. § 1455(*l*) and 12 U.S.C. § 1719(g) are identical provisions, this Memorandum Opinion, hereinafter, will refer only to the Fannie Mae provision, § 1719(g).

Treasury committed to provide up to $100 billion in funding to each GSE "to ensure that their assets were equal to their liabilities"—*i.e.*, to "cure [the GSEs'] negative net worth"—at the end of any fiscal quarter. *Id.*; FHFA Mot. at 11. On May 6, 2009, Treasury and the GSEs, through FHFA, entered into the First Amendment to the PSPAs, whereby Treasury doubled its funding cap to $200 billion for each GSE. Individual Pls.'s Opp'n at 11. On December 24, 2009, the parties executed the Second Amendment, which permitted the GSEs to continue to "draw unlimited sums from Treasury [as required to cure any quarterly negative net worth] until the end of 2012," and then, as of December 31, 2012, permanently fixed the funding cap for each GSE (at an amount that, in the end, totaled greater than $200 billion per GSE), in accordance with an agreed-upon formula. *Id.* at 11-12; FHFA Mot. at 12; *see also* Treasury AR at 190-91, 196-97.[5]

In exchange for its funding commitment, Treasury received senior preferred stock in each GSE, which entitled Treasury to four principal contractual rights under the PSPAs. *See, e.g.*, Treasury AR at 14. First, Treasury received a senior liquidation preference[6] of $1 billion for each GSE *plus* a dollar-for-dollar increase each time the GSEs drew upon Treasury's funding commitment. Individual Pls.'s Opp'n at 8-9 (citing Treasury AR at 100, 133). Second, the PSPAs entitled Treasury to dividends equivalent to 10% of Treasury's existing liquidation preference, paid quarterly.[7] *Id.* at 9 (citing AR at 32-33, 67-68); Treasury Mot. at 13. Third,

[5] Citations to the administrative record filed by the Treasury defendants, *e.g.*, Administrative R., *In re Fannie Mae/Freddie Mac*, No. 13-1288 (D.D.C. Dec. 17, 2013), ECF No. 6, are noted as " Treasury AR." Citations to the document compilation regarding the Third Amendment filed by the FHFA defendants, *e.g.*, *In re Fannie Mae/Freddie Mac*, ECF No. 7, are noted as "FHFA Docs."

[6] "A liquidation preference is a priority right to receive distributions from the [GSEs'] assets in the event they are dissolved." Individual Pls.'s Opp'n at 5.

[7] Given the Court's ruling to grant the defendants' motion to dismiss, there is no need to evaluate the merits of the defendants' decision to execute the Third Amendment instead of selecting other options in lieu of the cash dividend that, under the PSPAs, was equal to 10% of Treasury's liquidation preference. Nevertheless, the Court notes its disagreement with the plaintiffs' characterization of one purported alternative to the Third Amendment. The plaintiffs claim that the GSEs "had no obligation to pay the 10 percent dividend in cash," and instead could simply opt to pay a 12% dividend that would be added to the outstanding liquidation preference rather than be paid in cash each quarter. Individual Pls.'s Opp'n at 9, 66-67. However, the plaintiffs' contention that paying 10% in cash or

Treasury received warrants to acquire up to 79.9% of the GSEs' common stock at a nominal price. Individual Pls.'s Opp'n at 9; *e.g.*, Treasury AR at 15, 43. Fourth, beginning on March 31, 2010, Treasury would be entitled to a periodic commitment fee "to fully compensate [Treasury] for the support provided by the ongoing [funding] [c]ommitment." Treasury AR at 22, 56. The amount of the periodic commitment fee was to be determined by mutual agreement, and Treasury reserved the right to waive the fee for one year at a time "based on adverse conditions in the United States mortgage market." *Id.* Treasury waived the commitment fee in 2010 and 2011, and later, under the Third Amendment, the fee was suspended. Treasury Mot. at 14, 18.

As of August 8, 2012, Treasury had provided $187.5 billion in funding to the GSEs,[8] and, thus, held a total $189.5 billion senior liquidation preference between both GSEs, including the

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adding 12% to the liquidation preference was merely a matter of choice, Class Pls.'s Opp'n at 11, directly contravenes the unambiguous language of the contract. The relevant provisions, which are identical, in Treasury's respective stock certificates with each of the GSEs, state:

> "'Dividend Rate' means 10.0%; provided, however, that if at any time the [GSE] 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%."

Treasury AR at 33, 67-68 (Treasury Senior Preferred Stock Certificates § 2(c)) (emphasis added). The provision makes clear that 10% cash dividends were "required by" the stock certificates, and that 12% dividends deferred to the liquidation preference were only triggered upon a "failure" to meet the 10% cash dividend requirement. Thus, classifying the 12% dividend feature as a "penalty," as Treasury does, is surely more accurate than classifying it as a "right." *Compare* Treasury Defs.'s Reply at 49-50 (D.D.C. May 2, 2014) ("Treasury Reply"), *with* Individual Pls.'s Opp'n at 9. The plaintiffs cannot gloss over this distinction by repetitively using the phrase "in kind" to describe the 12% dividend feature. *See* Individual Pls.'s Opp'n at 9, 66-67, 80-81; Class Pls.'s Opp'n at 16. Inclusion of "in kind" within § 2(c) would have slightly improved the plaintiffs' argument that the contract expressly permitted the GSEs to simply choose between a 10% cash dividend or 12% dividend deferred to the liquidation preference. But, as plaintiffs are certainly aware, "in kind" appears nowhere within the stock certificates' dividends provision. *See* Treasury AR at 33, 67-68.

With regard to the two other hypothetical alternatives presented by the individual plaintiffs—Treasury accepting lower dividends or allowing the GSEs to use excess profits to pay down the liquidation preference and, thus, the basis for the 10% dividend—the Court has no occasion to determine whether the plaintiffs' arguments demonstrate arbitrary and capricious decisionmaking or only amount to second-guessing decisionmakers charged with exercising predictive judgments. *Compare* Individual Pls.'s Opp'n at 79-82, *with* FHFA Defs.'s Reply at 52-58 (D.D.C. May 2, 2014) ("FHFA Reply").

[8] A figure that is unchanged through 2013. *See* Treasury AR 4351.

initial $1 billion liquidation preferences from each GSE. Therefore, "the GSEs' dividend obligations to Treasury were nearly $19 billion per year." Treasury Mot. at 16.

On August 17, 2012, Treasury and the GSEs, through FHFA, agreed to the Third Amendment to the PSPA, which is the focus of this litigation. The Third Amendment "replaced the previous dividend formula with a requirement that the GSEs pay, as a dividend, the amount by which their net worth for the quarter exceeds a capital buffer of $3 billion. The capital buffer gradually declines over time by $600 million per year, and is entirely eliminated in 2018." Treasury Mot. at 18. In simpler terms, the amendment "requires Fannie Mae and Freddie Mac to pay a quarterly dividend to Treasury equal to the *entire net worth* of each Enterprise, minus a small reserve that shrinks to zero over time." Class Pls.'s Opp'n at 3. These dividend payments do not reduce Treasury's outstanding liquidation preferences. *See* Individual Pls.'s Opp'n at 16.

The plaintiffs cite multiple justifications offered publicly by the defendants for this "net worth sweep." *See* Individual Pls.'s Opp'n at 16-17. First, Treasury asserted that the amendment will end "the circular practice of the Treasury advancing funds to the [GSEs] simply to pay dividends back to Treasury." *Id.* at 16 (citing Press Release, Treasury Dep't Announces Further Steps to Expedite Wind Down of Fannie Mae and Freddie Mac (Aug. 17, 2012), *available at* http://www.treasury.gov/press-center/press-releases/Pages/tg1684.aspx); *see also* Treasury Mot. at 2, 5, 50; FHFA Mot. at 3, 15-16. However, the plaintiffs counter that in 2012, the GSEs were once again profitable and, pertinently, able to pay the 10% dividend without drawing additional funds from Treasury. *Id.* at 14-15; *but see Fairholme* Compl. at ¶ 26 (stating that "approximately $26 billion" of Treasury's current liquidation preference "were required simply to pay the 10% dividend payments owed to Treasury"). Second, quoting from the same Treasury press release, the plaintiffs note Treasury's statement that the net worth sweep is consistent with the Obama Administration's "commitment . . . that the GSEs will be wound down and will not be allowed to retain profits, rebuild capital, and return to the market in their prior form." *Id.* at 16-17. Third, according to the press release, the net worth sweep would "make sure that every dollar of earnings that Fannie Mae and Freddie Mac generate will be used to benefit taxpayers for their investment in those firms." *Id.* at 17.

Under the Third Amendment net worth sweep, the GSEs paid Treasury nearly $130 billion in 2013.[9] Treasury AR at 4352. As mentioned above, under the former dividend arrangement requiring payment equivalent to 10% of Treasury's existing liquidation preference, the GSEs would have owed nearly $19 billion. Through 2013, the cumulative draws of Treasury funding taken by the GSEs remained $187.5 billion, *id.* at 4351, and the cumulative dividends paid to Treasury by the GSEs totaled $185.2 billion, *id.* at 4352.

Notwithstanding the plaintiffs' attempt to downplay the need for a GSE bailout in the first place, *see, e.g.*, Individual Pls.'s Opp'n at 6, 10-11, the plaintiffs do not contest the initial PSPA or subsequent two amendments to the PSPA, *see, e.g.*, Class Pls.'s Opp'n at 11, but rather only challenge the Third Amendment to the PSPA. The class plaintiffs have brought claims of breach of contract, regarding allegedly promised dividends and liquidation preferences, breach of the implied covenant of good faith and fair dealing, and an unconstitutional taking, as well as derivative claims of breach of fiduciary duty. The *Perry* plaintiff has brought claims under the Administrative Procedure Act ("APA"). The *Arrowood* plaintiffs have also brought APA claims, as well as claims of breach of contract, regarding allegedly promised dividends and liquidation preferences, and breach of the implied covenant of good faith and fair dealing. The *Fairholme* plaintiffs have brought the same claims as the *Perry* and *Arrowood* plaintiffs with an additional

[9] Though this figure includes the outlier $59.3 billion dividend paid by Fannie Mae in the second quarter and $30.4 billion dividend paid by Freddie Mac in the fourth quarter. Treasury AR 4352.

claim of breach of fiduciary duty against FHFA. The parties dispute whether the *Fairholme* plaintiffs' fiduciary duty claim is direct or derivative. *See infra* n.24.

On January 17, 2014, the defendants moved to dismiss the complaints against the Third Amendment for lack of jurisdiction under Federal Rule of Civil Procedure 12(b)(1) and for failure to state a claim under Rule 12(b)(6). In the alternative, the defendants moved for summary judgment pursuant to Rule 56. In their opposition, filed March 21, 2014, the individual plaintiffs presented a cross-motion for summary judgment.

II. LEGAL STANDARD

"Federal courts are of limited jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Under Rule 12(b)(1), the plaintiffs bear the burden of demonstrating that subject matter jurisdiction exists. *Khadr v. United States*, 529 F.3d 1112, 1115 (D.C. Cir. 2008). The Court must "assume the truth of all material factual allegations in the complaint and construe the complaint liberally, granting [the] plaintiff[s] the benefit of all inferences that can be derived from the facts alleged." *Am. Nat. Ins. Co. v. F.D.I.C.*, 642 F.3d 1137, 1139 (D.C. Cir. 2011) (internal quotation marks and citation omitted). But "[b]ecause subject-matter jurisdiction focuses on the [C]ourt's power to hear the claim . . . , the [C]ourt must give the plaintiff[s'] factual allegations closer scrutiny when resolving a Rule 12(b)(1) motion than would be required for a Rule 12(b)(6) motion for failure to state a claim." *Youming Jin v. Ministry of State Sec.*, 475 F. Supp. 2d 54, 60 (D.D.C. 2007). Furthermore, when evaluating a Rule 12(b)(1) motion to dismiss, "it has been long accepted that the [Court] may make appropriate inquiry beyond the pleadings to satisfy itself on authority to entertain the case." *Haase v. Sessions*, 835 F.2d 902, 906 (D.C. Cir. 1987) (internal quotation marks and citation omitted).

A motion to dismiss is also appropriate when the complaint fails "to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). The Court does not "require heightened fact pleading of specifics, but only enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Once again, "the complaint is construed liberally in the plaintiffs' favor, and [the Court] grant[s] plaintiffs the benefit of all inferences that can be derived from the facts alleged. However, the [C]ourt need not accept inferences drawn by plaintiffs if such inferences are unsupported by the facts set out in the complaint. Nor must the [C]ourt accept legal conclusions cast in the form of factual allegations. *Kowal v. MCI Commc'ns Corp.*, 16 F.3d 1271, 1276 (D.C. Cir. 1994) (internal quotation marks and citation omitted). "If, on a motion under Rule 12(b)(6) . . . , matters outside the pleadings are presented to and not excluded by the [C]ourt, the motion must be treated as one for summary judgment under Rule 56." Fed. R. Civ. P. 12.

III. ANALYSIS

A. HERA Bars the Plaintiffs' Prayers for Declaratory, Injunctive, and Other Equitable Relief against FHFA and Treasury

By this Court's calculation, twenty-four of the thirty-one substantive prayers for relief[10] requested by the plaintiffs across their five complaints seek declaratory, injunctive, or other equitable relief against FHFA or Treasury. *See also* FHFA Mot. at 22 n.13. Such relief runs up against HERA's anti-injunction provision, which declares that "no court may take any action to restrain or affect the exercise of powers or functions of [FHFA] as a conservator or a receiver." 12 U.S.C. § 4617(f).

[10] This thirty-one prayers for relief figure does not include the two prayers for "reasonable costs, including attorneys' fees, incurred in bringing this action" and "such other and further relief as this Court deems just and proper" that appear in each of the five complaints at issue here. *See, e.g.*, *Fairholme* Compl. at ¶ 146(i) and (j).

While case law adjudicating HERA-related disputes is generally sparse, "[c]ourts interpreting the scope of [§] 4617(f) have relied on decisions addressing the nearly identical jurisdictional bar applicable to the Federal Deposit Insurance Corporation ('FDIC') conservatorships contained in 12 U.S.C. § 1821(j)."[11] *Natural Res. Def. Council, Inc. v. FHFA*, 815 F. Supp. 2d 630, 641 (S.D.N.Y. 2011), *aff'd sub nom. Town of Babylon v. FHFA*, 699 F.3d 221 (2d Cir. 2012). Congress passed the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Pub. L. No. 101-73, 103 Stat. 183, during the savings and loan crisis to enable the FDIC (and, formerly, the Resolution Trust Corporation ("RTC")) to serve as a conservator or receiver for troubled financial institutions. It was with this backdrop that the Court of Appeals for the District of Columbia Circuit, in *Freeman v. FDIC*, explained that the language of § 1821(j) "does indeed effect a sweeping ouster of courts' power to grant equitable remedies." 56 F.3d 1394, 1399 (D.C. Cir. 1995).[12] The Circuit held that the FIRREA provision precludes courts from granting "non-monetary remedies, including injunctive relief [] [and] declaratory relief" that would "effectively 'restrain' the [agency] from" exercising its statutorily authorized responsibilities. *Id.* (quoting 12 U.S.C. § 1821(j)). As the parties both agree, an equivalent bar on jurisdiction derives from HERA's substantially identical anti-injunction provision. *E.g.*, Individual Pls.'s Opp'n at 31-32.

Like a number of its sister circuits, however, this Circuit has established that, if the agency "has acted or proposes to act beyond, or contrary to, its statutorily prescribed,

[11] Section 1821(j) reads: ". . . 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).

[12] "Although this limitation on courts' power to grant equitable relief may appear drastic, it fully accords with the intent of Congress at the time it enacted FIRREA in the midst of the savings and loan insolvency crisis to enable the FDIC and the [RTC] to expeditiously wind up the affairs of literally hundreds of failed financial institutions throughout the country." *Id.* at 1398. Whether or not FHFA is "winding up the affairs of" the GSEs, the Circuit's interpretation of congressional intent to grant the FDIC enormous discretion to act as a conservator or receiver during the savings and loan crisis of 1989 applies with equal force to the mortgage finance crisis of 2008.

constitutionally permitted, powers or functions," then 12 U.S.C. § 4617(f) shall not apply. *Nat'l Trust for Historic Pres. v. FDIC*, 21 F.3d 469, 472 (D.C. Cir. 1994) (Wald, J., concurring) (internal quotation marks and citation omitted) (referring to 12 U.S.C. § 1821(j)); *see also Leon Cnty., Fla. v. FHFA*, 700 F.3d 1273, 1278 (11th Cir. 2012) ("'[I]f the FHFA were to act beyond statutory or constitutional bounds in a manner that adversely impacted the rights of others, § 4617(f) would not bar judicial oversight or review of its actions.'") (quoting *In re Freddie Mac Derivative Litig.*, 643 F. Supp. 2d 790, 799 (E.D. Va. 2009)); *Cnty. of Sonoma v. FHFA*, 710 F.3d 987, 992 (9th Cir. 2013) ("[T]he anti-judicial review provision is inapplicable when FHFA acts beyond the scope of its conservator power."). Thus, the question for this Court is whether the plaintiffs sufficiently plead that FHFA acted beyond the scope of its statutory "powers or functions . . . as a conservator" when the agency executed the Third Amendment to the PSPAs with Treasury. 12 U.S.C. § 4617(f). If not, the Court must dismiss all of the defendants' claims for declaratory, injunctive, or other equitable relief.[13]

1. Section 4617(f) Bars Claims of Arbitrary and Capricious Conduct, under APA § 706(2)(A), Which Seek Declaratory, Injunctive, or Other Equitable Relief

While there is a "strong presumption that Congress intends judicial review of administrative action," *Bowen v. Mich. Acad. of Family Physicians*, 476 U.S. 667, 670 (1986), that presumption is "defeated if the substantive statute precludes review." *Heckler v. Chaney*, 470 U.S. 821, 843 (1985) (citing 5 U.S.C. § 701(a)(1)). The plaintiffs do not discuss the applicability of 5 U.S.C. § 701(a)(1) of the APA to the present case in any of their oppositions, except to cite *Reno v. Catholic Soc. Servs.*, 509 U.S. 43, 63-64 (1993), in the individual plaintiffs' opposition and reply briefs for the proposition that the Court can preclude APA review

[13] As the Court will explain below, this is true regardless of whether the defendants have levied some of their non-monetary claims against Treasury instead of FHFA.

"only if presented with clear and convincing evidence" of congressional intent to preclude such review. *E.g.*, Individual Pls.'s Reply to Defs.'s Mot. for Summ. J. at 15-16 (D.D.C. June 2, 2014) ("Individual Pls.'s Reply"). The individual plaintiffs are correct in that the "presumption of judicial review [under the APA] is, after all, a presumption, and like all presumptions used in interpreting statutes, may be overcome by, *inter alia*, specific language . . . that is a reliable indicator of congressional intent . . . to preclude judicial review." *Bowen*, 476 U.S. at 673 (internal quotation marks and citation omitted). HERA's express anti-injunction provision, which, as explained below, necessarily covers litigation arising out of contracts executed by FHFA in accordance with its duties as a conservator, qualifies as a reliable indicator of congressional intent to preclude review of non-monetary APA claims brought against both FHFA and Treasury. Importantly, when applying FIRREA's anti-injunction provision, 12 U.S.C § 1821(j), this Circuit has only considered whether the FDIC acted beyond "its statutorily prescribed, constitutionally permitted, powers or functions" under FIRREA, specifically, and not whether it acted beyond any of its more general APA obligations under 5 U.S.C. § 702(2). *See Nat'l Trust*, 21 F.3d at 472 (Wald, J., concurring and further noting that, "given the breadth of the statutory language [of § 1821(j)], untempered by any persuasive legislative history pointing in a different direction, the statute would appear to bar a court from acting in virtually all circumstances"); *Freeman*, 56 F.3d at 1398-99; *MBIA Ins. Corp. v. FDIC*, 816 F. Supp. 2d 81, 103 (D.D.C. 2011), *aff'd*, 708 F.3d 234 (D.C. Cir. 2013); *see also Leon Cnty.*, 700 F.3d at 1278-79. In other words, this Circuit, like the APA itself, implicitly draws a distinction between acting beyond the scope of the constitution or a statute, *see* § 702(2)(B) and (C), and acting within the scope of a statute, but doing so arbitrarily and capriciously, *see* § 702(2)(A). This distinction arises directly from the text of § 4617(f), which prohibits the Court from restraining "the *exercise* of powers or functions of [FHFA]"—*i.e.*, restraining *how* FHFA employs its powers or functions—but does not prohibit review based upon the statutory or constitutional origin of the powers or functions themselves. 12 U.S.C. § 4617(f) (emphasis added). Consequently, it does appear that § 4617(f) bars all declaratory, injunctive, or other equitable relief stemming from claims of arbitrary and capricious decisionmaking, under APA § 706(2)(A). Thus, the two counts in each of the *Perry*, *Fairholme*, and *Arrowood* Complaints, and related prayers for relief, that claim APA violations for arbitrary and capricious conduct by both Treasury and FHFA are hereby dismissed pursuant to Rule 12(b)(1).[14]

2. Section 4617(f) Applies to Treasury's Authority under HERA

As a threshold matter, the plaintiffs contend that § 4617(f) does not bar claims against Treasury because the provision only governs claims against FHFA. However, the defendants' argument that granting relief against the counterparty to a contract with FHFA would directly restrain FHFA's ability as a conservator vis-à-vis that contract is based on sound reasoning. *See, e.g.*, Treasury Reply at 12-13 (collecting cases outside of this Circuit). Conduct by a counterparty that is required under a contract with FHFA does not merely constitute "a peripheral connection to FHFA's activities as the [GSEs'] conservator." *See* Individual Pls.'s Opp'n at 29. To the contrary, such interdependent, contractual conduct is directly connected to FHFA's activities as a conservator. A plaintiff is not entitled to use the technical wording of her

[14] The class, *Arrowood*, and *Fairholme* plaintiffs each present a claim of breach of the implied covenant of good faith and fair dealing that closely parallels the individual plaintiffs' APA claims for arbitrary and capricious conduct. *See, e.g.*, *In re Fannie Mae/Freddie Mac* Am. Compl. at ¶ 161 (". . . Fannie Mae, acting through FHFA, acted arbitrarily and unreasonably and not in good faith or with fair dealing toward the members of the Fannie Preferred Class."). Given the breadth of HERA and this Circuit's wariness toward evaluating *how* FHFA carries out its conservatorship responsibilities, *any* claim—APA- or contract-based—dependent upon allegations of arbitrary and capricious behavior coupled with a request for equitable relief probably should be summarily dismissed under § 4617(f). Yet regardless of whether the Circuit sees fit to establish a categorical rule, the plaintiffs' claims of breach of the implied covenant which seek equitable relief are still generally dismissed on § 4617(f) grounds because the Court finds that FHFA acted within its statutory authority under HERA. *See infra* Section III(A)(4). And because some plaintiffs include within their breach of the implied covenant allegations a request for monetary relief, dismissal is also proper on ripeness and failure to state a claim grounds. *See infra* Section III(C).

complaint—*i.e.*, bringing a claim against a counterparty when the contract in question is intertwined with FHFA's responsibilities as a conservator—as an end-run around HERA. Therefore, § 4617(f) applies generally to litigation concerning a contract signed by FHFA pursuant to its powers as a conservator.

Additionally, when the counterparty to FHFA's contract—Treasury—is also a government entity operating based on authority derived from HERA, *e.g.* 12 U.S.C. § 1719(g) (temporarily authorizing Treasury to purchase GSE securities), HERA's anti-injunction provision may be logically extended to that government counterparty. Likewise, if FHFA, as a conservator or receiver, signs a contract with another government entity that is acting beyond the scope of its HERA powers, then FHFA is functionally complicit in its counterparty's misconduct, and such unlawful actions may be imputed to FHFA. Here, as noted above, there can be little doubt that enjoining Treasury from partaking in the Third Amendment would restrain FHFA's uncontested authority to determine how to conserve the viability of the GSEs. Accordingly, the Court must decide whether Treasury acted in contradiction of its temporary power, under HERA, to invest in the GSEs.

The individual plaintiffs argue that Treasury acted beyond the scope of HERA because the Third Amendment constitutes the purchase of new GSE securities after HERA's December 31, 2009 sunset provision and because Treasury violated the APA by acting arbitrarily and capriciously when entering into the net worth sweep. Here, given § 4617(f)'s bar on non-monetary claims of arbitrary and capricious decisionmaking under the APA, the Court must only consider whether Treasury purchased new securities through the Third Amendment.

3. Treasury's Execution of the Third Amendment Does Not Constitute the Purchase of New Securities in Contravention of HERA

The individual plaintiffs argue that Treasury violated the sunset provision associated with its authority to purchase GSE securities under 12 U.S.C. § 1719(g) because the Third Amendment was not an "exercise of rights" under the statute and because the Third Amendment was effectively a purchase of new securities after December 31, 2009. Individual Pls.'s Opp'n at 37. Both claims are unpersuasive.

Asserting that the Third Amendment was not the exercise of a right, as allegedly required for any "market participa[tion]" after 2009, the individual plaintiffs state that, "[a]s of 2010, Treasury's authority as a market participant was limited to 'hold[ing], exercis[ing] any rights received in connection with, or sell[ing] any obligations or securities purchased'" from the GSEs. Individual Pls.'s Opp'n at 36-37 (quoting 12 U.S.C. § 1719(g)(2)(D)). But this contention overreads the provision governing the application of the statutory expiration date to purchased securities. While § 1719(g)(2)(D) notes that holding securities, exercising any rights under the securities contract, or selling securities are specifically *exempt* from the sunset provision, the existence of that provision does not therefore preclude other non-security-purchasing activities otherwise permitted under an already agreed-upon, pre-2010 investment contract with the GSEs.[15] To then say that the purchase authority sunset provision also categorically prohibits any provision within Treasury's contracts with the GSEs that requires "mutual assent" is to reach too far. *Cf.* Individual Pls.'s Opp'n at 38. Thus, whether or not amending the PSPA is a "right," as understood under § 1719(g), is irrelevant, as long as the Third Amendment did not constitute a purchase of new securities.

[15] While legislative history on this issue is unrevealing, the Court can easily imagine that Congress, with its exclusion from the sunset provision of Treasury's ability to "exercise any rights received in connection with . . . securities purchased," was contemplating an investment agreement whereby Treasury maintained future rights to purchase more GSE securities.

Here, Treasury purchased one million senior preferred shares in each GSE in exchange for a number of contractual entitlements. *E.g.*, Treasury AR at 21-22 (Fannie Mae PSPA). This "purchase" of GSE securities required Treasury to provide the GSEs with a funding commitment. While in all three amendments that followed this purchase Treasury never received additional GSE shares, under the first two amendments, Treasury provided the GSEs with an expanded funding commitment. The individual plaintiffs cite the "Action Memorandum for [Treasury] Secretary Geithner," which invokes Treasury's statutory purchasing authority under § 1719(g) as a justification for the funding expansion, as evidence that the Third Amendment was also a purchase of securities. Individual Pls.'s Reply at 21 (Treasury AR at 181-88). The Court, however, does not accept that a reference to Treasury's general purchasing authority in a memorandum to Secretary Geithner regarding the Second Amendment means that the Second Amendment (and First Amendment, for that matter) was, in fact, a purchase of new obligations or securities according to § 1719(g)(1)(a). While Treasury's funding commitment is the currency by which Treasury purchased shares, which came with additional rights for Treasury, in the original PSPAs, no new shares or obligations were purchased during the first two amendments. Treasury's receipt of "valuable consideration"—*i.e.*, the potential for increased liquidation preferences as the GSEs drew more funding—for these amendments does not, on its own, constitute the purchase of new GSE securities under § 1719(g)(1)(a).[16] *Cf.* Individual Pls.'s Reply at 21.

Yet regardless of whether the first two amendments to the PSPAs should be considered a purchase of new securities, the Court finds that Treasury did not purchase new securities under

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[16] Similarly, the fact that Treasury, prior to executing the First and Second Amendments, made § 1719(g)(1)(B) "emergency determinations" generally required before purchasing new securities does not, alone, signify the purchase of new securities. *See* Treasury Reply at 37-38 (determinations made "because [Treasury] was pledging additional taxpayer funds to the GSEs").

the Third Amendment. Under the Third Amendment—unlike the first two amendments—Treasury *neither* granted the GSEs additional funding commitments *nor* received an increased liquidation preference. Instead, Treasury agreed to a net worth sweep in exchange for eliminating the cash dividend equivalent to 10% of the GSEs' liquidation preference. This net worth sweep represented a new formula of dividend compensation for a $200 billion-plus investment Treasury had already made. As FHFA further claims, the agency executed the Third Amendment to ameliorate the existential challenge of paying the dividends it *already* owed pursuant to the GSE securities Treasury purchased through the PSPA; it did not do so in order to sell more GSE securities. FHFA Mot. at 3 ("The [GSEs] were unable to meet their 10% dividend obligations without drawing more from Treasury, causing a downward spiral of repaying *preexisting obligations* to Treasury through additional draws from Treasury.") (emphasis added). Notwithstanding plaintiffs' contentions regarding the "fundamental change doctrine," Treasury's own tax regulations, or otherwise, the present fact pattern strikes the Court as straightforward, at least in the context of the applicability of § 1719(g)'s sunset provision. Without providing an additional funding commitment or receiving new securities from the GSEs as consideration for its Third Amendment to the already existing PSPAs, Treasury cannot be said to have purchased new securities under § 1719(g)(1)(a). Treasury may have amended the compensation structure of its investment in a way that plaintiffs find troubling, but doing so did not violate the purchase authority sunset provision. § 1719(g)(4).

4. *FHFA Acted within Its Statutory Authority*

The individual plaintiffs put forth a number of claims that FHFA violated HERA by entering into the Third Amendment.[17] These arguments concern both FHFA's conduct and the purported reasons *for* FHFA's conduct—the *what* and the *why*, so to speak.[18]

At bottom, the Third Amendment sweeps nearly all GSE profit dollars to Treasury. The result for non-Treasury shareholders is virtually no likelihood of dividend payments (given the lack of profits along with Treasury's discretion to pay dividends, *see, e.g.* Treasury AR at 58 (Freddie Mac PSPA § 5.1)) and a decrease in the potential liquidation preference they would receive if the company liquidated during a period of profitability. Both parties essentially admit this same depiction in their briefs, biased adjectives aside. Looking past the financial engineering involved in the PSPAs and subsequent amendments, the question for this Court, simply, is whether the net worth sweep amendment represents conduct that exceeds FHFA's authority under HERA—a statute of exceptional scope that gave immense discretion to FHFA as a conservator. It is surely true that "FHFA cannot evade judicial scrutiny by merely labeling its actions with a conservator stamp." *Leon Cnty. v. FHFA*, 700 F.3d 1273, 1278 (11th Cir. 2012). Yet construing the allegations in a light most favorable to the plaintiffs, the Court finds that the plaintiffs fail to demonstrate by a preponderance of the evidence—if at all—that FHFA's execution of the Third Amendment violated HERA. *See, e.g.*, *Pitney Bowes, Inc. v. U.S. Postal Serv.*, 27 F. Supp. 2d 15, 19 (D.D.C. 1998) ("The plaintiff bears the burden of persuasion to establish subject matter jurisdiction by a preponderance of the evidence."). As such, the plaintiffs cannot overcome § 4617(f)'s jurisdictional bar on equitable relief.

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[17] The class plaintiffs appear to adopt the individual plaintiffs' briefing on this issue. *See* Class Pls.'s Opp'n at 25.

[18] The Court has already dismissed, *supra*, claims of arbitrary and capricious decisionmaking brought pursuant to 5 U.S.C. 706(2)(A). This subsection, then, will address all other claims for equitable relief against FHFA.

a. FHFA's Justifications for Executing the Third Amendment and, Consequently, the Accompanying Administrative Record, Are Irrelevant for § 4617(f) Analysis

The extraordinary breadth of HERA's statutory grant to FHFA as a conservator or receiver for the GSEs, likely due to the bill's enactment during an unprecedented crisis in the housing market, *Cf. Freeman*, 56 F.3d at 1398, coupled with the anti-injunction provision, narrows the Court's jurisdictional analysis to *what* the Third Amendment entails, rather than *why* FHFA executed the Third Amendment. *See also id.* (the anti-injunction provision applies "unless [the conservator] has acted . . . beyond, or contrary to, its statutorily prescribed, constitutionally permitted, powers or functions."). Nevertheless, the individual plaintiffs focus a sizable portion of their opposition and reply briefs on disputing FHFA's *justifications* for the Third Amendment. *See* Individual Pls.'s Opp'n at 58-73; Individual Pls.'s Reply at 31-39. Similarly, the individual plaintiffs argue that FHFA violated HERA by not producing the full administrative record. Individual Pls.'s Opp'n at 46-51; Individual Pls.'s Reply at 26-29. Both sets of claims ask the Court, directly or indirectly, to evaluate FHFA's rationale for entering into the Third Amendment—a request that contravenes § 4617(f).

Claims that FHFA's varying explanations for entering into the Third Amendment reveal that the agency's conduct went beyond its statutory authority under HERA—which are merely extensions of the individual plaintiffs' arbitrary and capricious arguments under a different subheading—share the same fate as the plaintiff's APA arbitrary and capricious claims. Once again, to determine whether it has jurisdiction to adjudicate claims for equitable relief against FHFA as a conservator, the Court must look at *what* has happened, not *why* it happened. For instance, the Court will examine whether the Third Amendment *actually* resulted in a *de facto* receivership, *infra*; not what FHFA has publicly stated regarding any power it may or may not have, as conservator, to prepare the GSEs for liquidation, *see* Individual Pls.'s Opp'n at 58-66. FHFA's underlying motives or opinions—*i.e.*, whether the net worth sweep would arrest a downward spiral of dividend payments (*see also supra* n.7), increase payments to Treasury, or keep the GSEs in a holding pattern, Individual Pls.'s Opp'n at 66-73—do not matter for the purposes of § 4617(f). *Cf. Leon Cnty., Fla. v. FHFA*, 816 F. Supp. 2d 1205, 1208 (N.D. Fla. 2011) *aff'd*, 700 F.3d 1273 (11th Cir. 2012) ("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."). Moreover, contrary to the individual plaintiffs' assertion, *id.* at 46-51, and consistent with the Court's ruling regarding the bar on arbitrary and capricious review under § 4617(f), *supra*, the Court need not view the full administrative record to determine whether the Third Amendment, *in practice*, exceeds the bounds of HERA.

Generally, "[i]t is not [the Court's] place to substitute [its] judgment for FHFA's," *Cnty. of Sonoma*, 710 F.3d at 993, let alone in the face of HERA's "sweeping ouster of courts' power to grant equitable remedies," *Freeman*, 56 F.3d at 1398. *See also MBIA Ins. Corp.*, 816 F. Supp. 2d at 103 ("In seeking injunctive or declaratory relief, it is not enough for [the plaintiffs] to allege that [conservator] came to the wrong conclusion . . . ."). 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. *See* 12 U.S.C. § 4617(f). Therefore, the Court will only consider FHFA's actual conduct.

b. FHFA Has Not Violated 12 U.S.C. § 4617(a)(7)

The individual plaintiffs briefly argue that FHFA violated HERA's prescription "not [to] be subject to the direction or supervision of any other agency of the United States . . . in the exercise of the rights, powers, and privileges of the Agency." 12 U.S.C. § 4617(a)(7); *see* Individual Pls.'s Opp'n at 51; *Fairholme* and *Arrowood* Plaintiffs' Supplemental Opp'n at 7-10 (D.D.C. Mar. 21, 2014) ("Sup. Opp'n"); Individual Pls.'s Reply at 13, 40. However, "records" showing that Treasury "invented the net-worth sweep concept with no input from FHFA" do not come close to a reasonable inference that "FHFA considered itself bound to do whatever Treasury ordered." *See* Individual Pls.'s Opp'n at 51. The plaintiffs cannot transform subjective, conclusory allegations into objective facts. *See* Sup. Opp'n at 9-10 (claiming that "[o]nly a conservator that has given up the will to exercise its independent judgment could agree to forfeit so much"). Notwithstanding the plaintiffs' perspective that the Third Amendment was a "one-sided deal" favoring Treasury, the amendment was executed by two sophisticated parties, and there is nothing in the pleadings or the administrative record provided by Treasury that hints at coercion actionable under § 4617(a)(7). *See* Individual Pls.'s Opp'n at 51 (citing Treasury AR at 3775-802, 3833-62, 3883-94, 3895-903). Undoubtedly, many negotiations arise from one party conjuring up an idea, and then bringing their proposal to the other party. This claim does not pass muster under either Rule 12(b)(1) or Rule 12(b)(6).

c. FHFA Has Not Placed the GSEs in De Facto *Liquidation*

The individual plaintiffs further contend that the Third Amendment amounts to a *de facto* liquidation, which exceeds FHFA's statutory authority as a conservator. By entering into an agreement that sweeps away nearly all GSE profits, they argue, FHFA has forsaken its statutory responsibility to "rehabilitate" the GSEs and, instead, has effectively placed the GSEs in receivership. Individual Pls.'s Opp'n at 55-58; *see* 12 U.S.C. § 4617(a)(2). But FHFA counters that full-scale rehabilitation is not the only possible statutory duty of a conservator—that the statute also permits a conservator to "reorganize" or "wind up" the affairs of a GSE. FHFA Mot. at 30 (citing 12 U.S.C. § 4617(a)(2)). The Court has no occasion to decide whether the conservator is empowered to wind down the GSEs. It is unnecessary to engage in a lengthy debate over statutory interpretation because the facts, as stated in the plaintiffs' pleadings, belie the individual plaintiffs' claims of *de facto* liquidation under receivership authority.

Here, the Court need not look further than the current state of the GSEs to find that FHFA has acted within its broad statutory authority as a conservator. Four years ago, on the brink of collapse, the GSEs went into conservatorship under the authority of FHFA. *E.g.*, *Fairholme* Compl. at ¶ 3. Today, both GSEs continue to operate, and have now regained profitability. *E.g.*, *Fairholme* Compl at ¶¶ 8, 60, 63 ("Fannie and Freddie are now immensely profitable."); *cf. id.* at ¶ 14 (noting that prior to the Third Amendment, "[t]he conservatorship of Fannie and Freddie achieved the purpose of restoring the Companies to financial health"). Unquestionably, the plaintiffs take great issue with FHFA's conduct between and since these two bookend facts. However, when the Court is asked to determine whether FHFA acted beyond, or contrary to, its responsibilities as conservator under a statute that grants the agency expansive discretion to act as it sees fit, it is the current state of affairs that must weigh heaviest on this analysis. If the Third Amendment were really part of a scheme to liquidate the GSEs, then the GSEs would, presumably, be in liquidation rather than still be "immensely profitable." *See Fairholme* Compl. at ¶ 60. There is no dispute that the Third Amendment substantially changed the flow of profits, directing billions of dollars into Treasury's coffers.[19] But that alteration, alone, is in no way sufficient to reclassify a conservatorship into a receivership.[20]

The individual plaintiffs cite no precedent stating that a net worth sweep, or some equivalent, is functionally akin to liquidation. The case law cited in their opposition actually supports the position that FHFA is acting as a conservator. Individual Pls.'s Opp'n at 52-54 (collecting cases). In sum, these cases stand for the proposition that a conservator should "carry on the business of the institution," *MBIA Ins. Corp. v. FDIC*, 708 F.3d 234, 236 (D.C. Cir. 2013), and "take actions necessary to restore a financially troubled institution to solvency," *McAllister v. RTC*, 201 F.3d 570, 579 (5th Cir. 2000). Here, the GSEs maintain an operational mortgage finance business and are, once again, profitable—two facts indicative of a successful

[19] It is worth noting that Treasury's insistence on receiving cash dividends, as required under the PSPAs, rather than accepting a 12% dividend deferred to the liquidation preference, suggests that Treasury believed there was no intention to imminently liquidate the GSEs. *See* Treasury Reply at 49-50; *see also supra* n.7. A belief that there was no planned liquidation—and thus no forthcoming receipt of liquidation payments—would mean that adding owed dividends to Treasury's ever-growing liquidation preference would produce increased risk for the taxpayer.

[20] The individual plaintiffs specifically argue that the net worth sweep exceeds FHFA's authority as a conservator because it (1) depletes available capital; (2) "eliminates the possibility of normal business operations"; and (3) carries an ultimate intent to wind down the GSEs. Individual Pls.'s Opp'n at 56-58. First, the original dividend distribution scheme under the PSPAs also depleted the GSEs' capital. Dividends distributed to security holders, by nature, constitute a depletion of available capital. Second, there is no HERA provision that requires a conservator to abide by every public statement it has made. To the contrary, HERA permits a conservator wide latitude to flexibly operate the GSEs over time. *See* 12 U.S.C. § 4617(b)(2) Third, even if FHFA has explicitly stated an intent to eventually wind down the GSEs, such an intent is not automatically inconsistent with acting as a conservator. There 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. FHFA can lawfully take steps to maintain operational soundness and solvency, conserving the assets of the GSEs, until it decides that the time is right for liquidation. *See* 12 U.S.C. § 4617(b)(2)(D) ("[p]owers as conservator").

Moreover, since the Third Amendment remains consistent with FHFA's wide-ranging authority as a conservator, there is no need for the Court to further resolve whether the amendment falls within FHFA's authority to "transfer or sell any asset" under § 4617(b)(2)(G). *Compare* FHFA Mot. at 27-29 *and* FHFA Reply at 5-7, *with* Individual Pls.'s Opp'n at 63-66 *and* Individual Pls.'s Reply at 31-33. The plaintiffs essentially argue that the Third Amendment runs counter to FHFA's power to transfer assets *because* FHFA is not seeking to "rehabilitate" the GSEs when making this transfer. Individual Pls.'s Opp'n at 64-66. Yet, as explained, the Court finds the plaintiffs' premise—that FHFA's conduct is inconsistent with a conservatorship—to be lacking. Therefore, whether or not FHFA classifies the Third Amendment as a transfer of assets is of no moment. The breadth of Congress' grant of authority to FHFA under HERA means that the Court's analysis must center much more on the ends than the means.

conservatorship.[21] Thus, the plaintiffs plead no facts demonstrating that FHFA has exceeded its statutory authority as a conservator.

Given that § 4617(f) bars subject matter jurisdiction[22] over all declaratory, injunctive, and other equitable relief requested against the defendants that would restrain the conservator's ability to "exercise [its statutory] powers or functions," all claims related to these prayers for relief must be dismissed pursuant to Rule 12(b)(1). Included are the individual plaintiffs' APA claims against both FHFA and Treasury,[23] the *Fairholme* plaintiffs' claim of breach of fiduciary duty against FHFA, and any part of the plaintiffs' claims of breach of the implied covenant of good faith and fair dealing which request declaratory relief.

B. HERA Bars the Plaintiffs' Derivative Claims against FHFA and Treasury

The class plaintiffs bring derivative claims against both FHFA and Treasury on behalf of Fannie Mae and Freddie Mac. *In re Fannie Mae/Freddie Mac* Am. Compl. at ¶¶ 72-79 (Fannie Mae); *In re Fannie Mae/Freddie Mac* Derivative Compl. at ¶¶ 175-82 (Freddie Mac).[24] Under

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[21] Indeed, the GSE's current profitability is the fundamental justification for the plaintiffs' prayers for equitable and monetary relief. In other words, this litigation only exists *because* the GSEs have, under FHFA's authority, progressed from insolvency to profitability.

[22] The Court acknowledges that there appears to be some confusion over whether Rule 12(b)(1) or Rule 12(b)(6) applies to § 4617(f). This Circuit has framed FIRREA's substantially identical anti-injunction provision, 12 U.S.C. § 1821(j), as a bar on *relief*. *See Freeman*, 56 F.3d at 1396, 1398, 1406; *see also MBIA Ins. Corp.*, 816 F. Supp. 2d at 104, 106 (explicitly dismissing claims on § 1821(j) grounds pursuant to Rule 12(b)(6)). However, recent rulings by courts in the Second, Ninth, and Eleventh Circuits framing § 4617(f) as a *jurisdictional* bar, *see Town of Babylon*, 699 F.3d at 227-28; *Cnty. of Sonoma*, 710 F.3d at 990, 994-95; *Leon Cnty.*, 700 F.3d at 1275 n.1, 1276, coupled with the parties in this case doing the same, *see*, *e.g.*, Individual Pls.'s Opp'n at 31-32 ("HERA's jurisdictional bar"); FHFA Mot. at 28 ("[t]he jurisdictional bar of Section 4617(f)"), leads the Court to believe that the breadth of § 4617(f) better represents a jurisdictional bar, with related claims subject to dismissal under Rule 12(b)(1), than a bar on relief. But regardless of the proper basis for dismissal, the Court would dismiss the plaintiffs' claims for equitable relief under 12(b)(1) *or* 12(b)(6).

[23] Accordingly, the *Perry* Complaint is dismissed in its entirety.

[24] The Court need not determine whether the individual plaintiffs' APA claims should be considered derivative, since all such claims are dismissed pursuant to § 4617(f). *Compare* Treasury Mot. at 30-33, *with* Individual Pls.'s Reply at 9-11.

Similarly, the *Fairholme* plaintiffs' fiduciary duty claim against FHFA, which seeks only equitable relief, is also dismissed pursuant to § 4617(f). *See* Sup. Opp'n at 13 ("The Fairholme Plaintiffs, moreover, have expressly limited their fiduciary duty claim to seek only 'equitable and declaratory relief' aimed at unwinding the Sweep Amendment

HERA, FHFA "shall, as conservator or receiver, and by operation of law, immediately succeed to (i) all rights, titles, powers, and privileges of the [GSE], and of any stockholder . . . ." 12 U.S.C. § 4617(b)(2)(A)(i).[25] The Circuit has held that "[t]his language plainly transfers shareholders' ability to bring derivative suits—a 'right[ ], title[ ], power[ ], [or] privilege[ ]'—to FHFA." *Kellmer v. Raines*, 674 F.3d 848, 850 (D.C. Cir. 2012).

1. An Exception to HERA's Bar on Shareholder Derivative Claims Would Contravene the Plain Language of the Statute

The plaintiffs argue that, despite the general bar against derivative suits, they have standing to sue derivatively because FHFA, due to a conflict of interest, would be unwilling to sue itself or Treasury.[26] Class Pls.'s Opp'n at 32-35; Sup. Opp'n at 14-16. In passing, *Kellmer* notes the existence, among other circuits, of an exception to the equivalent bar on shareholder

and eliminating its harmful effect on Plaintiffs' interests in Fannie and Freddie.") (internal quotations and citation to Complaint omitted). As such, there is no requirement for the Court to decide whether such claims are derivative or direct. However, if such a determination were necessary, the Court notes that it would find that the *Fairholme* plaintiffs' fiduciary duty claim is derivative in nature and, therefore, barred under § 4617(b)(2)(A)(i) as well. Without resolving whether Delaware and/or Virginia law applies to the *Fairholme* plaintiffs' fiduciary duty claim, the Court—like both parties—will briefly utilize the analysis established by the Supreme Court of Delaware in *Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, 845 A.2d 1031 (Del. 2004). To determine whether a shareholder's claim is derivative or direct, the Court asks: "(1) who suffered the alleged harm (the corporation or the suing stockholders, individually); and (2) who would receive the benefit of any recovery or other remedy (the corporation or the stockholders, individually)?" *Id.* at 1033. Regardless of whether the *Fairholme* plaintiffs plead injuries to both the GSEs and the individual plaintiff shareholders, *see* FHFA Reply at 23; *but see* Sup. Opp'n at 12-13, the claim qualifies as derivative, not direct, under *Tooley*'s second prong. Here, recovery or relief will not flow "directly to the stockholders." *Tooley*, 845 A.2d at 1036. Instead, the equitable relief *Fairholme* seeks—"namely, vacating the Third Amendment and returning its resulting dividends from Treasury to the Enterprises (*Fairholme* Compl. ¶ 146(d)-(e))—would flow first and foremost to the [GSEs]." *FHFA Reply* at 24. That relief will *not* flow directly to the *Fairholme* plaintiffs is especially true since, after signing the PSPAs, Treasury effectively maintained discretion over GSE dividend payments, *see, e.g.*, Treasury AR at 24 (Fannie Mae PSPA § 5.1), and the GSEs, still in conservatorship, are not liquidating assets pursuant to any liquidation preferences.

Finally, Treasury's argument that the plaintiffs lack prudential standing, Treasury Mot. at 34-36, does not require consideration here. *Cf. Louisiana Envtl. Action Network v. Browner*, 87 F.3d 1379, 1384 (D.C. Cir. 1996) ("[The Court has] no difficulty dismissing a case based on one jurisdictional bar rather than another. . . . Because issues of standing, ripeness, and other such 'elements' of justiciability are each predicate to any review on the merits, a court need not identify all such elements that a complainant may have failed to show in a particular case.").

[25] The statute also provides that FHFA may, as conservator, ". . . operate the [GSE] with all the powers of the shareholders." 12 U.S.C. § 4617(b)(2)(B)(i).

[26] "The party invoking federal jurisdiction bears the burden of establishing [standing]." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992).

derivative actions brought against the FDIC under the substantially similar FIRREA provision, 12 U.S.C. § 1821(d)(2)(A), for instances of "manifest conflict of interest." *Kellmer*, 674 F.3d at 850. The defendants are right, however, that this Circuit has not adopted such an exception. *E.g.*, Treasury Mot. at 31. While *Kellmer* concerned a suit against officers and directors rather than one against FHFA and Treasury, *see* Class Pls.'s Opp'n at 31, the Circuit's holding puts no limitations on HERA's rule against shareholder derivative suits. Based on the Circuit's discussion of the text of 12 U.S.C. § 4617(b)(2)(A)(i), it stands to reason that if the *Kellmer* Court had occasion to consider the purported conflict of interest exception, it would not have found that such an exception exists.

The idea of an exception to HERA's rule against derivative suits comes from two cases, both considering FIRREA § 1821(d)(2)(A). First, the Federal Circuit held that, notwithstanding the "general proposition" that the FDIC assumed "the right to control the prosecution of legal claims on behalf of the insured depository institution now in its receivership," a plaintiff has standing to bring a derivative suit when the FDIC has a "manifest conflict of interest"—*i.e.*, when the plaintiffs ask the receiver to bring a suit based on a breach allegedly caused by the receiver. *First Hartford Corp. Pension Plan & Trust v. United States*, 194 F.3d 1279, 1295-96 (Fed. Cir. 1999). Then, the Ninth Circuit "adopt[ed] the *First Hartford* exception" in *Delta Savings Bank v. United States*, 265 F.3d 1017 (9th Cir. 2001), for instances of conflict of interest between sufficiently "interdependent entities." *Id.* at 1021-23.[27]

It strikes this Court as odd that 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

[27] The Court can reasonably presume the Ninth Circuit's exception would also apply to instances where a plaintiff demands that the FDIC sue itself.

around FHFA's conservatorship authority by means of the shareholder derivative suits that the statute explicitly bars. "To resolve this [oddity, however,] we need only heed Professor Frankfurter's timeless advice: '(1) Read the statute; (2) read the statute; (3) read the statute!'" *Kellmer*, 674 F.3d at 850 (second internal quotation marks omitted) (citing Henry J. Friendly, *Mr. Justice Frankfurter and the Reading of Statutes*, *in* Benchmarks 196, 202 (1967)). The Circuit tells the Court that HERA, by its unambiguous text, removes the power to bring derivative suits from shareholders and gives it to FHFA. *Id.* (citing § 4617(b)(2)(A)).[28] As the *basis* for its exception to the rule against shareholder derivative suits, the Federal Circuit explained that "the very object of the derivative suit mechanism is to permit shareholders to file suit on behalf of a corporation when the managers or directors of the corporation, perhaps due to a conflict of interest, are unable or unwilling to do so, despite it being in the best interests of the corporation." *First Hartford*, 194 F.3d at 1295; *see also* Class Pls.'s Opp'n at 32 (quoting the same). Yet the 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. Derivative suits largely exist so that shareholders can protect a corporation from those who run it—and HERA takes the right to such suits away from shareholders.[29] How, then, can a court base the exception to a rule barring shareholder

[28] *See also La. Mun. Police Emps. Ret. Sys. v. FHFA*, 434 F. App'x 188, 191 (4th Cir. 2011) (affirming and quoting *In re Freddie Mac Derivative Litig.*, 643 F. Supp. 2d 790, 795 (E.D. Va. 2009) ("[T]he plain meaning of the statute is that *all* rights previously held by Freddie Mac's stockholders, including the right to sue derivatively, now belong exclusively to the [Agency].")).

[29] "Indeed, as the Supreme Court has explained, 'the purpose of the derivative action was to place in the hands of the individual shareholder a means to protect the interests of the corporation from the misfeasance and malfeasance of faithless directors and managers.'" *First Hartford*, 194 F.3d at 1295 (quoting *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 95 (1991)).

derivative suits on the purpose of the "derivative suit mechanism" that rule seeks to bar? *See First Hartford*, 194 F.3d at 1295. Such an exception would swallow the rule.[30]

By looking outside HERA's statutory language to find an exception to the rule against derivative suits that is based on the reason the judicial system permits derivative suits in the first place, a court would effectively be asserting its disagreement with the breadth of HERA's text. HERA provides no qualification for its bar on shareholder derivative suits, and neither will this Court. § 4617(b)(2)(A) (the conservator "shall . . . immediately succeed to . . . *all* rights, titles, powers, and privileges . . . of any stockholder) (emphasis added).[31] It is a slippery slope for the Court to poke holes in, or limit, the plain language of a statute, especially when, as here, the plaintiffs have not asked the Court to weigh in on the statute's constitutionality. Therefore, the Court finds that HERA's plain language bars shareholder derivative suits, without exception.

2. *Even If the Exception Applies, There Is No Conflict of Interest between FHFA and Treasury*

Even assuming *arguendo* that the *First Hartford* and *Delta Savings* exceptions to HERA's prohibition on shareholder derivative suits applied to HERA § 4617(b)(2)(A)(i), there is no conflict of interest between FHFA and Treasury, and the class plaintiffs' fiduciary duty claims against Treasury would be dismissed. The *First Hartford* decision would not apply to the

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[30] The Court further notes that the *First Hartford* and *Delta Savings* decisions both involved the FDIC in receivership. Applying an exception to the statutory rule against derivative suits makes still less sense in the conservatorship context, where FHFA enjoys even greater power free from judicial intervention. Consistent with congressional intent to decrease restrictions governing the emergency scenario during which FHFA would need to conserve the viability of the GSEs, under HERA, court involvement on issues brought by outside stakeholders, and not by the GSEs themselves, *cf.* § 4617(a)(5), is most available throughout the *receivership* claims process. *E.g.*, § 4617(b)(5), (6).

[31] The Court respectfully disagrees with the Ninth Circuit's argument that "strict adherence to an absolute rule would be at least impracticable, and arguably absurd." *Delta Sav. Bank v. United States*, 265 F.3d 1017, 1023-24 (9th Cir. 2001). This Court believes that an unequivocal, "absolute rule" against shareholder derivative suits enacted by Congress during a time of economic crises requires "strict adherence." HERA's anti-injunction provision, § 4617(f), is illustrative of Congress' intention to transfer "all" shareholder rights to the conservator so that it could work, unimpeded, to save the GSEs from impending collapse, without a concern for preserving any such shareholder rights to derivative suits.

Treasury fiduciary duty claims because the plaintiffs are not demanding that FHFA sue itself or sue another government entity on account of FHFA's own breach, 194 F.3d at 1295—the plaintiffs' claims against Treasury are due to Treasury's alleged breach. *E.g.*, *In re Fannie Mae/Freddie Mac* Am. Compl. at ¶¶ 177-79. In *Delta Savings*, the Ninth Circuit's finding of a "manifest conflict of interest" was not just based on the presence of two government entities, but rather two sufficiently *interrelated* government agencies. 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; it is the nature of the [Office of Thrift Supervision ('OTS')]–FDIC relationship that raises the conflict here."). As the *Delta Savings* Court explained, the FDIC and the OTS were "interrelated agencies with overlapping personnel, structures, and responsibilities." *Id.* at 1021-22. The relationship between FHFA and Treasury fails the Ninth Circuit's interrelatedness test. The class plaintiffs point to no "operational or managerial overlap," and the agencies do not "share a common genesis." *Id.* at 1022-23. Unlike OTS, which supervised thrift institutions and retained the ability to "choose the FDIC to be the conservator," *id.* at 1023, Treasury plays no role in choosing FHFA to act as a conservator for the GSEs. While Treasury and FHFA, *inter alia*, have jointly proposed regulations, *e.g.*, Credit Risk Retention, 78 Fed. Reg. 183 (proposed Sept. 20, 2013), the fact that both entities exist within the financial regulation space cannot, on its own, satisfy *Delta Savings*' narrowly applied interrelatedness test. *See* 265 F.3d at 1022-1023.

Furthermore, the Court understands that Treasury represented the only feasible entity—public or private—capable of injecting sufficient liquidity into and serving as a backstop for the GSEs within the short timeframe necessary to preserve their existence in September 2008. There was no other investment partner at FHFA's disposal. *See* FHFA Mot. at 7-8. In fact, Congress expressly foresaw the need for a Treasury-FHFA relationship, specifically authorizing Treasury to invest in the GSEs. 12 U.S.C. § 1719(g); *see also* 12 U.S.C. § 4617(b)(5)(D)(iii)(I) (Congress highlighted Treasury's potential role as creditor to the GSEs by explicitly creating an exception to FHFA's authority, as receiver, to disallow creditor claims made by Treasury).[32] A relationship-based conflict of interest analysis, *see Delta Sav. Bank*, 265 F.3d at 1023, does not require the Court to ignore the harsh economic realities facing the GSEs—and the national financial system if the GSEs collapsed—when FHFA and Treasury executed the PSPAs in 2008. Courts, generally, should be wary of labeling a transaction with an investor of last resort as a conflict of interest.[33]

Thus, the class plaintiffs' derivative claims, on behalf of the GSEs, for breach of fiduciary duty by FHFA and Treasury, are dismissed pursuant to Rule 12(b)(1) for lack of standing.[34]

C. The Plaintiffs' Breach of Contract and Breach of the Implied Covenant of Good Faith and Fair Dealing Claims for Monetary Damages Must Also Be Dismissed

The plaintiffs further request monetary damages for claims of breach of contract and breach of the implied covenant of good faith and fair dealing, specifically regarding the dividends and liquidation preference provisions within their respective GSE stock certificates. *See In re Fannie Mae/Freddie Mac* Am. Compl. at 64 (¶ 7); *Arrowood* Compl. at 52 (¶ E);[35]

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[32] Notably, Congress omitted Treasury from its list of potential credit providers exempt from FDIC's authority to disallow claims under FIRREA. *See* 12 U.S.C. § 1821(d)(5)(D)(iii)(I).

[33] A recent ruling by Judge Jackson provides additional persuasive reasoning that, even if the conflict of interest exception existed in this Circuit, the FHFA-Treasury relationship does not constitute such a conflict. *Gail C. Sweeney Estate Marital Trust v. U.S. Treasury Dep't*, No. 13-0206, 2014 WL 4661983 (D.D.C. Sept. 19, 2014).

[34] "[T]he defect of standing is a defect in subject matter jurisdiction." *Haase v. Sessions*, 835 F.2d 902, 906 (D.C. Cir. 1987).

[35] It is unclear to the Court whether the *Arrowood* plaintiffs incorporate their claim of breach of the implied covenant into their request for monetary relief, *Arrowood* Compl. at 52 (¶ E). Yet, regardless of the *Arrowood* plaintiff's intention, the claim is dismissed. If the claim of breach of the implied covenant is included within ¶ E,

Fairholme Compl. at ¶ 146(h). As the class plaintiffs correctly assert, HERA's anti-injunction provision, § 4617(f), does not bar requests for *monetary* relief. *See* Class Pls.'s Opp'n at 21-22 (citing, among other cases, *Hindes v. FDIC*., 137 F.3d 148, 161 (3d Cir. 1998); *Willow Grove, Ltd. v. Fed. Nat'l Mortg. Ass'n*, No. 13-0723, 2013 WL 6865127, at *2 (D. Colo. Dec. 31, 2013)); *see also Freeman*, 56 F.3d at 1399 (concluding that FIRREA § 1821(j) precluded nonmonetary remedies, but noting that "aggrieved parties will [still] have opportunities to seek money damages"). Nevertheless, the plaintiffs' contract-based claims seeking monetary damages must also be dismissed under the threshold analyses required by Rule 12(b)(1) and Rule 12(b)(6).

1. The Plaintiffs' Liquidation Preference Claims Are Not Ripe

FHFA's entrance into the Third Amendment, allegedly in contravention of the GSEs' existing contract—*i.e.*, stock certificates—with the plaintiffs, constitutes a decision by an administrative agency. *See* 12 U.S.C. § 4511(a) ("There is established the Federal Housing Finance Agency, which shall be an independent agency of the Federal Government."). While the class and *Arrowood* plaintiffs also include the GSEs as targets of their claims of breach of contract and breach of the implied covenant, the action in question was undeniably one taken by FHFA. As such, the ripeness doctrine, which is most often applied to pre-enforcement review of agency determinations, may also govern the Court's assessment of subject matter jurisdiction here.[36] "Ripeness entails a functional, not a formal, inquiry." *Pfizer Inc. v. Shalala*, 182 F.3d 975, 980 (D.C. Cir. 1999). "Determining whether administrative action is ripe for judicial

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then the claim is dismissed pursuant to Rule 12(b)(1) and Rule 12(b)(6). *See infra*. If the *Arrowood* plaintiffs only intended to seek declaratory relief for the alleged breach of the implied covenant, then Count VI of the *Arrowood* Complaint is dismissed, under HERA § 4617(f), pursuant to Rule 12(b)(1). *See supra* Section III(A).

[36] "The question of ripeness goes to [the Court's] subject matter jurisdiction . . . ." *Duke City Lumber Co.* v. *Butz*, 539 F.2d 220, 221 n.2 (D.C. Cir. 1976).

review requires us to evaluate (1) the fitness of the issues for judicial decision and (2) the hardship to the parties of withholding court consideration." *Nat'l Park Hospitality Ass'n v. Dep't of Interior*, 538 U.S. 803, 808 (2003) (citing *Abbott Labs. v. Gardner*, 387 U.S. 136, 149 (1967)). "A claim is not ripe for adjudication if it rests upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" *Texas v. United States*, 523 U.S. 296, 300 (1998) (quoting *Thomas v. Union Carbide Agric. Products Co.*, 473 U.S. 568, 580-81).

An analysis of the plaintiffs' contentions regarding the liquidation preference written into their preferred stock certificates is uncomplicated. The certificates grant the plaintiffs "a priority right to receive distributions from the Companies' assets in the event they are dissolved." Individual Pls.'s Opp'n at 5.[37] Therefore, by definition, the GSEs owe a liquidation preference payment to a preferred shareholder only during liquidation. It follows that there can be no loss of a liquidation preference prior to the time that such a preference can, contractually, be paid. Here, the GSEs remain in conservatorship, not receivership, and there is no evidence of *de facto* liquidation.[38] *See supra* Section III(A)(4)(c).

The question for the Court cannot be whether the Third Amendment diminishes an *opportunity* for liquidation preferences at some point in the future, but rather whether the plaintiffs have suffered an injury to their right to a liquidation preference in fact and at present. Yet the individual plaintiffs assert that the Third Amendment "has clearly injured Plaintiffs in a direct and personal way" because "[t]heir right to an opportunity to benefit from the liquidation

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[37] The common stockholders among the class plaintiffs similarly claim deprivation "of any possibility of receiving dividends or a liquidation preference." *E.g.*, *In re Fannie Mae/Freddie Mac* Am. Compl. at ¶ 155.

[38] The *Arrowood* and *Fairholme* plaintiffs' citation to *Quadrangle Offshore (Cayman), LLC v. Kenetech Corp.*, No. 16362, 1998 WL 778359 (Del. Ch. Oct. 21, 1998) is, thus, inapposite, since that case concerns what the plaintiffs would aptly classify as *de facto* liquidation. *See* Sup. Opp'n at 41-42, 45 ("In *Quadrangle*, the defendant company had pursued no business and sold most of its assets to pay creditors, but because the company did not formally declare that it was in liquidation, it did not pay the preferred shareholders their contractually-specified liquidation preference.").

preferences in their preferred stock—once valuable—is now worthless . . . ." Individual Pls.'s Opp'n at 36. But, just as there was a Third Amendment, the Court cannot definitively say there will be no Fourth or Fifth Amendment that will transform the current "opportunity to benefit from the liquidation preferences in [the plaintiffs'] preferred stock." A ripeness requirement prevents the Court from deciding a case "contingent [on] future events that may not occur as anticipated, or indeed may not occur at all." *Texas v. United States*, 523 U.S. at 300. Indeed, the purpose of the ripeness doctrine is to ensure the Court hears only an "actual case or controversy." *Cf. Pfizer*, 182 F.3d at 980. Thus, the plaintiffs' liquidation preference claims are not fit for a judicial decision until liquidation occurs.[39]

Given that the plaintiffs maintain no current right to a liquidation preference while the GSEs are in conservatorship, the plaintiffs are no worse off today than they were before the Third Amendment. Therefore, there is no hardship imposed on the plaintiffs by withholding court consideration until this contingent right matures at the moment of liquidation. Once again, any present injury is, at most, a decrease in share value, which can only be claimed as part of a derivative action that would be barred by HERA. *See supra* n.39. "Moreover, no irremediable adverse consequences flow from requiring a later challenge to" the Third Amendment with regard to liquidation preferences since, as the defendants acknowledge, FHFA Mot. at 34-35, the right to a liquidation preference can be adjudicated during the statutorily prescribed receivership claims process. *Toilet Goods Ass'n, Inc. v. Gardner*, 387 U.S. 158, 164 (1967); *see also* 12

[39] Even if the plaintiffs could presently claim damages as a result of a prospective contractual breach regarding the plaintiff shareholders' liquidation preference, this claim would, at best, be one of damage to the price of their GSE shares, as valued by the market "based in part on the existence of their attendant . . . liquidation rights." Class Pls.'s Opp'n at 37-38. Such claims are considered derivative under Delaware law, and would be barred under HERA § 4617(b)(2)(A)(i), *supra* Section III(B). *E.g.*, *Labovitz v. Wash. Times Corp.*, 172 F.3d 897, 904-05 (D.C. Cir. 1999) ("the loss [plaintiffs] suffered in share value is a derivative harm") (citing *Kramer v. W. Pac. Indus., Inc.*, 546 A.2d 348, 353 (Del. 1988), for the proposition that "Delaware courts have long recognized that actions charging mismanagement which depress[ ] the value of stock [allege] a wrong to the corporation; *i.e.*, the stockholders collectively, to be enforced by a derivative action") (internal quotation marks and citation omitted).

U.S.C. § 4617(b)(2)(K)(i), (b)(3)-(10). Until then, the plaintiffs have no direct claims to liquidation preference-related damages that are ripe for judicial review, and their existing claims must be dismissed under Rule 12(b)(1).[40]

In addition, for largely the same reasons that lead the Court to conclude that the plaintiffs' liquidation preference claims lack ripeness, the plaintiffs' breach of contract and breach of implied covenant claims regarding liquidation preferences fail to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). The right to this elevated preference for asset distribution, given to preferred shareholders under GSE stock certificates, is only triggered during liquidation. Consequently, the plaintiffs' direct breach of contract claims for injuries related to their liquidation preference rights can provide them no "plausible" relief against FHFA—or against the GSEs, for that matter—until the agency places the GSEs into receivership and commences the dissolution process. *See Twombly*, 550 U.S. at 570; *see also supra* n.39 (the plaintiffs' attempt to amorphously straddle the line between direct injury to their contingent right to a liquidation preference and derivative injury to the present "value" of their GSE holdings further demonstrates the uncertainty of their claims). The Court's reasoning requiring dismissal

[40] FHFA and Treasury further argue that, under 12 U.S.C. § 4617(e)(2), which limits the maximum liability of FHFA during receivership, the plaintiffs liquidation preference claims are limited "to the amount that shareholders would have received had the GSEs' assets and liabilities been liquidated at the time the conservator was appointed in September 2008." Treasury Mot. at 28, 34. The Court is unable to identify any case law discussing this HERA provision, though a number of courts, including a handful within this Circuit, have examined FIRREA's similar provision capping liability, 12 U.S.C. § 1821(i)(2). *E.g.*, *Bank of Am., N.A. v. F.D.I.C.*, 962 F. Supp. 2d 165, 173 (D.D.C. 2013) ("12 U.S.C. § 1821(i)(2) unequivocally limits the maximum liability of the FDIC to the amount a claimant would have received in liquidation under the distribution scheme set forth in FIRREA."). The Tenth Circuit has noted that § 1821(i)(2) limits creditor claims against the agency to the "pro rata share of the assets which would have been available *on the day the institution was placed in receivership*." *Castleglen, Inc. v. RTC*, 984 F.2d 1571, 1583 (10th Cir. 1993) (emphasis added). Identifying the point at which to measure FHFA's maximum liability as "the day the institution was placed in receivership"—as opposed to the day the GSEs were placed in conservatorship, like the defendants suggest here—is consistent with the fact that this maximum liability is set only in reference to "a claim against the *receiver* or the regulated entity for which such *receiver* is appointed." 12 U.S.C. § 1821(i)(2) (emphasis added). As such, § 4617(e)(2) "has no relevance outside of receivership," and provides the court with no guidance regarding potential damages—or lack thereof—from claims made against FHFA as a conservator or against the GSEs while in conservatorship. *See* Individual Pls.'s Opp'n at 23; *see also* Class Pls.'s Opp'n at 39.

of such breach of contract claims also requires dismissal of the plaintiffs' claims of breach of the implied covenant of good faith and fair dealing, insofar as such claims request monetary relief. "Although an implied covenant of good faith and honest conduct exists in every contract, . . . such subjective standards cannot override the literal terms of an agreement." *Gilbert v. El Paso Co.*, 575 A.2d 1131, 1143 (Del. 1990). As mentioned, the stock certificates, on their face, only require liquidation preference payments when the GSEs enter liquidation. Since no liquidation has occurred, the plaintiffs' implied covenant claims relating to liquidation preference rights cannot stand at this time.

2. The Plaintiffs' Dividend Claims Fail to State a Claim upon Which Relief Can Be Granted

The stock certificates upon which the plaintiffs base their claims of breach of contract and breach of the implied covenant state that "holders of outstanding shares of . . . 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, non-cumulative cash dividends . . . ." *E.g.*, Individual Pls.'s Opp'n Ex. A at A-1 (Fannie Mae Preferred Stock Series S); Ex. B at A-1 (Freddie Mac Preferred Stock) (emphasis added). The "right" to dividends to which the plaintiffs refer throughout their briefs, then, is, in actuality, wholly dependent upon the discretion of the GSEs' board of directors. As the individual plaintiffs stress, "[a] contractual 'right' is an entitlement to certain performance from the counter-party, and it is 'exercised' through unilateral action that does not require negotiation or mutual assent." Individual Pls.'s Opp'n at 38. Here, the payment of a dividend expressly requires "mutual assent," since, under the contract, plaintiffs cannot receive such payment without board approval.

This Court—like many courts over the past two centuries—agrees with the defendants that shareholders do not have a present or absolute right to dividends which are subject to the discretion of the board. FHFA Mot. at 41-42. As Justice Holmes fittingly explained eighty-four years ago, an investment in stock "presupposes that the business is to go on, and therefore even if there are net earnings, the holder of stock, preferred as well as common, is entitled to have a dividend declared only out of such part of them as can be applied to dividends consistently with a wise administration of a going concern." *Wabash Ry. Co. v. Barclay*, 280 U.S. 197, 203-04 (1930) (further noting that dividend payments are "in the first instance at least a matter for the directors to determine").[41]

The history of case law finding no contractual right to discretionary dividends is only bolstered by the specific facts of this case. Under HERA, FHFA succeeded to all rights and powers of the board of directors. *See* 12 U.S.C. § 4617(b)(2)(A)(i) ("[FHFA] shall, as conservator or receiver, and by operation of law, immediately succeed to—(i) all rights, titles, powers, and privileges of the [GSEs], and of any . . . director of such regulated entity with respect to the regulated entity and *the assets of the [GSEs]*.") FHFA's power over the assets of the GSEs surely includes the power to declare discretionary dividends from the surplus assets of the GSEs. Consistent with FHFA's assumption of the board's power, FHFA's director, James Lockhart, stated that "the common stock and preferred stock dividends will be eliminated." *In re Fannie Mae/Freddie Mac* Am. Compl. at ¶ 53 (quoting Statement of FHFA Director James B. Lockhart at News Conference Announcing Conservatorship of Fannie Mae and Freddie Mac

[41] *See also New York, L.E. & W.R. Co. v. Nickals*, 119 U.S. 296, 305-07 (1886) (By qualifying dividend payments with "as declared by the board" language, the preferred stock contract did "not intend[] to confer upon the former an absolute right to a dividend in any particular year. . . . We are of opinion that . . . preferred stockholders . . . are not entitled, of right, to dividends, payable out of the net profits accruing in any particular year, unless the directors of the company formally declare, or ought to declare, a dividend payable out of such profits."); *In re Terex Corp.*, No. 91-3864, 1993 WL 7519, at *1 (6th Cir. Jan. 12, 1993) ("The decision to pay (or not to pay) a dividend was within the sole discretion of Metropolitan's board of directors; accordingly, Terex had no contractual right to receive a dividend for any given year."); *Crawford Drug Stores v. United States*, 220 F.2d 292, 296 (10th Cir. 1955) ("[I]n ordinary circumstances the holder of preferred stock has no such absolute right to the payment of dividends."); *Comm'r of Internal Revenue v. Meridient & Thirteenth Realty Co.*, 132 F.2d 182, 187 (7th Cir. 1942) (unlike a creditor's absolute right to interest, "[s]tockholders have no absolute right to dividends until they are declared").

(Sept. 7, 2008), *available at* http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-FHFA-Director-James-B--Lockhart-at-News-Conference-Annnouncing-Conservatorship-of-Fannie-Mae-and-Freddie-Mac.aspx). Once the agency executed the PSPAs, however, FHFA effectively transferred discretionary power over dividend issuance to Treasury. *See* Treasury AR at 24, 58 (Fannie Mae and Freddie Mac PSPAs § 5.1, requiring Treasury's written consent for declaration of any dividends, "preferred or otherwise"). Thus, not only do the plaintiffs lack a right to dividend payments under their original stock certificates, but FHFA—the primary target of the plaintiffs' breach of contract and breach of the implied covenant claims concerning dividends—no longer has exclusive discretion to issue such dividends.

Without a contractual right to dividends, the plaintiffs cannot state a claim for breach of contract specifically based on their alleged dividend entitlements. *See In re Fannie Mae/Freddie Mac* Am. Compl. at ¶¶ 155, 161, 167; *Fairholme* Compl. at ¶ 122.[42] And when the contract is unambiguous regarding a lack of contractual right, there cannot be a coinciding claim of breach of the implied covenant of good faith and fair dealing. *Dave Greytak Enters, Inc. v. Mazda Motors of Am., Inc.*, 622 A.2d 14, 23 (Del. Ch. 1992), *aff'd sub nom. David Greytak Enters., Inc. v. Mazda Motors of Am., Inc.*, No. 64, 1992 WL 135147 (Del. 1992) ("[W]here the subject at issue is expressly covered by the contract, or where the contract is intentionally silent as to that subject, the implied duty to perform in good faith does not come into play."); *see also Dunlap v. State Farm Fire & Cas. Co.*, 878 A.2d 434, 441 (Del. 2005) ("Existing contract terms control, however, such that implied good faith cannot be used to circumvent the parties' bargain, or to create a free-floating duty . . . unattached to the underlying legal document.") (internal quotation

[42] While the *Arrowood* Complaint does not specify dividends and liquidation preferences as the "rights" affected by the Third Amendment, *see Arrowood* Compl. ¶¶ 135-38, other sections of the Complaint clarify that dividends and liquidation preferences are the rights for which the *Arrowood* plaintiffs seek monetary damages. *See, e.g.*, *id.* at ¶ 7.

marks and citation omitted); *QVT Fund LP v. Eurohypo Capital Funding LLC I*, No. 5881, 2011 WL 2672092, at *14 (Del. Ch. July 8, 2011) ("If the contract clearly delineates the parties' rights, there is no room for the implied covenant because it cannot override the express terms of a contract.") (internal quotation marks and citation omitted).[43] As such, the plaintiffs' claims for breach of contract[44] and breach of the implied covenant regarding the dividend provisions of the plaintiffs' stock certificates must be dismissed pursuant to Rule 12(b)(6).

Even if the implied covenant was applicable to this case—and it is not—the plaintiffs would have failed to plead such a cause of action. The Court has ruled that the plaintiffs fail to demonstrate through their pleadings that FHFA violated its statutory authority under HERA by entering into the Third Amendment with Treasury. *See supra* Section III(A)(4). Yet the plaintiffs attempt to brand agency actions that fall within FHFA's statutorily established powers to succeed to all the rights of shareholders and stabilize the GSEs as performed in "bad faith." *E.g.*, *In re Fannie Mae/Freddie Mac* Am. Compl. at ¶¶ 90-91, 161. But the plaintiffs cannot overcome FHFA's sweeping congressional mandate with conclusory statements regarding the Third Amendment's effect on the plaintiffs' *prospective*—and not present—rights to dividends and liquidation preferences. *E.g.*, *Arrowood* Compl. at ¶¶ 96, 141.[45] Furthermore, the class and

[43] The individual plaintiffs' citation to *QVT Fund*, Sup. Opp'n at 40-41, 44-45, is distinguishable from this case. In *QVT Fund*, the plaintiffs claim that the alleged breach of an "implied obligation"—which the Court of Chancery deemed sufficiently pleaded—is the reason why *mandatory* dividend payments were not triggered. *See* 2011 WL 2672092, at *14-15. Here, no contractual obligation—implicit or explicit—exists that could transform unmistakably discretionary dividends into mandatory dividends.

[44] The Court rejects the individual plaintiffs' additional contention that the Third Amendment "effectively converted [Treasury's stock] into common stock," which would "represent a distribution to the common shareholder ahead of and in violation of the contractual rights of Plaintiffs and other preferred shareholders." Sup. Opp'n at 30. Here, the characteristics of preferred stock "that distinguish that stock from common stock"—*e.g.*, senior-most dividend and liquidation rights—remain "expressly and clearly stated" under the Third Amendment. *See Elliot Assocs., L.P. v. Avatex Corp.*, 715 A.2d 843, 852 (Del. 1998); *see also* FHFA Reply at 35-37.

[45] Since the plaintiffs have not demonstrated, through their pleadings, that FHFA acted in bad faith, Delaware case law under which discretionary dividends will only be compelled in the rare instance of a judicial finding of "fraud or gross abuse of discretion" by the board of directors is inapposite. *See, e.g.*, *Gabelli & Co. v. Liggett Grp. Inc.*, 479 A.2d 276, 280 (Del. 1984); *Moskowitz v. Bantrell*, 190 A.2d 749, 750 (Del. 1963).

Arrowood plaintiffs fail to plead claims of breach of the implied covenant against the GSEs, since the plaintiffs attribute all alleged "arbitrar[y] and unreasonabl[e]" conduct only to FHFA, as a conservator that assumed all rights of the GSEs, and not to the GSEs themselves.[46] *E.g.*, *In re Fannie Mae/Freddie Mac* Am. Compl. at ¶¶ 161, 167, 173; *see also* FHFA Reply at 32-33.[47]

D. The Class Plaintiffs Fail to Plead That the Third Amendment Is an Unconstitutional Taking

Finally, the class plaintiffs claim that the Third Amendment effected an unconstitutional taking of their alleged dividend entitlements and liquidation rights without just compensation. U.S. Const. amend. V ("nor shall private property be taken for public use, without just compensation"); *see In re Fannie Mae/Freddie Mac* Am. Compl. at ¶¶ 110-16, 183-92. Takings claims are reviewed as either physical or regulatory takings. A "paradigmatic" physical taking "is a direct government appropriation or physical invasion of private property." *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 537 (2005). Since the class plaintiffs do not allege a physical taking, the Court must decide whether they adequately plead a taking as a result of government regulation. Class Pls.'s Opp'n at 67-70. Before determining which takings rubric to utilize for its analysis, a court must first evaluate whether a plaintiff has a cognizable property interest protected by the Fifth Amendment. *See, e.g.*, *Conti v. United States*, 291 F.3d 1334, 1339 (Fed.

Additionally, even if the plaintiffs presented allegations of "gross abuse of discretion" resulting in *present* damage to the "value" of the plaintiffs' investment, such claims would be considered derivative and barred under HERA § 4617(b)(2)(A)(i). *See supra* n.39; *cf. U.S. v. Byrum*, 408 U.S. 125, 141 (1972) ("Although vested with broad discretion in determining whether, when, and what amount of dividends shall be paid, that discretion is subject to legal restraints. If, in obedience to the will of the majority stockholder, corporate directors disregard the interests of shareholders by accumulating earnings to an unreasonable extent, they are vulnerable to a derivative suit.")

[46] The *Fairholme* plaintiffs bring their claims only against FHFA. *See Fairholme* Compl. Count VI.

[47] The reasoning of this section would also apply to dividend and liquidation preference claims for non-monetary relief *even if* § 4617(f) did not bar such claims. "In assessing whether a declaratory judgment action is ripe, courts must determine 'whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.'" *RDP Technologies, Inc. v. Cambi AS*, 800 F. Supp. 2d 127, 136 (D.D.C. 2011) (quoting *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 (2007)).

Cir. 2002); *Nat'l Leased Hous. Ass'n v. U.S. Dep't of Hous. & Urban Dev.*, No. 03-1509, 2007 WL 148829, at *11 (D.D.C. Jan. 16, 2007). Here, the class plaintiffs do not allege a cognizable property interest and, as such, fail to state a claim against FHFA and Treasury for a violation of the Fifth Amendment's Takings Clause.

1. The Jurisdictional Defect in the Class Plaintiffs' Pleadings Is Not Dispositive of Their Takings Claims

As an initial matter, the defendants argue that the class plaintiffs' takings claims belong in the Court of Federal Claims rather than in this Court. Pursuant to the so-called "Big" Tucker Act, 28 U.S.C. § 1491(a)(1), the Court of Claims maintains exclusive jurisdiction over claims against the United States that exceed $10,000. Under the "Little" Tucker Act, 28 U.S.C. § 1346(a)(2), the Court of Claims shares concurrent jurisdiction with federal district courts over claims against the United States not exceeding $10,000. In this Circuit, for complaints that include *potential* claims over $10,000, Little Tucker Act jurisdiction is only satisfied by a "clearly and adequately expressed" waiver of such claims. *See Waters v. Rumsfeld*, 320 F.3d 265, 271-272 (D.C. Cir. 2003) ("[F]or a district court to maintain jurisdiction over a claim that might otherwise exceed $10,000, a plaintiff's waiver of amounts over that threshold must be clearly and adequately expressed.") (internal quotation marks and citation omitted). Here, the class plaintiffs argue that "expressly limit[ing] the prospective takings class to individuals who suffered losses less than $10,000" is an adequate alternative to waiver, and that waiver is "premature" until the class certification phase. Class Pls.'s Opp'n at 53. Yet the plaintiffs' refusal to clearly and adequately waive claims exceeding $10,000 in either their pleadings or subsequent opposition brief contravenes Circuit precedent. *See Goble v. Marsh*, 684 F.2d 12, 15-16 (D.C. Cir. 1982); *Stone v. United States*, 683 F.2d 449, 454 n.8 (D.C. Cir. 1982) ("Generally a plaintiffs' waiver should be set forth in the initial pleadings."). Nevertheless, the

Circuit has also made clear its preference that the District Court should not transfer a case that is defective on Little Tucker Act grounds to the Court of Claims "without first giving [the plaintiffs] an opportunity to amend their complaints to effect an adequate waiver." *Goble*, 684 F.2d at 17.

Thus, while the class plaintiffs' takings pleading is inadequate for jurisdiction in this Court under the "Little" Tucker Act, in keeping with the tenor of Circuit case law, the Court would generally provide the class plaintiffs "an opportunity to amend their complaints to effect an adequate waiver." *Id*. However, doing so here is unnecessary, since the Court finds that the class plaintiffs' takings claims are dismissed on alternative grounds.

2. The Class Plaintiffs Fail to Plead a Cognizable Property Interest

Any property rights that the class plaintiffs claim can only arise from their GSE stock certificates. Yet "existing rules," "understandings," or "background principles" derived from legislation enacted prior to the share purchase inhere in the plaintiffs' title to the stock certificates and "define the range of interests that qualify for protection as 'property' under the Fifth" Amendment. *Lucas v. S. Carolina Coastal Council*, 505 U.S. 1003, 1028-30 (1992); *see also Am. Pelagic Fishing Co., L.P. v. United States*, 379 F.3d 1363, 1379 (Fed. Cir. 2004).[48] Since 1992, when Congress established FHFA's predecessor, the Office of Federal Housing Enterprise Oversight ("OFHEO"), the GSEs have been subject to regulatory oversight, including the specter of conservatorship or receivership under which the regulatory agency succeeds to "all rights" of the GSEs and shareholders. *See* Federal Housing Enterprises Financial Safety and Soundness Act of 1992, Pub. L. No. 102-550, §§ 1301-1395, 106 Stat. 3672, 3941-4012 (establishing OFHEO); 12 U.S.C. § 4617(b)(2)(i). This enduring regulatory scheme governing

[48] Given the extensive history of Takings Clause jurisprudence within the Court of Appeals for the Federal Circuit, the Court will look to such cases for guidance.

the GSEs at the time the class plaintiffs purchased their shares represents the "background principle" that inheres in the stock certificates.

The defendants argue that the plaintiffs fail to plead a cognizable property interest, for takings purposes, because the GSEs—and, therefore, the plaintiff shareholders—lack the right to exclude the government from their property. Treasury Mot. at 59-60; FHFA Mot. at 60-62; *but see* Class Pls.'s Opp'n at 61-65. The Court agrees. "[T]he 'right to exclude' is doubtless . . . 'one of the most essential sticks in the bundle of rights that are commonly characterized as property.'" *Yee v. City of Escondido*, 503 U.S. 519, 528 (1992) (quoting *Kaiser Aetna v. United States*, 444 U.S. 164, 176 (1979)). The defendants analogize the "federal oversight and regulation" to which the GSEs have been subject to that of regulated financial institutions. *See* Treasury Mot. at 59. Utilizing this analogy, the defendants cite Federal Circuit case law for the proposition that the plaintiff shareholders have no present cognizable property interest in the dividends or liquidation preferences referenced in their stock certificates.

In two cases involving statutorily regulated financial institutions, placed under the authority of either the FDIC or RTC, the Federal Circuit found that the shareholders of these institutions lacked the requisite property interests to support a takings claim. *Golden Pac. Bancorp v. United States*, 15 F.3d 1066 (Fed. Cir. 1994); *Cal. Hous. Sec., Inc. v. United States*, 959 F.2d 955 (Fed. Cir. 1992).[49] On account of the existing regulatory structure permitting the appointment of a conservator or receiver, the financial institutions "lacked the fundamental right to exclude the government from its property at those times when the government could legally impose a conservatorship or receivership on [the institutions]." *Golden Pac.*, 15 F.3d at 1073

[49] The fact that the *California Housing* Court only considered the "permanent physical occupation" rubric of regulatory takings analysis from *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982), which would not apply to the present facts, has no effect on its holding regarding the threshold determination of a cognizable property interest.

(quoting *Cal. Hous.*, 959 F.2d at 958) (internal quotation marks omitted). And the result of this "regulated environment" is imputed to the shareholders of the financial institution, who thus hold "less than the full bundle of property rights." *Id.* (internal quotation marks omitted).

The Court finds this reasoning to be persuasive. By statutory definition, the GSEs are subject to governmental control at the discretion of FHFA's director. 12 U.S.C. § 4617(a)(2). Therefore, the GSE shareholders necessarily lack the right to exclude the government from their investment when FHFA places the GSEs under governmental control—*e.g.*, into conservatorship.[50] This conclusion is especially true since the statute explicitly grants FHFA the power to assume "all rights . . . of the regulated entity, and of any stockholder . . . ." *See* 12 U.S.C. § 4617(b)(2)(i).[51]

Without disputing the broader analogy that the defendants draw between regulated financial institutions and the GSEs,[52] the class plaintiffs seek to distinguish the Federal Circuit decisions based on *why* FHFA and Treasury entered into the Third Amendment. *Id.* at 63. But motives are irrelevant, for takings purposes, if the plaintiffs possess no cognizable property interests in the first place. *Golden Pacific* and *California Housing* stand for the general notion that investors have no right to exclude the government from their alleged property interests when the regulated institution in which they own shares is placed into conservatorship or receivership.

[50] The Court notes that FHFA overreads the Federal Circuit holdings. Unlike FHFA's contention that "shareholders had no cognizable property interest within the meaning of the Takings Clause *before* conservatorship," FHFA Mot. at 61, the shareholders only lose their cognizable property interests "when [the GSEs are] in conservatorship," Treasury Mot. at 58.

[51] The class plaintiffs' alarmist assertion that a holding like the one at present "would mean that the defendants could expropriate all of the shares in the most profitable and stable financial institutions in the country without triggering the Takings Clause" is unwarranted. Class Pls.'s Opp'n at 63-64. There is no right to exclude, and therefore no cognizable property interest upon which to state a takings claim, only when the government may "legally impose a conservatorship"—*i.e.*, when necessary to stabilize a stressed financial institution. *See Cal. Hous.*, 959 F.2d at 958; 12 U.S.C. § 4617(a)(2).

[52] *See* Class Pls.'s Opp'n at 61-62 ("Those cases hold that shareholders in regulated financial institutions are on notice that government regulators may place the institution into conservatorship or receivership if they conclude that the institution is insolvent or being operated in an unsafe and unsound manner, and therefore those shareholders lack the 'right to exclude' the government in such circumstances.")

See Cal. Hous., 959 F.2d at 958 (no right to exclude when a conservatorship or receivership is legally imposed). Whether the defendants executed the Third Amendment to generate profits for taxpayers or to escape a "downward spiral" of the GSEs seeking funding in order to pay owed dividends back to Treasury, it does not change the fact that it was executed during a period of conservatorship and, thus, after the plaintiffs' property interests—whatever they may have been prior to the Third Amendment—were extinguished. Unless the plaintiffs can demonstrate that FHFA could not legally impose a conservatorship upon the GSEs at the time of the Third Amendment, allegations of mischievous intentions during a conservatorship do not revive already eliminated cognizable property interests. *See id.* And here, the class plaintiffs only plead that the Third Amendment was inconsistent with FHFA's responsibilities *as* conservator—not that FHFA lacked any legal right to *be* a conservator on August 17, 2012. *E.g.*, *In re Fannie Mae/Freddie Mac* Am. Compl. at ¶¶ 92-101 (alleging that "the Third Amendment was inconsistent and in conflict with FHFA's statutory responsibilities as a conservator"); *see also* 12 U.S.C. § 4617(a)(2) ("[FHFA] may, *at the discretion of the Director*, be appointed conservator or receiver for the purpose of reorganizing, rehabilitating, or winding up the affairs of a regulated entity.") (emphasis added). Given that the class plaintiffs cannot repair the overarching threshold defect of having no cognizable property interest at stake, their takings claim must be dismissed under Rule 12(b)(6). *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) ("[O]nly a complaint that states a plausible claim for relief survives a motion to dismiss.").[53]

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[53] In consideration of the class plaintiffs' takings claims concerning dividends, specifically, the Court further acknowledges the multitude of federal cases, in different contexts, finding a lack of a cognizable property interest when another party maintains *discretion* to grant a plaintiff's alleged property interest. *E.g.*, *Toxco, Inc. v. Chu*, 801 F. Supp. 2d 1, 10 (D.D.C. 2011) ("[I]f the government is vested with complete discretion as to whether or not it must undertake any of its contractual obligations, the plaintiff does not have a constitutional property interest in that contract.") (citing *Enplanar, Inc. v. Marsh*, 11 F.3d 1284, 1295-96 (5th Cir. 1994); *Christ Gatzonis Elec. Contractor, Inc. v. N.Y. City Sch. Constr. Auth.*, 23 F.3d 636, 640 (2d Cir. 1994)); *Barrington Cove Ltd. P'ship v. R.I. Hous. & Mortg. Fin. Corp.*, 246 F.3d 1, 5-6 (1st Cir. 2001) (finding that a plaintiff has no cognizable property interest in "'promised' federal income tax credits" because a state agency maintained "absolute discretion to

3. The Class Plaintiffs Further Fail to Plead a Regulatory Taking

Even if the class plaintiffs could claim a cognizable property interest—and they cannot—their claims would still fail on a motion to dismiss under existing Supreme Court regulatory takings precedent. "The general rule at least is that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking." *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922). The Supreme Court has developed a series of analytical rubrics under which courts are to determine "whether a regulation 'reaches a certain magnitude' in depriving an owner of the use of property." *See Dist. Intown Props. Ltd. P'ship v. D.C.*, 198 F.3d 874, 878 (D.C. Cir. 1999) (quoting *Mahon*, 260 U.S. at 413). There are two principal "narrow categories" of *per se* takings. *See Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 538 (2005). First, "a permanent physical occupation authorized by government is a taking without regard to the public interests that it may serve." *Loretto*, 458 U.S. at 426. Here, the government has not physically occupied the plaintiffs' property.[54] Second, a government regulation that deprives an owner of "*all* economically beneficial uses" of his property is also a taking. *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1019 (1992). Regardless of whether *Lucas* only applies to real property, *compare* Treasury Mot. at 61, *with* Class Pls.'s Opp'n at 67-68, the

determine whether" such tax credits are awarded); *Nello L. Teer Co. v. Orange Cnty.*, No. 92-2240, 1993 WL 177872, at *2 (4th Cir. 1993) ("Under our precedents, if a local zoning authority possesses any significant discretion in granting a permit, there is no cognizable property interest in the issuance of that permit.") (internal quotation marks, alteration, and citation omitted). The logic of these decisions would appear to extend to dividends that are issued at the "sole discretion" of a GSE board—or, in this case, the regulatory entity that has succeeded to all the rights of the board. Much like how plaintiffs cannot claim that discretionary dividends amount to a contractual right, the class plaintiffs cannot contend that such dividend provisions constitute a cognizable property interest.

[54] The Supreme Court has also held that "when the government commands the relinquishment of funds linked to a specific, identifiable property interest such as a bank account or parcel of real property, 'a *per se* [takings] approach' is the proper mode of analysis." *Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586, 2600 (2013) (citing *Brown v. Legal Found. of Wash.*, 538 U.S. 216, 235 (2003)). Despite citing this language in their opposition brief, Class Pls.'s Opp'n at 67, the class plaintiffs have not alleged that the government has commanded them to *relinquish* any funds—or property, for that matter—already owned or possessed. *See* Treasury Reply at 56 ("The plaintiffs' claim, instead, is that the value of their expectation of dividends or a liquidation preference has been diminished . . . .").

plaintiffs cannot find relief under a "total wipeout" theory. *See* Class Pls.'s Opp'n at 67-68. The plaintiffs maintain "economically beneficial use" of their shares, since the stock very much remains a tradable equity. Indeed, GSE shares are traded daily on public over-the-counter (OTC) exchanges.[55] And given the Court's rejection of the plaintiffs' alleged present rights to dividends and liquidation payments, it is clear that the government has not "seized [the plaintiffs'] private property and kept that property for itself." Class Pls.'s Opp'n at 67.

A regulatory taking, on the other hand, is evaluated under the "ad hoc" inquiry set forth in *Penn Central Transp. Co. v. New York City*, 438 U.S. 104 (1978). *Id.* at 124. *Penn Central* identified three "factors that have particular significance" in evaluating regulatory takings claims: (1) "[t]he economic impact of the regulation on the claimant"; (2) "the extent to which the regulation has interfered with distinct investment-backed expectations"; and (3) "the character of the governmental action." *Id.* A plaintiff is not required to demonstrate favorable results under all three *Penn Central* factors in order for the Court to find a taking—it is a balancing test. *See Dist. Intown Props.*, 198 F.3d at 878-79 (*Penn Central* submits "three primary factors [to be] weigh[ed] in the balance"). While regulatory takings require a "more fact specific inquiry", *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 332 (2002), no supplementation of the factual record could alter dismissal here.

At present, the Third Amendment has had no economic impact on the plaintiffs' alleged dividend or liquidation preference rights. In view of the unambiguous language of the stock certificate's dividend provision coupled with Treasury's discretion to pay dividends under the PSPAs, the plaintiffs cannot show that the Third Amendment rendered their prospects of

[55] That the plaintiffs retained value in their market traded shares is consistent with the statement from Freddie Mac's Form 8-K filing on September 8, 2011, which the class plaintiffs quote in the Amended Complaint. *See In re Fannie Mae/Freddie Mac* Am. Compl. at ¶ 53 ("The holders of Freddie Mac's existing common stock and preferred stock . . . will retain all their rights in the financial worth of those instruments, *as such worth is determined by the market*.") (emphasis added) (quoting Freddie Mac 2011 8-K (Sept. 11, 2008)).

receiving dividends any less discretionary than they were prior to the amendment. Additionally, since liquidation preference rights only ripen *during liquidation*, any impact on such rights is, at best, theoretical while the GSEs remain in conservatorship.

"A 'reasonable investment-backed expectation' must be more than a 'unilateral expectation or an abstract need.'" *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1005 (1984) (quoting *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 161 (1980)). "In determining whether a reasonable investment-backed expectation exists, one relevant consideration is the extent of government regulation within an industry." *Ascom Hasler Mailing Sys., Inc. v. U.S. Postal Serv.*, 885 F. Supp. 2d 156, 195 (D.D.C. 2012) (collecting cases). For decades—and at the time each of the class plaintiffs purchased their GSE stock—the GSEs have been under the watchful eye of regulatory agencies and subject to conservatorship or receivership largely at the government's discretion. *See supra* Section III(D)(2).[56] As the Federal Circuit's holdings in *California Housing* and *Golden Pacific* elucidate, by lacking the right to exclusive possession of their stock certificates—and therefore lacking a cognizable property interest—at the time of the Third Amendment, the plaintiff shareholders could not have "developed a historically rooted expectation of compensation" for any possible seizures that occurred during FHFA's conservatorship. *See Cal. Hous.*, 959 F.2d at 958. The plaintiffs "voluntarily entered into [investment contracts with] the highly regulated" GSEs. *See Golden Pac.*, 15 F.3d at 1073.[57] In fact, a number of the class plaintiffs purchased their shares mere

[56] Furthermore, as FHFA cogently explains, "[b]ecause the [GSEs] benefited from preferential tax treatment, far lower capital requirements, and a widely perceived government guarantee, [the] [p]laintiffs should have anticipated that the [GSEs] would be subject to . . . regulation." FHFA Mot. at 61 n.37 (citation omitted). The tradeoff when investing in government-sponsored entities that receive meaningfully different benefits than private corporations is increased regulation and the prospect of a government takeover.

[57] Both Fannie Mae and Freddie Mac preferred stock certificates provide notice that "[t]he ability of the Board of Directors to declare dividends may be restricted by [FHFA's predecessor] OFHEO." *See* Individual Pls.'s Opp'n Ex. A at 20 (Fannie Mae Preferred Stock Series S); Ex. B at 27 (Freddie Mac Preferred Stock).

months before or shortly after FHFA exercised its statutory authority to place the GSEs into conservatorship. *E.g.*, *In re Fannie Mae/Freddie Mac* Am. Compl. at ¶¶ 30-35; *In re Fannie Mae/Freddie Mac* Derivative Compl. at ¶¶ 20-21. There can be no doubt that the plaintiff shareholders understood the risks intrinsic to investments in entities as closely regulated as the GSEs, and, as such, have not now been deprived of any *reasonable* investment-backed expectations.

Looking to the character of the governmental action in dispute, the *Penn Central* Court explained that "[a] 'taking' may more readily be found when the interference with property can be characterized as a physical invasion by government than when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good." 438 U.S. at 124. Here, the plaintiffs do not plead a physical invasion of their property. Whether the regulatory action taken by FHFA and Treasury when executing the Third Amendment "promote[s] the common good" or advances a public purpose, however, is in dispute. The Supreme Court in *Kelo v. City of New London*, a public use case, reaffirmed that courts should take a deferential stance regarding what constitutes a legitimate public purpose. 545 U.S. 469, 487-88 (2005) ("When the legislature's purpose is legitimate and its means are not irrational, our cases make clear that empirical debates over the wisdom of takings . . . are not to be carried out in the federal courts."); *see also Hilton Washington Corp. v. D.C.*, 777 F.2d 47, 49-50 (D.C. Cir. 1985) (looking only for a "valid public purpose" when examining *Penn Central*'s "character of the governmental action" factor). The plaintiffs would be hard pressed to argue that actions taken to "benefit taxpayers" do not qualify as a legitimate public purpose. *E.g.*, Class Pls.'s Opp'n at 15. To reach this conclusion with certainty, however, the Court would likely need to permit additional fact-finding. Nevertheless, more discovery is unnecessary because *Penn Central*'s first two factors weigh strongly enough against the plaintiffs' takings claims that dismissal would be proper in this case. *See Monsanto*, 467 U.S. at 1005 ("[T]he force of [the reasonable investment-backed expectations] factor [here] is so overwhelming . . . that it disposes of the taking question . . . .").

4. Claims of an Unconstitutional Taking of Liquidation Rights Are Not Ripe

Moreover, the Court would also dismiss the class plaintiffs' takings claims, at least in relation to liquidation preference rights, on ripeness grounds. As mentioned above, "[a] claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." *Texas v. United States*, 523 U.S. at 300 (internal quotation marks and citation omitted). Liquidation preferences only entitle a preferred stockholder to payment in the event of liquidation. Consistent with the Court's reasoning discussed *supra*, Section III(C)(1), the government cannot take a property right that has not yet matured. This Court's findings concerning cognizable property interests aside, a claim of an unconstitutional taking of liquidation preference rights may only be brought once a liquidation process has commenced.[58]

[58] Regarding another possible basis for dismissal, the Court appreciates the logical appeal of FHFA's comparison of the *Omnia* Court's finding that consequential—rather than direct—injuries to a third party do not entitle that third party to a takings remedy and the alleged injury caused to the plaintiffs here by the Third Amendment agreement between FHFA and Treasury. FHFA Mot. at 62-63; FHFA Reply at 40-45 (citing *Omnia Commercial Co. v. United States*, 261 U.S. 502 (1923)); *but see* Class Pls.'s Opp'n at 70-72. However, the Court is wary of applying to the present facts a decision that came just five months after the concept of a regulatory taking was born, *see Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922), and many decades before the Supreme Court began actively developing its regulatory takings jurisprudence. *See Lingle*, 544 U.S. at 536-40 (outlining the evolution of regulatory takings case law since the Supreme Court's *Penn Central* decision in 1978).

The Court need not address whether the class plaintiffs' takings claims are further barred because FHFA is not the United States for takings purposes, FHFA Mot. at 59-60, or because Treasury entered into the Third Amendment as a "market participant," Treasury Mot. at 64-65. Such additional arguments are unnecessary to consider in order to resolve the takings issue at the motion to dismiss stage.

IV. CONCLUSION

It is understandable for the Third Amendment, which sweeps nearly all GSE profits to Treasury, to raise eyebrows, or even engender a feeling of discomfort. But any sense of unease over the defendants' conduct is not enough to overcome the plain meaning of HERA's text. Here, the plaintiffs' true gripe is with the language of a statute that enabled FHFA and, consequently, Treasury, to take unprecedented steps to salvage the largest players in the mortgage finance industry before their looming collapse triggered a systemic panic. Indeed, the plaintiffs' grievance is really with Congress itself. It was Congress, after all, that parted the legal seas so that FHFA and Treasury could effectively do whatever they thought was needed to stabilize and, if necessary, liquidate, the GSEs. Recognizing its role in the constitutional system, this Court does not seek to evaluate the merits of whether the Third Amendment is sound financial—or even moral—policy. The Court does, however, find that HERA's unambiguous statutory provisions, coupled with the unequivocal language of the plaintiffs' original GSE stock certificates, compels the dismissal of all of the plaintiffs' claims.

Thus, for the foregoing reasons, the Court GRANTS the defendants' motions to dismiss and DENIES the individual plaintiffs' cross-motion for summary judgment.

A separate Order consistent with this Memorandum Opinion shall issue this date.

9-30-14
Date

Royce C. Lamberth
ROYCE C. LAMBERTH
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PERRY CAPITAL LLC,

Plaintiff,

v.

JACOB J. LEW, *et al.*,

Defendant.

Civil No. 13-1025 (RCL)

FAIRHOLME FUNDS, INC., *et al.*,

Plaintiff,

v.

FEDERAL HOUSING FINANCE AGENCY, *et al.*,

Defendant.

Civil No. 13-1053 (RCL)

ARROWOOD INDEMNITY COMPANY, *et al.*,

Plaintiff,

v.

FEDERAL NATIONAL MORTGAGE ASSOCATION, *et al.*,

Defendant.

Civil No. 13-1439 (RCL)

In re Fannie Mae/Freddie Mac Senior Preferred Stock Purchase Agreement Class Action Litigations

This Memorandum Opinion relates to: ALL CASES

Miscellaneous No. 13-1288 (RCL)

CLASS ACTION

ORDER

Before the Court is the *Fairholme* plaintiffs' motion [*Fairholme* 31, 32] for supplementation of the administrative record, limited discovery, suspension of briefing on the defendants' dispositive motions, and a status conference, to which all other plaintiffs join [*Arrowood* 40], [*In re Fannie Mae/Freddie Mac* 23], [*Perry* 49], the defendants' respective opposition briefs [*Fairholme* 33, 34] to the *Fairholme* plaintiffs' motion and responses [*Arrowood* 41, 42], [*In re Fannie Mae/Freddie Mac* 24, 25] to the *Arrowood* and class action plaintiffs' notices of joinder, and the *Fairholme* plaintiffs' reply [*Fairholme* 36] thereto, to which the class action plaintiffs join [*In re Fannie Mae/Freddie Mac* 29]. For the reasons explained in the Memorandum Opinion dismissing the plaintiffs' cases issued this date, the plaintiffs' motion for supplementation of the administrative record, limited discovery, suspension of briefing on the defendants' dispositive motions, and a status conference is hereby **DENIED** as moot.

It is **SO ORDERED** this 30th day of September 2014.

Royce C. Lamberth
ROYCE C. LAMBERTH
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

ARROWOOD INDEMNITY COMPANY, ARROWOOD SURPLUS LINES INSURANCE COMPANY, and FINANCIAL STRUCTURES LIMITED, *Plaintiffs*, *v.* FEDERAL NATIONAL MORTGAGE ASSOCIATION; FEDERAL HOME LOAN MORTGAGE CORPORATION; FEDERAL HOUSING FINANCE AGENCY, as Conservator of Federal National Mortgage Association and Federal Home Loan Mortgage Corporation; THE DEPARTMENT OF THE TREASURY; EDWARD DeMARCO, in his official capacity as Acting Director of Federal Housing Finance Agency; and JACOB J. LEW, in his official capacity as Secretary of the Treasury, *Defendants*.	Case No. 13-1439-RCL

NOTICE OF APPEAL

NOTICE IF HEREBY GIVEN, this 9th day of October, 2014, that Plaintiffs Arrowood Indemnity Company, Arrowood Surplus Lines Insurance Company, and Financial Structures Limited (collectively, "Plaintiffs") hereby appeal to the United States Court of Appeals for the District of Columbia Circuit from: (1) the Memorandum Opinion (Dkt. No. 58) entered on September 30, 2014; (2) the Order Granting Defendants' Motions to Dismiss and Denying Plaintiffs' Cross-Motion for Summary Judgment (Dkt. No. 59) entered on September 30, 2014; (3) the Order Denying Motion for Supplementation of the Administrative Record, Limited Discovery, Suspension of Briefing on the Defendants' Dispositive Motions, and a Status

Conference (Dkt. No. 60) entered on September 30, 2014; and (4) all other orders and rulings adverse to Plaintiffs in this case.

Respectfully submitted,

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Date: October 9, 2014

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

In re Fannie Mae/Freddie Mac Senior Preferred Stock Purchase Agreement Class Action Litigations THIS DOCUMENT RELATES TO: ALL CASES	**Misc. Action No. 13-mc-1288 (RCL)** CLASS ACTION

CONSOLIDATED CLASS ACTION AND DERIVATIVE PLAINTIFFS' NOTICE OF APPEAL

Notice is hereby given this 15th day of October, 2014, that the Consolidated Class Action and Derivative Plaintiffs in the above-captioned action appeal to the United States Court of Appeals for the District of Columbia from: (1) the Memorandum Opinion [ECF No. 46] entered on September 30, 2014; (2) the Order Granting Defendants' Motions to Dismiss and Denying Plaintiffs' Cross-Motion for Summary Judgment [ECF No. 47] entered on September 30, 2014; (3) the Order Denying Motion for Supplementation of the Administrative Record, Limited Discovery, Suspension of Briefing on the Defendants' Dispositive Motions, and a Status Conference [ECF No. 48] entered on September 30, 2014; and (4) all other orders and rulings adverse to the Consolidated Class Action and Derivative Plaintiffs in the above-captioned action.

Dated: October 15, 2014

Respectfully submitted,

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Interim Co-Lead Class Counsel

DETERMINATION

WHEREAS, Section 1117 of the Housing and Economic Recovery Act of 2008 (the "Act") authorizes the Secretary of the Treasury (the "Secretary") to purchase any obligations and other securities ("purchase authority") issued by the Federal National Mortgage Association ("Fannie Mae"), the Federal Home Loan Mortgage Corporation ("Freddie Mac"), and any Federal Home Loan Bank (collectively, the "regulated entities"), on such terms and conditions as the Secretary may determine and in such amounts as the Secretary may determine;

WHEREAS, Section 1117 of the Act provides that in connection with the Secretary's use of his purchase authority, the Secretary must determine that such actions are necessary to: (i) provide stability to the financial markets; (ii) prevent disruptions in the availability of mortgage finance; and (iii) protect the taxpayer;

WHEREAS, Section 1117 of the Act also provides that in making the determination that such actions are necessary to protect the taxpayer, the Secretary shall take into consideration: (i) the need for preferences or priorities regarding payments to the Government; (ii) limits on maturity or disposition of obligations or securities to be purchased; (iii) the regulated entities' plans for the orderly resumption of private market funding or capital market access; (iv) the probability of the regulated entities fulfilling the terms of any such obligation or other security, including repayment; (v) the need to maintain the regulated entities' status as private-shareholder owned companies; and (vi) restrictions on the use of regulated entity resources, including limitations on the payment of dividends and executive compensation and any such other terms and conditions as appropriate for those purposes;

NOW, THEREFORE, I HEREBY DETERMINE, based on the three criteria described above and after taking into consideration the six factors described above and such other information available to me, that (1) the United States Department of the Treasury's (the "Treasury") execution of the Senior Preferred Stock Purchase Agreement (the "Agreement") and, pursuant to such Agreement, the purchase of senior preferred stock and common stock warrants of Fannie Mae and Freddie Mac; (2) the Treasury's purchase in the secondary market of mortgage backed securities issued by Fannie Mae and Freddie Mac; and (3) a Treasury secured lending agreement with each of the regulated entities, are necessary to provide stability to the financial markets, prevent disruptions in the availability of mortgage finance, and protect the taxpayer.

Henry M. Paulson, Jr.
September 7, 2008

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

ASSISTANT SECRETARY

September 7, 2008

ACTION MEMORANDUM FOR SECRETARY PAULSON

FROM: Anthony W. Ryan
Acting Under Secretary for Domestic Finance

SUBJECT: Emergency Determination under Section 1117 of the Housing and Economic Recovery Act of 2008 for Purchase of Obligations and Securities of Regulated Entities

Recommendation

That you approve and sign the proposed Determination relating to the purchase of obligations and securities from the regulated entities.

✓ Approve ______ Disapprove ______ Let's Discuss

Background

Section 1117 of the Housing and Economic Recovery Act of 2008 ("the Act") authorizes the Treasury to purchase any obligations and other securities issued by the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac") (collectively the Government Sponsored Enterprises or "Housing GSEs") and the twelve Federal Home Loan Banks ("FHLBs"), on such terms and conditions and in such amounts as you may determine.

In connection with exercising this authority, the Act requires you to make a determination that such exercise is necessary to: (1) provide stability to the financial markets; (2) prevent disruptions in the availability of mortgage finance; and (3) protect the taxpayer. The Act also provides that in making the determination that the actions are necessary to protect the taxpayer, you must take into consideration: (i) the need for preferences or priorities regarding payments to the Government; (ii) limits on maturity or disposition of obligations or securities to be purchased; (iii) the regulated entities' plans for the orderly resumption of private market funding or capital market access; (iv) the probability of the regulated entities fulfilling the terms of any such obligation or other security, including repayment; (v) the need to maintain the regulated entities' status as private-shareholder owned companies; and (vi) restrictions on the use of regulated entity resources, including limitations on the payment of dividends and executive compensation and any such other terms and conditions as appropriate for those purposes.

The overall conditions in the mortgage and housing markets have been, and remain, challenging for many market participants. Both Fannie Mae and Freddie Mac are exposed to these markets through their guarantees of mortgage backed securities and mortgage investments in their portfolios. As the assets supporting Fannie Mae's and Freddie Mac's guarantee and investment portfolios have deteriorated, the costs of raising additional capital and funding themselves have risen. Both Housing GSEs have experienced challenges in raising capital given current conditions. Given these concerns as well as other findings related to unsafe and unsound practices and conditions at both Housing GSEs, the Director of the Federal Housing Finance Agency ("FHFA") has made the determination to place Fannie Mae and Freddie Mac in conservatorship. In addition to the challenges experienced by the Housing GSEs, the FHLBs borrowing costs have also been impacted which also affect the availability of mortgage credit in the overall economy.

Exercise of Emergency Authority

In order to provide stability to the financial markets, prevent disruptions in mortgage finance availability, and protect the taxpayers, we recommend that you exercise the authority granted to Treasury in three ways. First, the Treasury will establish a backstop government sponsored enterprise credit facility (GSECF), which will be made available to Fannie Mae, Freddie Mac, and the FHLBs. Second, the Treasury will acquire in the secondary market investment grade agency mortgage backed securities issued by Fannie Mae and Freddie Mac through Financial Agency Agreements with two or three selected financial agents (the "GSE MBS Security Purchase Program"). Third, the Treasury will enter into a Senior Preferred Stock Purchase Agreement ("Purchase Agreement") with both Fannie Mae and Freddie Mac.

The GSECF will provide Fannie Mae, Freddie Mac, and the FHLBs with an ultimate liquidity backstop. As noted, in the months preceding Fannie Mae's and Freddie Mac's entry into conservatorship, the cost of the Housing GSEs' borrowing had become increasingly expensive and volatile, creating uncertainty in the financial markets and concerns regarding the future availability of mortgage financing. The GSECF is intended to help address uncertainty in the markets regarding the Housing GSEs and the FHLBs.

Treasury's purchase of Fannie Mae and Freddie Mac mortgage backed securities through the GSE MBS Purchase Program will help support the availability of mortgage credit by temporarily providing additional capital to the mortgage market.

Finally, to further promote stability in the markets, the Treasury's Senior Preferred Stock Purchase Agreements provides for the purchase of up to $100 billion in Senior Preferred Stock from each Housing GSE to help ensure that they each maintain a positive net worth. This action will improve market stability by providing additional security to Housing GSE debt holders, senior and subordinated, and improve mortgage availability by providing additional confidence to investors in Housing GSE mortgage backed securities. The terms underlying the Purchase Agreement also include the provision of warrants, which will provide potential future upside to the taxpayers.

In designing these three initiatives, specific steps were taken to protect the taxpayer. In particular, consideration was given to the six factors set forth in the Act.

The need for preferences or priorities – The Purchase Agreement will protect the taxpayer by providing the Treasury with Senior Preferred Stock that has a liquidation preference over all other classes of equity, including existing preferred stock. The Purchase Agreement also protects the taxpayer by: (i) prohibiting Fannie Mae and Freddie Mac from issuing any additional subordinated debt; and (ii) restricting Fannie Mae and Freddie Mac from increasing the aggregate amount of their indebtedness to more than 110% of the amount of their aggregate indebtedness as of June 30, 2008. In addition, the terms of the Senior Preferred Stock Agreement require Fannie Mae and Freddie Mac to remit to Treasury the net proceeds from the issuance of any equity which is to be applied to redeem amounts outstanding under the liquidation preference (and which shall be applied first against any accrued and unpaid dividends). The GSE MBS Purchase Program will also protect the taxpayer by purchasing mortgage backed securities guaranteed by the Housing GSEs.

Limits on maturity or disposition of obligations or securities – The loans made under the GSECF will have a short-term duration and will be fully collateralized. The eligible collateral also will be limited to GSE MBS collateral. There will be adequate haircuts on the collateral to provide additional protection to the taxpayer as well as discretion to change if necessary. In considering the appropriate limits on the duration of the Purchase Agreement, it was determined in order to facilitate market stability that the Purchase Agreement should continue until the earlier of the $100 billion cap having been reached or until all liabilities of Fannie Mae and Freddie Mac have been satisfied. In addition, beginning in 2010 the Treasury will begin to charge the Housing GSEs a periodic commitment fee that will be payable quarterly to compensate the taxpayers for the ongoing support provided to the Housing GSEs under the terms of the Purchase Agreement. Moreover, because the Treasury can hold to maturity securities purchased under the GSE MBS Purchase Program and because of the spreads between Treasury issuances and GSE mortgage backed securities, we do not expect taxpayer losses from this GSE MBS program.

Housing GSEs plans for orderly resumption of private market funding or capital market access – Under conservatorship, Fannie Mae and Freddie Mac will continue to operate as going concerns, and the issuance of the Senior Preferred Stock and Treasury's corresponding commitment of up to $100 billion so that each Housing GSE maintains a positive net worth should strengthen their ability to secure financing in the capital markets.

Probability of the Housing GSEs and the FHLBs fulfilling the terms of their obligations – The terms of the GSECF with regard to the short-term duration, eligible collateral, and haircuts make it likely that the Housing GSEs will be able to fulfill their obligations. With regard to the Purchase Agreement, we believe that the structure of the Purchase Agreement and the terms of the Senior Preferred Stock with its liquidation preference over all other equity, including preferred equity, combined with the Purchase Agreement's restrictions on debt issuance, enhance the probability of both Fannie Mae and Freddie Mac ultimately repaying amounts owed.

Need to maintain the Housing GSEs' and the FHLBs' status as private shareholder-owned companies – Fannie Mae and Freddie Mac may emerge from conservatorship to resume independent operations, or they may emerge in some other form determined by Congress. Conservatorship preserves the status and claims of the preferred and common shareholders. The value of the warrants issued to the government under the terms of the Purchase Agreement could potentially increase in value, thereby providing enhanced value to the taxpayers. Upon the government's exercise of the warrants, the Housing GSEs would be required under the terms of the Purchase Agreement to apply the net cash proceeds to pay-down the liquidation preference of the Senior Preferred Stock. Moreover, the terms of the collateralized short term loans made under the GSECF to the FHLBs are consistent with the need to maintain their status as private shareholder-owned companies.

Restrictions on the use of corporation resources – The terms of the Purchase Agreement prohibit Fannie Mae and Freddie Mac from declaring any dividends on outstanding preferred or common stock until the Senior Preferred Stock has been fully redeemed. The Purchase Agreement also prohibits the redemption of any outstanding preferred or common stock without the prior consent of the Treasury until the Senior Preferred Stock has been fully redeemed. The Purchase Agreement requires that the Director of FHFA consult with the Treasury before entering into new compensation arrangements or increasing amounts or benefits payable under existing compensation agreements with certain executive officers.

Attachments:

Tab 1: Determination
Tab 2: Summary of Government Sponsored Enterprise Credit Facility
Tab 3: Summary of the GSE Mortgage Backed Security Purchase Program
Tab 4: Summary of the Senior Preferred Stock Purchase Agreement

TAB 1

DETERMINATION

WHEREAS, Section 1117 of the Housing and Economic Recovery Act of 2008 (the "Act") authorizes the Secretary of the Treasury (the "Secretary") to purchase any obligations and other securities ("purchase authority") issued by the Federal National Mortgage Association ("Fannie Mae"), the Federal Home Loan Mortgage Corporation ("Freddie Mac"), and any Federal Home Loan Bank (collectively, the "regulated entities"), on such terms and conditions as the Secretary may determine and in such amounts as the Secretary may determine;

WHEREAS, Section 1117 of the Act provides that in connection with the Secretary's use of his purchase authority, the Secretary must determine that such actions are necessary to: (i) provide stability to the financial markets; (ii) prevent disruptions in the availability of mortgage finance; and (iii) protect the taxpayer;

WHEREAS, Section 1117 of the Act also provides that in making the determination that such actions are necessary to protect the taxpayer, the Secretary shall take into consideration: (i) the need for preferences or priorities regarding payments to the Government; (ii) limits on maturity or disposition of obligations or securities to be purchased; (iii) the regulated entities' plans for the orderly resumption of private market funding or capital market access; (iv) the probability of the regulated entities fulfilling the terms of any such obligation or other security, including repayment; (v) the need to maintain the regulated entities' status as private-shareholder owned companies; and (vi) restrictions on the use of regulated entity resources, including limitations on the payment of dividends and executive compensation and any such other terms and conditions as appropriate for those purposes;

NOW, THEREFORE, I HEREBY DETERMINE, based on the three criteria described above and after taking into consideration the six factors described above and such other information available to me, that (1) the United States Department of the Treasury's (the "Treasury") execution of the Senior Preferred Stock Purchase Agreement (the "Agreement") and, pursuant to such Agreement, the purchase of senior preferred stock and common stock warrants of Fannie Mae and Freddie Mac; (2) the Treasury's purchase in the secondary market of mortgage backed securities issued by Fannie Mae and Freddie Mac; and (3) a Treasury secured lending agreement with each of the regulated entities, are necessary to provide stability to the financial markets, prevent disruptions in the availability of mortgage finance, and protect the taxpayer.

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Henry M. Paulson, Jr.
September ___, 2008

TAB 2

SUMMARY
Government Sponsored Enterprise Credit Facility

Treasury will established the Government Sponsored Enterprise Credit Facility (GSECF) to ensure credit availability to the housing GSEs. The GSECF is a lending facility that will provide secured funding on an as needed basis under terms and conditions established by the Secretary to protect taxpayers. Fannie Mae, Freddie Mac, and the Federal Home Loan Banks are eligible to borrow under this program if needed.

The facility will offer liquidity if needed until December 31, 2009. The Housing and Economic Recovery Act of 2008 provided Treasury with the authority to establish this facility.

Funding. Funding will be provided directly by Treasury from its general fund held at the Federal Reserve Bank of New York (FRBNY) in exchange for eligible collateral from the GSEs, which will be limited to guaranteed mortgage backed securities issued by Freddie Mac and Fannie Mae as well as advances made by the Federal Home Loan Banks. All such assets pledged against loans will be accepted with appropriate collateral margins as determined by Treasury.

- The FRBNY will act as Treasury's fiscal agent to advance funds to the GSEs and to administer collateral arrangements.
- Any lending through the GSECF will be directly debited from Treasury's general account and credited to the borrowing GSE's account, both held at the FRBNY.
- Loan requests will require approval from Treasury and verification by the FRBNY that adequate collateral has been pledged.
- Similar to other borrowing done by Treasury, information on any borrowing will be publicly reported at the end of the following day in the Daily Treasury Statement.
- Any additional borrowing by Treasury necessitated by this program would be subject to the debt limit.

Loan Duration and Size. Loans will be for short-term durations and would in general be expected to be for less than one month but no shorter than one week.

- Specific maturities will be determined based on individual loan requests.
- The term of a loan may not be extended, but a maturing loan may be replaced with a new loan under the same borrowing procedures as the initial loan.
- Loans may be pre-paid with two days notice, and loans may be called before their scheduled maturity date.
- Loan amounts will be based on available collateral.
- Loans will not be made with a maturity date beyond December 31, 2009.

Rate. The rate on a loan request ordinarily will be based on the daily LIBOR fix for a similar term of the loan plus 50 basis points (LIBOR +50 bp). The rate is set at the discretion of the Secretary with the objective of protecting the taxpayer, and is subject to change.

Collateral. All loans will be collateralized and collateral is limited to agency mortgage backed securities issued by Freddie Mac and Fannie Mae and advances made by the Federal Home Loan Banks.

- The collateral will be valued and managed by Treasury's fiscal agent, the FRBNY, based on a range of pricing services.

TAB 3

SUMMARY
GSE Mortgage Backed Securities Purchase Program

To promote the stability of the mortgage market, Treasury will purchase Government Sponsored Enterprise (GSE) mortgage-backed securities (MBS) in the open market. By purchasing these guaranteed securities, Treasury seeks to broaden access to mortgage funding for current and prospective homeowners, promote market stability, and mitigate pressures on mortgage rates.

Scope of Program. Treasury will invest in agency MBS with the size and timing subject to the discretion of the Secretary. The scale of the program will be based on developments in the capital markets and housing markets.

- Congress granted Treasury authority to purchases MBS in the Housing and Economic Recovery Act of 2008. The authority expires on December 31, 2009.
- Treasury will begin later this month with an initial investment of $5 billion in GSE MBS, which are credit-guaranteed by the GSEs. Additional purchases will be made as deemed appropriate.
- Treasury can hold this portfolio of MBS to maturity and, based on mortgage market conditions, Treasury may make adjustments to the portfolio.

Management. Treasury will designate independent asset managers as financial agents to undertake the purchase and management of a portfolio of GSE MBS on behalf of Treasury.

- The portfolios will be managed with clear investment guidelines and investment objectives.
- The primary objectives of this portfolio will be to promote market stability, ensure mortgage availability, and protect the taxpayer.

Risk. Treasury is committed to protecting taxpayers and will ensure that measures are in place to reduce the potential for investment loss.

- Under most likely scenarios, taxpayers will benefit from this program - both indirectly through the increased availability and lower cost of mortgage financing, and directly through potential returns on Treasury's portfolio of MBS.

Budget Implications. Given that Treasury can hold these securities to maturity, the spreads between Treasury's cost of borrowing and GSE MBS indicate that there is no reason to expect taxpayer losses from this program, and it could produce gains.

- Treasury financing of purchases of GSE MBS will be deemed as outlays and are subject to the statutory debt limit.

- However, Treasury will be receiving an income producing asset (a portfolio of GSE MBS) in return for its invested funds.
- Treasury will make available information on purchases through this program in the Monthly Treasury Statement.

TAB 4

SUMMARY
Treasury Senior Preferred Stock Purchase Agreement

Fannie Mae and Freddie Mac (collectively, GSEs) debt and mortgage backed securities (MBS) outstanding today amount to about $5 trillion, and are held by central banks and investors around the world. Investors have purchased GSE securities in part because the ambiguities in their Congressional charters created a perception of government backing. These ambiguities fostered enormous growth in GSE debt outstanding, and the breadth of these holdings pose a systemic risk to our financial system. Because the U.S. government created these ambiguities, we have a responsibility to both avert and ultimately address the systemic risk now posed by the scale and breadth of the holdings of GSE debt and MBS.

To address our responsibility to support GSE debt holders, Treasury will establish a Senior Preferred Stock Purchase Agreement (Agreement) with each GSE which will ensure that each enterprise does not have a negative net worth. This measure will add to market stability by providing additional security to GSE debt holders – senior and subordinated-- and will add to mortgage affordability by providing additional confidence to investors in GSE MBS. This commitment will eliminate any mandatory triggering of receivership.

These Agreements are the most effective means of averting systemic risk and protecting the taxpayer. They are more efficient than a one-time equity injection, in that Treasury will use them only as needed and on terms that the Department deems appropriate.

These Agreements will provide maximum protection for the taxpayer, in the form of senior preferred stock with a liquidation preference; an upfront $1 billion issuance of senior preferred stock from each GSE, quarterly dividend payments, warrants representing an ownership stake of 79.9% in each GSE going forward, and a quarterly fee starting in 2010.

Terms of the Agreements:

- The Agreements will be contracts between the Department of the Treasury and each GSE. They will be indefinite in length and have a capacity of $100 billion each, an amount chosen to demonstrate a strong commitment to the GSEs' creditors and MBS holders. This number is unrelated to the Department's analysis of the current financial conditions of the GSEs.

- If the Federal Housing Finance Agency determines that a GSE's liabilities have exceeded its assets under generally accepted accounting principles, Treasury will contribute cash capital to the GSE in an amount equal to the difference between liabilities and assets and receive in return senior preferred stock, which will be senior to all other preferred stock, common stock or other capital stock to be issued by the GSE. These Agreements will protect the senior and subordinated debt and the mortgage-backed securities of the GSEs. The GSE's common stock and existing preferred shareholders will bear any losses ahead of the government.

- In exchange for entering into these Agreements with the GSEs, Treasury will immediately receive the following compensation:
  - $1 billion of senior preferred stock in each GSE
  - Warrants for the purchase of common stock of each GSE representing 79.9% of the common stock of each GSE on a fully-diluted basis at a nominal price.

- The senior preferred stock shall accrue dividends at 10% per year. The rate shall increase to 12% if, in any quarter, the dividends are not paid in cash, until all accrued dividends have been paid in cash.

- The senior preferred stock shall not be entitled to voting rights. In a conservatorship, voting rights of all stockholders are vested in the Conservator.

- Beginning March 31, 2010, the GSEs shall pay the Department of Treasury on a quarterly basis a periodic commitment fee that will compensate the Treasury for the explicit support provided by the Agreement. The Secretary of the Treasury and the Conservator shall determine the periodic commitment fee in consultation with the Chairman of the Federal Reserve.

- The following covenants apply to the GSEs as part of the Agreements.
  - Without the prior consent of the Treasury, the GSEs shall not:
    - Make any payment to purchase or redeem its capital stock (other than senior preferred stock), or pay any dividends, including preferred dividends (other than dividends on senior preferred stock).
    - Issue capital stock of any kind
    - Enter into any new or adjust any existing compensation agreements with "named executive officers" without consulting with Treasury
    - Terminate conservatorship other than in connection with receivership
    - Sell, convey or transfer any of its assets outside the ordinary course of business except as necessary to meet their obligation under the Agreements to reduce their portfolio of retained mortgages and MBS

  - Increase its funded senior debt to more than 110% of its funded senior debt as of June 30, 2008
  - Consolidate, merge or sell substantially all of its assets

- Each GSE's retained mortgage and MBS portfolio shall not exceed $850 billion as of December 31, 2009, and shall decline by 10% per year until the retained mortgage and MBS portfolio reaches $250 billion.

SENIOR PREFERRED STOCK PURCHASE AGREEMENT

SENIOR PREFERRED STOCK PURCHASE AGREEMENT (this "Agreement") dated as of September 7, 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.

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 "Commitment"); provided, 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 non-assessable, 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, and (b) if Seller and the Designated Representative fail to act as requested within thirty (30) days of such notice, or 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, seek judicial relief requiring Seller to draw on the Commitment or Purchaser to fund the Commitment, as applicable. 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. 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]

FEDERAL NATIONAL MORTGAGE
ASSOCIATION, by

Federal Housing Finance Agency,
its Conservator

James B Lockhart III

James B. Lockhart III
Director

UNITED STATES DEPARTMENT
OF THE TREASURY

Henry M. Paulson, Jr.
Secretary of the Treasury

Acknowledged and, solely as
to Sections 5.3, 6.2 and 6.11,
agreed:

FEDERAL HOUSING
FINANCE AGENCY,
as Conservator

James B Lockhart III

James B. Lockhart III
Director

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

Federal Housing Finance Agency, its Conservator

James B. Lockhart III

James B. Lockhart III
Director

Signature Page to Certificate of Designations of Senior Preferred Stock

FEDERAL NATIONAL MORTGAGE ASSOCIATION
WARRANT TO PURCHASE COMMON STOCK

NO. _____ September 7, 2008

VOID AFTER SEPTEMBER 7, 2028

THIS CERTIFIES THAT, for value received, the United States Department of the Treasury, with its principal office at 1500 Pennsylvania Avenue, NW, Washington, DC 20220 (the "Holder"), is entitled to purchase at the Exercise Price (defined below) from Federal National Mortgage Association, a government-sponsored enterprise of the United States of America, with its principal office at 3900 Wisconsin Avenue, NW, Washington, DC 20016 (the "Company"), shares of common stock, no par value, of the Company, as provided herein.

1. Definitions. As used herein, the following terms shall have the following respective meanings:

"Affiliate" shall mean, as to any specified Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control," when used with respect to any Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise and the terms "affiliated," "controlling" and "controlled" have meanings correlative to the foregoing.

"Business Day" shall mean each Monday, Tuesday, Wednesday, Thursday and Friday that is not a day on which banking institutions in New York, New York are authorized or obligated by law or executive order to close.

"Common Stock" shall mean the common stock, no par value, of the Company, and all other stock of any class or classes (however designated) of the Company from time to time outstanding, the holders of which have the right, without limitation as to amount, either to all or to a share of the balance of current dividends or liquidating distributions after the payment of dividends and distributions on any shares entitled to preference.

"Exercise Period" shall mean the time period commencing with the date hereof and ending at 5:00 p.m. New York time on the 20th anniversary of the date hereof.

"Exercise Price" shall mean one one-thousandth of a cent ($0.00001) per share.

"Exercise Shares" shall mean the shares of the Common Stock issuable upon exercise of this Warrant, subject to adjustment pursuant to the terms herein, and shall also mean any other shares, securities, assets or property otherwise issuable upon exercise of this Warrant.

"Fair Market Value" shall mean, with respect to a share of Common Stock, or any other security of the Company or any other issuer:

(a) the volume weighted average daily Market Price during the period of the most recent twenty (20) Trading Days, ending on the last Trading Day before the date of determination of Fair Market Value, if such class of Common Stock or other security is (i) traded on the New York Stock Exchange or any other U.S. national or regional securities exchange, or admitted to unlisted trading privileges on such an exchange, or (ii) is quoted or reported on the Over-the-Counter Bulletin Board ("OTCBB") or by Pink OTC Markets Inc. or a similar organization or agency succeeding to its functions of reporting prices; or

(b) if such class of Common Stock or other security is not then so listed, admitted to trading or quoted, the Fair Market Value shall be the Market Price on the last Business Day before the date of determination of Fair Market Value.

"Fully Diluted" shall mean, as of immediately prior to the exercise of this Warrant (or a portion of this Warrant), the sum of, without duplication, (i) the total number of shares of Common Stock outstanding and (ii) all shares of Common Stock issuable in respect of securities convertible into or exercisable or exchangeable for Common Stock, stock appreciation rights or options, warrants (including this Warrant) and other rights to purchase or subscribe for Common Stock or securities convertible into or exercisable or exchangeable for Common Stock (in each case, assuming that no restrictions apply with respect to conversion, exercise, exchange, subscription or purchase).

"Market Price" shall be, as of any specified date with respect to any share of any class of Common Stock or any other security of the Company or any other issuer:

(i) the closing price on that date or, if no closing price is reported, the last reported sale price, of shares of the Common Stock or such other security on the New York Stock Exchange on that date; or

(ii) if the Common Stock or such other security is not traded on the New York Stock Exchange, the closing price on that date as reported in composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock or such other security is so traded or, if no closing price is reported, the last reported sale price of shares of the Common Stock or such other security on the principal U.S. national or regional securities exchange on which the Common Stock or such other security is so traded on that date; or

(iii) if the Common Stock or such other security is not traded on a U.S. national or regional securities exchange, the last quoted bid price on that date for the Common Stock or such other security in the over-the-counter market as reported (x) by the OTCBB or (y) if reports are unavailable under clause (x) above by Pink OTC Markets Inc. or a similar organization or agency succeeding to its functions of reporting prices;

(iv) if the Common Stock or such other security is not so quoted by OTCBB or Pink OTC Markets Inc. or a similar organization, the Market Price shall be determined in accordance with the Valuation Procedure.

"Participating Securities" shall mean, (i) any equity security (other than Common Stock) that entitles the holders thereof to participate in liquidations or other distributions with the holders of Common Stock or otherwise participate in the capital of the Company other than through a fixed or floating rate of return on capital loaned or invested, and (ii) any stock appreciation rights, phantom stock rights, or any other profit participation rights with respect to any of the Company's capital stock or other equity ownership interest, or any rights or options to acquire any such rights.

"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.

"Trading Day" shall mean, with respect to any class of Common Stock or any other security of the Company or any other issuer a day (i) on which the securities exchange or other trading platform applicable for purposes of determining the Market Price of a share or unit of such class of Common Stock or other security shall be open for business or (ii) for which quotations from such securities exchange or other trading platform of the character specified for purposes of determining such Market Price shall be reported.

"Valuation Procedure" shall mean a determination made in good faith by the Board of Directors of the Company (the "Board") that is set forth in resolutions of the Board that are certified by the Secretary of the Company, which certified resolutions (i) set forth the basis of the Board's determination, which, in the case of a valuation in excess of $100 million, shall include the Board's reliance on the valuation of a nationally recognized investment banking or appraisal firm, and (ii) are delivered to the Holder within ten (10) Business Days following such determination. A Valuation Procedure with respect to the value of any capital stock shall be based on the price that would be paid for all of the capital stock of the issuer in an arm's-length transaction between a willing buyer and a willing seller (neither acting under compulsion).

2. Exercise of Warrant; Number of Shares.

2.1 Exercise. This Warrant may be exercised in whole or in part at any time during the Exercise Period, by delivery of the following to the Company at its address set forth above (or at such other address as it may designate by notice in writing to the Holder):

(a) an executed Notice of Exercise in the form attached hereto;

(b) payment of the Exercise Price (i) in cash or by check, (ii) by cancellation of indebtedness or (iii) pursuant to Section 2.2 hereof; and

(c) this Warrant.

This Warrant will be exercisable for a number of shares of Common Stock that, together with the shares of Common Stock previously issued pursuant to this Warrant, is equal to 79.9% of the total number of shares of Common Stock outstanding on a Fully Diluted basis on the date of exercise. Whenever the Holder exercises this Warrant in whole or in part, it may assign its right to receive the Exercise Shares issuable upon such exercise to any other Person.

As soon as practicable (and in any event within five Business Days) after this Warrant shall have been exercised, a certificate or certificates for the Exercise Shares so purchased, registered in the name of the Holder or such other Person as may be designated by the Holder (to the extent such transfer is not validly restricted and upon payment of any transfer taxes that are required to be paid by the Holder in connection with any such transfer), shall be issued and delivered by the Company to the Holder or such other Person .

The Person in whose name any certificate or certificates for the Exercise Shares are to be issued upon exercise of this Warrant shall be deemed to have become the holder of record of such shares on the date on which this Warrant was surrendered and payment of the Exercise Price was made, irrespective of the date of delivery of such certificate or certificates, except that, if the date of such surrender and payment is a date when the stock transfer books of the Company are closed, such Person shall be deemed to have become the holder of such shares at the close of business on the next succeeding date on which the stock transfer books are open (whether before or after the end of the Exercise Period).

2.2 Net Exercise. Notwithstanding any provision herein to the contrary, if the Market Price of one share of the Common Stock is greater than the Exercise Price (at the date of calculation as set forth below), in lieu of exercising this Warrant by payment of cash, check or cancellation of indebtedness, the Holder may elect (the "Conversion Right") to receive shares equal to the value (as determined below) of this Warrant (or the portion thereof being canceled) by surrender of this Warrant at the principal office of the Company together with the properly endorsed Notice of Exercise in which event the Company shall issue to the Holder a number of shares of Common Stock computed using the following formula:

$$X = \frac{Y\,(A-B)}{A}$$

Where X = the number of shares of Common Stock to be issued

Y = the number of shares of Common Stock purchasable under this Warrant or, if only a portion of this Warrant is being exercised, the portion of this Warrant being exercised (at the date of such calculation)

A = the Market Price of one share of the Common Stock (at the date of such calculation)

B = Exercise Price (as adjusted pursuant to the terms herein to the date of such calculation)

The Company shall pay all reasonable administrative costs incurred by the Holder in connection with the exercise of the Conversion Right by the Holder pursuant to this Section 2.2.

3. Covenants and Representations of the Company

3.1 Covenants as to Exercise Shares.

(a) The Company covenants and agrees that all Exercise Shares that may be issued upon the exercise of this Warrant will, upon issuance, be validly authorized, issued and outstanding, fully paid and nonassessable, free of preemptive rights and free from all taxes, liens and charges with respect to the issuance thereof. If the Common Stock or the class of securities of any other Exercise Shares is then listed or quoted on a national securities exchange or a regional securities exchange, all such Exercise Shares shall, upon issuance, also be so listed or quoted. The Company further covenants and agrees that the Company will at all times during the Exercise Period, have authorized and reserved solely for purposes of the exercise of this Warrant, free from preemptive rights, a sufficient number of shares of its Common Stock or the class of securities of any other Exercise Shares to provide for the exercise in full of this Warrant (without taking into account any possible exercise pursuant to Section 2.2 hereof). If at any time during the Exercise Period the number of authorized but unissued shares of Common Stock or the class of securities of any other Exercise Shares shall not be sufficient to permit exercise in full of this Warrant (without taking into account any possible exercise pursuant to Section 2.2 hereof), the Company will take such corporate action as shall be necessary to increase its authorized but unissued shares of Common Stock or the class of securities of any other Exercise Shares to such number of shares as shall be sufficient for such purposes.

(b) If at any time the Exercise Shares shall include any shares or other securities other than shares of Common Stock, or any other property or assets, the terms of this Warrant shall be modified or supplemented (and in the absence of express written documentation thereof, shall be deemed to be so modified or supplemented), and the Company shall take all actions as may be necessary to preserve, in a manner and on terms as nearly equivalent as practicable to the provisions of this Warrant as they apply to the Common Stock, the rights of the Holder hereunder, including any equitable replacements of the term "Common Stock" with the term "Exercise Shares" and adjustments of any formula included herein.

(c) The Company's filings under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), will comply in all material respects as to form with the Exchange Act and the rules and regulations thereunder.

(d) Without prior written consent of the Holder, the Company shall not permit any Significant Subsidiary (as defined by Rule 1-02(w) of Regulation S-X under the Securities Act or any successor rule) to (i) issue or grant any capital stock or equity ownership interest, including any Participating Security; (ii) any rights, options, warrants or convertible security that is exercisable for or convertible into any capital stock or other equity ownership interest, including any Participating Security; or (iii) any stock appreciation rights, phantom stock rights, or any other profit participation rights, or any rights or options to acquire any such rights, in each case of clauses (i), (ii) and (iii) above, to any Person other than the Company or its wholly owned subsidiaries.

(e) The Company shall not take any action that will result in an increase in the par value of the Common Stock.

3.2 No Impairment. Except and to the extent as waived or consented to in writing by the Holder, the Company will not, by amendment of its charter, bylaws or other governing documents or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Warrant and in the taking of all such action as may be necessary or appropriate in order to protect the exercise rights of the Holder against impairment or dilution consistent with the intent and principles expressed herein. If any event or occurrence shall occur (including without limitation, stock dividends and stock splits) as to which the failure to make any adjustment to the Exercise Price and/or the number of shares or other assets or property subject to this Warrant would adversely affect the purchase rights or value represented by this Warrant, including any issuance of Common Stock or Participating Securities, then, in each such case, the Company shall determine the adjustment, if any, on a basis consistent with the essential intent and principles herein, necessary to preserve, without dilution, the purchase rights represented by this Warrant. If such determination involves or is based on a determination of the Fair Market Value of any securities or other assets or property, such determination shall be made in accordance with the Valuation Procedure. Without limiting the foregoing, in the event of any dividend or distribution by the Company of assets or property (including shares of any other Person) on or with respect to the Common Stock, or any exchange of the shares of Common Stock into any other assets, property or securities, this Warrant will be equitably adjusted to permit the Holder to receive upon exercise the assets, property or securities that would have been received if the Warrant had been exercised immediately prior to such dividend, distribution or exchange.

3.3 Notice of Record Date. In the event (i) the Company takes a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, (ii) the Company authorizes the granting to the holders of Common Stock (or holders of the class of securities of any other Exercise Shares) of rights to subscribe to or purchase any shares of capital stock of any class or securities convertible into any shares of capital stock or of any other right, (iii) the Company authorizes any reclassification of, or any recapitalization involving, any class of Common Stock or any consolidation or merger to which the Company is a party and for which approval of the stockholders of the Company is required, or of the sale or transfer of all or substantially all of the assets of the Company, (iv) the Company authorizes or consents to or otherwise commences the voluntary or involuntary dissolution, liquidation or winding up of the Company or (v) the Company authorizes or takes any other action that would trigger an adjustment in the Exercise Price or the number or amount of shares of Common Stock or other Exercise Shares subject to this Warrant, the Company shall mail to the Holder, at least ten (10) days prior to the earlier of the record date for any such action or stockholder vote and the date of such action, a notice specifying (a) which action is to be taken and the date on which any such record is to be taken for the purpose of any such action, (b) the date that any such action is to take place and (c) the amount and character of any stock, other securities or property and amounts, or rights or options with respect thereto, proposed to be issued, granted or delivered to each holder of Common Stock (or holders of the class of securities of any other Exercise Shares).

4. Fractional Shares. No fractional shares shall be issued upon the exercise of this Warrant. All Exercise Shares (including fractions) issuable upon exercise of this Warrant may be aggregated for purposes of determining whether the exercise would result in the issuance of any fractional share. If, after aggregation, the exercise would result in the issuance of a fractional share, the Company shall, in lieu of issuance of any fractional share, pay the Holder otherwise entitled to such fraction a sum in cash equal to the product resulting from multiplying such fractional amount by the Fair Market Value of one share of Common Stock.

5. Listing Rights. The Company shall use its best efforts, upon the request of the Holder, to cause the Exercise Shares to be listed or quoted on a national securities exchange or a regional securities exchange.

6. No Stockholder Rights or Liabilities. Without limiting the consent rights of the Holder contained in Section 3, this Warrant in and of itself shall not entitle the Holder to any voting rights or other rights as a stockholder of the Company. No provision of this Warrant, in the absence of affirmative action by the Holder to exercise this Warrant in exchange for shares of Common Stock, and no mere enumeration herein of the rights or privileges of the Holder, shall give rise to any liability of the Holder for the Exercise Price or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

7. Transfer of Warrant. This Warrant is not transferable; provided, however, that the Holder may assign its rights to receive shares upon exercise of this Warrant pursuant to Section 2.1.

8. Payment of Taxes on Stock Certificate Issues Upon Exercise. The initial issuance of certificates of Common Stock upon any exercise of this Warrant shall be made without charge to the exercising Holder for any transfer, stamp or similar tax or for any other governmental charges that may be imposed in respect of the issuance of such stock certificates, and such stock certificates shall be issued in the respective names of, or in such names as may be directed by, the Holder; provided, however, that the Company shall not be required to pay any tax or such other charges that may be payable in respect of any transfer involved in the issuance and delivery of any such stock certificate, any new warrants or other securities in a name other than that of the Holder upon exercise of this Warrant (other than to an Affiliate), and the Company shall not be required to issue or deliver such certificates or other securities unless and until the Person or Persons requesting the issuance thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid or is not payable.

9. Lost, Stolen, Mutilated or Destroyed Warrant. If this Warrant is lost, stolen, mutilated or destroyed, the Company may, on such terms as to indemnity or otherwise as it may reasonably impose (which shall, in the case of a mutilated Warrant, include the surrender thereof), issue a new Warrant of like denomination and tenor as this Warrant so lost, stolen, mutilated or destroyed. Any such new Warrant shall constitute an original contractual obligation of the Company, whether or not the allegedly lost, stolen, mutilated or destroyed Warrant shall be at any time enforceable by anyone.

10. Closing of Books. The Company will at no time close its transfer books against the transfer of any shares of Common Stock issued or issuable upon the exercise or conversion of any Warrant in any manner which interferes with the timely exercise or conversion of this Warrant.

11. Notices, Etc. All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed telex or facsimile if sent during normal business hours of the recipient or if not, then on the next Business Day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) Business Day after deposit with a nationally recognized overnight courier, specifying next Business Day delivery, with written verification of receipt. All notices and other communications shall be sent to the Company at the address listed on the signature page and to Holder at the address set forth below or at such other address as the Company or Holder may designate by ten (10) days advance written notice to the other parties hereto:

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

with a copy to:

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

12. Acceptance. Receipt of this Warrant by the Holder shall constitute acceptance of and agreement to all of the terms and conditions contained herein.

13. Binding Effect on Successors. This Warrant shall be binding upon any Person succeeding the Company by merger, consolidation or acquisition of all or substantially all of the Company's assets, and all of the obligations of the Company relating to the Common Stock issuable upon the exercise or conversion of this Warrant shall survive the exercise, conversion and termination of this Warrant and all of the covenants and agreements of the Company shall inure to the benefit of the successors and assigns of the Holder.

14. Governing Law. This Warrant and all rights, obligations and liabilities hereunder shall be governed and construed in accordance with Federal law, if and to the extent such Federal law is applicable, and otherwise in accordance with the law of the State of New York.

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its duly authorized officer as of September 7, 2008.

FEDERAL NATIONAL MORTGAGE ASSOCIATION,
by

Federal Housing Finance Agency, its Conservator

James B Lockhart III

James B. Lockhart III
Director

Address: 3900 Wisconsin Avenue, NW
Washington, DC 20016

Signature Page to Warrant

NOTICE OF EXERCISE

TO: FEDERAL NATIONAL MORTGAGE ASSOCIATION

(1) ☐ The undersigned hereby elects to purchase _____________ shares of the Common Stock of Federal National Mortgage Association (the "Company") pursuant to the terms of the attached Warrant, and tenders herewith or is delivering by wire transfer to account number ___________ at ___________________ (bank) payment of the exercise price in full.

☐ The undersigned hereby elects to purchase _______ shares of the Common Stock of the Company pursuant to the terms of the net exercise provisions set forth in Section 2.2 of the attached Warrant.

(2) Please issue a certificate or certificates representing said shares of Common Stock in the name of the undersigned or in such other name as is specified below:

____
(Name)

____

____
(Address)

____
(Date)

____
(Signature)

____
(Print name)

SENIOR PREFERRED STOCK PURCHASE AGREEMENT

SENIOR PREFERRED STOCK PURCHASE AGREEMENT (this "Agreement") dated as of September 7, 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.

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 "Commitment"); provided, 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, and (b) if Seller and the Designated Representative fail to act as requested within thirty (30) days of such notice, or 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, seek judicial relief requiring Seller to draw on the Commitment or Purchaser to fund the Commitment, as applicable. 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. 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]

FEDERAL HOME LOAN MORTGAGE CORPORATION, by

Federal Housing Finance Agency,
its Conservator

James B. Lockhart III

James B. Lockhart III
Director

UNITED STATES DEPARTMENT OF THE TREASURY

Henry M. Paulson, Jr.
Secretary of the Treasury

Acknowledged and, solely as to Sections 5.3, 6.2 and 6.11, agreed:

FEDERAL HOUSING FINANCE AGENCY,
as Conservator

James B. Lockhart III

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

Federal Housing Finance Agency, its Conservator

James B. Lockhart III

James B. Lockhart III
Director

Signature Page to Certificate of Designations of Senior Preferred Stock

FEDERAL HOUSING FINANCE AGENCY

STATEMENT

Contact: Corinne Russell (202) 414-6921
Stefanie Mullin (202) 414-6376

For Immediate Release
September 7, 2008

STATEMENT OF FHFA DIRECTOR JAMES B. LOCKHART

Good Morning

Fannie Mae and Freddie Mac share the critical mission of providing stability and liquidity to the housing market. Between them, the Enterprises have $5.4 trillion of guaranteed mortgage-backed securities (MBS) and debt outstanding, which is equal to the publicly held debt of the United States. Their market share of all new mortgages reached over 80 percent earlier this year, but it is now falling. During the turmoil last year, they played a very important role in providing liquidity to the conforming mortgage market. That has required a very careful and delicate balance of mission and safety and soundness. A key component of this balance has been their ability to raise and maintain capital. Given recent market conditions, the balance has been lost. Unfortunately, as house prices, earnings and capital have continued to deteriorate, their ability to fulfill their mission has deteriorated. In particular, the capacity of their capital to absorb further losses while supporting new business activity is in doubt.

Today's action addresses safety and soundness concerns. FHFA's rating system is called GSE Enterprise Risk or G-Seer. It stands for Governance, Solvency, Earnings and Enterprise Risk which includes credit, market and operational risk. There are pervasive weaknesses across the board, which have been getting worse in this market.

Over the last three years OFHEO, and now FHFA, have worked hard to encourage the Enterprises to rectify their accounting, systems, controls and risk management issues. They have made good progress in many areas, but market conditions have overwhelmed that progress.

The result has been that they have been unable to provide needed stability to the market. They also find themselves unable to meet their affordable housing mission. Rather than letting these conditions fester and worsen and put our markets in jeopardy, FHFA, after painstaking review, has decided to take action now.

Key events over the past six months have demonstrated the increasing challenge faced by the companies in striving to balance mission and safety and soundness, and the ultimate disruption of that balance that led to today's announcements. In the first few months of this year, the secondary market showed significant deterioration, with buyers demanding much higher prices for mortgage backed securities.

In February, in recognition of the remediation progress in financial reporting, we removed the portfolio caps on each company, but they did not have the capital to use that flexibility.

In March, we announced with the Enterprises an initiative to increase mortgage market liquidity and market confidence. We reduced the OFHEO-directed capital requirements in return for their commitments to raise significant capital and to maintain overall capital levels well in excess of requirements.

In April, we released our Annual Report to Congress, identifying each company as a significant supervisory concern and noting, in particular, the deteriorating mortgage credit environment and the risks it posed to the companies.

In May OFHEO lifted its 2006 Consent Order with Fannie Mae after the company completed the terms of that order. Subsequently, Fannie Mae successfully raised $7.4 billion of new capital, but Freddie Mac never completed the capital raise promised in March.

Since then credit conditions in the mortgage market continued to deteriorate, with home prices continuing to decline and mortgage delinquency rates reaching alarming levels. FHFA intensified its reviews of each company's capital planning and capital position, their earnings forecasts and the effect of falling house prices and increasing delinquencies on the credit quality of their mortgage book.

In getting to today, the supervision team has spent countless hours reviewing with each company various forecasts, stress tests, and projections, and has evaluated the performance of their internal models in these analyses. We have had many meetings with each company's management teams, and have had frank exchanges regarding loss projections, asset valuations, and capital adequacy. More recently, we have gone the extra step of inviting the Federal Reserve and the OCC to have some of their senior mortgage credit experts join our team in these assessments.

The conclusions we reach today, while our own, have had the added benefit of their insight and perspective.

After this exhaustive review, I have determined that the companies cannot continue to operate safely and soundly and fulfill their critical public mission, without significant action to address our concerns, which are:

- the safety and soundness issues I mentioned, including current capitalization;
- current market conditions;
- the financial performance and condition of each company;
- the inability of the companies to fund themselves according to normal practices and prices; and
- the critical importance each company has in supporting the residential mortgage market in this country,

Therefore, in order to restore the balance between safety and soundness and mission, FHFA has placed Fannie Mae and Freddie Mac into conservatorship. That is a statutory process designed to stabilize a troubled institution with the objective of returning the entities to normal business operations. FHFA will act as the conservator to operate the Enterprises until they are stabilized.

The Boards of both companies consented yesterday to the conservatorship. I appreciate the cooperation we have received from the boards and the management of both Enterprises. These individuals did not create the inherent conflict and flawed business model embedded in the Enterprises' structure. I thank the CEOs for their service in these difficult times.

The goal of these actions is to help restore confidence in Fannie Mae and Freddie Mac, enhance their capacity to fulfill their mission, and mitigate the systemic risk that has contributed directly to the instability in the current market. The lack of confidence has resulted in continuing spread widening of their MBS, which means that virtually none of the large drop in interest rates over the past year has been passed on to the mortgage markets. On top of that, Freddie Mac and Fannie Mae, in order to try to build capital, have continued to raise prices and tighten credit standards.

FHFA has not undertaken this action lightly. We have consulted with the Chairman of the Board of Governors of the Federal Reserve System, Ben

Bernanke, who was appointed a consultant to FHFA under the new legislation. We have also consulted with the Secretary of the Treasury, not only as an FHFA Oversight Board member, but also in his duties under the law to provide financing to the GSEs. They both concurred with me that conservatorship needed to be undertaken now.

There are several key components of this conservatorship:

First, Monday morning the businesses will open as normal, only with stronger backing for the holders of MBS, senior debt and subordinated debt.

Second, the Enterprises will be allowed to grow their guarantee MBS books without limits and continue to purchase replacement securities for their portfolios, about $20 billion per month without capital constraints.

Third, as the conservator, FHFA will assume the power of the Board and management.

Fourth, the present CEOs will be leaving, but we have asked them to stay on to help with the transition.

Fifth, I am announcing today I have selected Herb Allison to be the new CEO of Fannie Mae and David Moffett the CEO of Freddie Mac. Herb has been the Vice Chairman of Merrill Lynch and for the last eight years chairman of TIAA-CREF. David was the Vice Chairman and CFO of US Bancorp. I appreciate the willingness of these two men to take on these tough jobs during these challenging times. Their compensation will be significantly lower than the outgoing CEOs. They will be joined by equally strong non-executive chairmen.

Sixth, at this time any other management action will be very limited. In fact, the new CEOs have agreed with me that it is very important to work with the current management teams and employees to encourage them to stay and to continue to make important improvements to the Enterprises.

Seventh, in order to conserve over $2 billion in capital every year, the common stock and preferred stock dividends will be eliminated, but the common and all preferred stocks will continue to remain outstanding. Subordinated debt interest and principal payments will continue to be made.

Eighth, all political activities -- including all lobbying -- will be halted immediately. We will review the charitable activities.

Lastly and very importantly, there will be the financing and investing relationship with the U.S. Treasury, which Secretary Paulson will be discussing. We believe that these facilities will provide the critically needed support to Freddie Mac and Fannie Mae and importantly the liquidity of the mortgage market.

One of the three facilities he will be mentioning is a secured liquidity facility which will be not only for Fannie Mae and Freddie Mac, but also for the 12 Federal Home Loan Banks that FHFA also regulates. The Federal Home Loan Banks have performed remarkably well over the last year as they have a different business model than Fannie Mae and Freddie Mac and a different capital structure that grows as their lending activity grows. They are joint and severally liable for the Bank System's debt obligations and all but one of the 12 are profitable. Therefore, it is very unlikely that they will use the facility.

During the conservatorship period, FHFA will continue to work expeditiously on the many regulations needed to implement the new law. Some of the key regulations will be minimum capital standards, prudential safety and soundness standards and portfolio limits. It is critical to complete these regulations so that any new investor will understand the investment proposition.

This decision was a tough one for the FHFA team as they have worked so hard to help the Enterprises remain strong suppliers of support to the secondary mortgage markets. Unfortunately, the antiquated capital requirements and the turmoil in housing markets over-whelmed all the good and hard work put in by the FHFA teams and the Enterprises' managers and employees. Conservatorship will give the Enterprises the time to restore the balances between safety and soundness and provide affordable housing and stability and liquidity to the mortgage markets. I want to thank the FHFA employees for their work during this intense regulatory process. They represent the best in public service. I would also like to thank the employees of Fannie Mae and Freddie Mac for all their hard work. Working together we can finish the job of restoring confidence in the Enterprises and with the new legislation build a stronger and safer future for the mortgage markets, homeowners and renters in America.

Thank you and I will now turn it back to Secretary Paulson.

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 "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 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]

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

Signature Page to Certificate of Designations of Senior Preferred Stock

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]

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 7^{th} day of September, 2008.

[Seal]

FEDERAL HOME LOAN MORTGAGE CORPORATION, by

The Federal Housing Finance Agency, its Conservator

____

James B. Lockhart III
Director

Signature Page to Certificate of Designations of Senior Preferred Stock

2009-SE-002712

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

ASSISTANT SECRETARY

May 6, 2009

ACTION MEMORANDUM FOR SECRETARY GEITHNER

FROM: Mario L. Ugoletti
Acting Assistant Secretary (Financial Institutions)

CC: Lee Sachs, Counselor

SUBJECT: Amendments to the Senior Preferred Stock Purchase Agreement with Fannie Mae and Freddie Mac, and Related Determination

Recommendation(s)

That you (1) execute the attached Amendments to the Amended and Restated Senior Preferred Stock Purchase Agreement (PSPA) between Treasury and Fannie Mae and Freddie Mac, and (2) execute the related Determination under Section 1117 of the Housing and Economic Recovery Act of 2007.

Approve ____ Disapprove _____ Let's Discuss _____

Background

Last fall, Treasury entered into an Amended and Restated Senior Preferred Stock Purchase Agreement dated as of September 26, 2008 with Fannie Mae and Freddie Mac, acting through the Federal Housing Finance Agency (FHFA) as its duly appointed conservator. Under the terms of the PSPAs, Treasury committed to provide to each of Freddie Mac and Fannie Mae immediately available funds in an amount up to but not in excess of the $100 billion through purchases of senior preferred stock of each of Freddie Mac and Fannie Mae.

Treasury is authorized to purchase "obligations and other securities" issued by Freddie Mac and Fannie Mae pursuant to Section 306(l) of the Federal Home Loan Mortgage Corporation Act, as amended (Freddie Mac Charter Act) and Section 304(g) of the Federal National Mortgage Association Act (Fannie Mae Charter Act), as those sections were added by Section 1117 of the Housing and Economic Recovery Act of 2008 (HERA). At the time that he executed the PSPAs, Secretary Paulson made a Determination, as required by HERA, after taking into consideration the matters set forth in Section 306(l)(l)(C) of the Freddie Mac Charter Act (as added by HERA) and Section 304(g)(1)(C) of the Fannie Mae Charter Act (as added by HERA), that the preferred stock purchases were necessary to (i) provide stability to the financial markets; (ii) prevent disruptions in the availability of mortgage finance; and (iii) protect the taxpayers.

The PSPAs provide for Treasury's purchase of up to $100 billion in senior preferred stock from each of Freddie Mac and Fannie Mae to help ensure that they each maintain a positive net worth. Treasury entered into the Agreements to improve market stability by providing additional security to Freddie Mac and Fannie Mae debt holders, senior and subordinated, and to improve mortgage availability by providing additional confidence to investors in mortgage-backed securities issued by Freddie Mac and Fannie Mae. The Agreements also provide for Freddie Mac and Fannie Mae's to deliver to Treasury warrants for the future purchase of the common stock of Freddie Mac and Fannie Mae.

In February 2009, to increase market confidence in Fannie Mae and Freddie Mac in light of the potential for deteriorating housing market conditions, you announced Treasury's intent to increase funding available to Fannie Mae and Freddie Mac under the PSPAs from $100 billion to $200 billion per company. The announcement also indicated that the permitted size of the retained mortgage portfolios of Fannie Mae and Freddie Mac under the PSPAs would be increased from $850 billion to $900 billion along with an increase in allowable debt outstanding.

Amendments to the PSPAs

The amendments to the PSPAs are described below.

(1) Size of the Treasury's Commitment – Increases funding available from $100 billion to $200 billion.

(2) Increase in Retained Portfolio – Increases from $850 billion to $900 billion. This change increases the permitted size of the retained portfolio as December 31, 2009, but keeps in place the gradual reduction over time (90 percent of the prior year's retained portfolio until $250 billion is reached).

(3) Increase Allowable Debt Outstanding – Provision on allowable debt outstanding is changed from 110 percent of outstanding debt as of June 30, 2008, to 120 percent of the limit on mortgage assets. Increasing the potential size of the retained portfolio requires expanded debt authority. In addition, there was some inequity in the initial formulation in that Freddie Mac had a slightly higher level of debt outstanding as of June 30, 2008. Also, FHFA has required increased liquidity holdings, which limits the amount of debt that can be used to fund the retained portfolio. All these factors led to an increase in the allowable percentage, and a change in the base from a fixed debt amount to mortgage assets.

(4) Change Definition "Indebtedness" to Account for Potential Changes to FAS 140 – A technical change to add language that is included in the definition of "mortgage assets" regarding Financial Accounting Standard (FAS) 140 to the definition of "indebtedness" (i.e., FAS 140 changes are not considered in determining compliance with the indebtedness covenant). Given the dollar cap on mortgage assets, these changes are necessary to address potential changes to FAS 140 that could require guaranteed mortgage-backed securities be brought on to the balance sheet of Fannie Mae and Freddie Mac.

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

DETERMINATION

WHEREAS, Section 1117 of the Housing and Economic Recovery Act of 2008 (the "Act") authorizes the Secretary of the Treasury (the "Secretary") to purchase any obligations and other securities ("purchase authority") issued by the Federal National Mortgage Association ("Fannie Mae"), the Federal Home Loan Mortgage Corporation ("Freddie Mac"), and any Federal Home Loan Bank (collectively, the "regulated entities"), on such terms and conditions as the Secretary may determine and in such amounts as the Secretary may determine;

WHEREAS, Section 1117 of the Act provides that in connection with the Secretary's use of his purchase authority, the Secretary must determine that such actions are necessary to: (i) provide stability to the financial markets; (ii) prevent disruptions in the availability of mortgage finance; and (iii) protect the taxpayer;

WHEREAS, Section 1117 of the Act also provides that in making the determination that such actions are necessary to protect the taxpayer, the Secretary shall take into consideration: (i) the need for preferences or priorities regarding payments to the Government; (ii) limits on maturity or disposition of obligations or securities to be purchased; (iii) the regulated entities' plans for the orderly resumption of private market funding or capital market access; (iv) the probability of the regulated entities fulfilling the terms of any such obligation or other security, including repayment; (v) the need to maintain the regulated entities' status as private-shareholder owned companies; and (vi) restrictions on the use of regulated entity resources, including limitations on the payment of dividends and executive compensation and any such other terms and conditions as appropriate for those purposes; and

WHEREAS, on September 7, 2008, Henry M. Paulson, Jr., as the Secretary on that date, made the requisite determination, based on the three criteria described above and after having taken into consideration the six factors described above, in connection with certain other actions taken on that date, including the execution by the United States Department of the Treasury (the "Treasury") of the original Senior Preferred Stock Purchase Agreement with each of Fannie Mae and Freddie Mac dated as of that date (collectively, the "Original Agreements"), and, pursuant to the Original Agreements, the purchase of senior preferred stock and common stock warrants of Fannie Mae and Freddie Mac in amounts not to exceed the maximum amounts specified therein.

NOW, THEREFORE, I HEREBY DETERMINE, based on the three criteria described above and after taking into consideration the six factors described above and such other information available to me as I deem appropriate, that the execution by the Treasury of the Amendment to Amended and Restated Senior Preferred Stock Purchase Agreement with each of Fannie Mae and Freddie Mac (collectively, the "Amendments") and, pursuant to the Amendments, the purchase of additional senior preferred stock of Fannie Mae and Freddie Mac to provide them with additional funding in amounts not to exceed the increased maximum amounts specified therein, are necessary to provide stability to the financial markets, prevent disruptions in the availability of mortgage finance, and protect the taxpayer.

Timothy F. Geithner.
May ___, 2009

AMENDMENT TO AMENDED AND RESTATED SENIOR PREFERRED STOCK PURCHASE AGREEMENT

AMENDMENT dated as of May 6, 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 now desire to enter into an amendment to the Amended and Restated Agreement for the purpose of increasing to $200,000,000,000 the maximum aggregate amount permitted to be provided to Seller under the Amended and Restated Agreement, and for the purpose of amending the terms of the Amended and Restated Agreement in certain other respects.

D. Purchaser and Seller are each authorized to enter into this Amendment to the Amended and Restated Agreement ("this Amendment") increasing to $200,000,000,000 the maximum aggregate amount permitted to be provided to Seller under the Amended and Restated Agreement, and amending the terms of the Amended and Restated Agreement 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.

2. **<u>Amendment to Section 1 (Relating to Definition of New Defined Term "Executive Officer").</u>**

Section 1 of the Amended and Restated Agreement is hereby amended to insert the following new defined term and corresponding definition after the definition of the term "Exchange Act":

> "*Executive Officer*" has the meaning given to such term in Exchange Act Rule 3b-7, as in effect on the date hereof.

3. **<u>Amendment to Section 1 (Relating to Definition of "Indebtedness").</u>**

The definition of "Indebtedness" in Section 1 of the Amended and Restated 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 or any similar accounting standard).

4. **<u>Amendment to Section 1 (Relating to Definition of "Maximum Amount").</u>**

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

> "*Maximum Amount*" means, as of any date of determination, $200,000,000,000 (two hundred billion dollars), less the aggregate amount of funding under the Commitment prior to such date.

5. **<u>Amendment to Section 2.1 (Relating to the Commitment).</u>**

Section 2.1 of the Amended and Restated 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 "<u>Commitment</u>"); <u>provided</u>, that in no event shall the aggregate amount funded under the Commitment exceed $200,000,000,000 (two hundred billion

dollars). The liquidation preference of Senior Preferred Stock shall increase in connection with draws on the Commitment, as set forth in Section 3.3 below.

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

Section 2.5 of the Amended and Restated 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 of $200,000,000,000 (two hundred billion dollars). 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.

7. **Amendment to Section 5.5 (Relating to Indebtedness).**

Section 5.5 of the Amended and Restated Agreement is hereby amended to read as follows:

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 (i) through and including December 30, 2010, 120.0% of the amount of Mortgage Assets Seller is permitted by Section 5.7 to own on December 31, 2009; and (ii) beginning on December 31, 2010, and through and including December 30, 2011, and each year thereafter, 120.0% of the amount of Mortgage Assets Seller is permitted by Section 5.7 to own on December 31 of the immediately preceding calendar year, 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.

8. **Amendment to Section 5.7 (Relating to Owned Mortgage Assets).**

Section 5.7 of the Amended and Restated 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 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.

9. **Amendment to Section 5.10 (Relating to Executive Compensation).**

Section 5.10 of the Amended and Restated Agreement is hereby amended to read as follows:

> 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 or other Executive Officer of Seller.

10. **Amended and Restated Agreement to Continue, as Amended.**

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

11. **Effective Date.**

This Amendment shall not become effective until it has been executed by both of Purchaser and Seller. When this 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

James B. Lockhart III

James B. Lockhart III
Director

UNITED STATES DEPARTMENT
OF THE TREASURY

Timothy F. Geithner

Timothy F. Geithner
Secretary of the Treasury

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

December 22, 2009

ACTION MEMORANDUM FOR SECRETARY GEITHNER

FROM: Lee Sachs, Counselor to the Secretary, Office of Domestic Finance

Michael S. Barr, Assistant Secretary, Financial Institutions

SUBJECT: Expiration of HERA Authority and Amendments to the Preferred Stock Purchase Agreements (PSPAs) between Treasury and Fannie Mae and Freddie Mac

Recommendation

That you approve that we enter into discussions with the Federal Housing Finance Agency, as conservator of Fannie Mae and Freddie Mac, to amend the existing Preferred Stock Purchase Agreement ("PSPA") contracts in the following manner:

1. Replace the existing fixed $200 billion cap on Treasury advances with a formulaic cap for the next three years that will automatically adjust upwards quarterly by the cumulative amount of any losses realized by either GSE and downward by the cumulative amount of any gains, but not below $200 billion, and will become fixed at the end of the three years.

   ___√___Approve ________Disapprove ________Let's Discuss

2. Adjust the retained portfolio runoff requirements such that any reduction is measured from $900 billion total portfolio size for each GSE and the target date for the first 10% reduction is postponed by one year to December 31, 2010.

   ___√___Approve ________Disapprove ________Let's Discuss

3. Other Issues: Delay the Periodic Commitment Fee setting process for one additional year to December 10, 2010. Make a technical change to the measurement definition of mortgage assets and indebtedness to address compliance issues.

   ___√___Approve ________Disapprove ________Let's Discuss

Background

We face a set of decisions before the end of the year about how best to ensure that Fannie Mae and Freddie Mac can continue to make housing finance available on reasonable terms during this crisis. We are proposing several steps, most importantly an increase in the financial backstops that cover the losses Fannie Mae and Freddie Mac are incurring from their very large exposure to the U.S. housing market.

Our plan is to announce this step before year end. The difficulty we face is that our increasing financial commitment to Fannie Mae and Freddie Mac, while appropriate given the risks we face, is somewhat at odds with our general approach and message of winding down support for the financial system.

Context

The backdrop for our actions is that the government sponsored enterprises (GSEs) have moved from being a source of instability during the early stages of the crisis to a stable and critical source of mortgage financing to the market today. We are also acting in the context of the end of the Federal Reserve and Treasury's massive program to purchase Agency-guaranteed mortgage-backed securities (MBS) and debt, which has eased the GSEs' ability to raise funds in the market as it has lowered mortgage rates.

As you know, Fannie Mae and Freddie Mac were put into federal conservatorship on September 7, 2008 in the face of large and continuing losses on their mortgage holdings and deteriorating ability to fund themselves in the markets due to a loss of confidence in their solvency. At that time, the last Administration established three facilities to support Fannie Mae and Freddie Mac. First, Treasury entered into agreements with both firms to allow each one to maintain positive net worth by incrementally drawing up to $100 billion, in exchange for which Treasury received preferred stock that would increase in liquidation preference value by an amount equal to each drawdown (Preferred Stock Purchase Agreements, or PSPAs). Second, Treasury created a program to purchase MBS guaranteed by the GSEs, under which Treasury has purchased nearly $200 billion in aggregate MBS to date. Third, Treasury established an effectively unlimited short-term liquidity facility for Fannie Mae, Freddie Mac, and the Federal Home Loan Banks, but these facilities have not been used. These three actions enabled the GSEs to continue playing their role as a reliable guarantor of MBS, which increased the availability and affordability of mortgages in a stressed environment.

As the crisis intensified and our Administration came into office, we made the judgment that given the outlook for the housing market, an environment of deteriorating confidence, and an abundance of caution, we needed to take steps to ensure that there was no doubt that the GSEs could continue to perform their vital function. As a result, we decided to increase the $100 billion cap on Treasury's funding commitment to Fannie Mae and Freddie Mac under each PSPA to $200 billion and create some additional capacity for the GSEs to purchase MBS and buy non-performing loans out of the MBS they guarantee.

Our policies, combined with actions by the Federal Reserve, have worked. The prevailing rate for a 30-year mortgage has fallen from around 6.5 percent in the summer of 2008 to under 5.0 percent today. This has made it possible for many borrowers to refinance, reduce their payments, and make their mortgages more affordable. With our support, nearly 70 percent of all new credit formation in the residential real estate sector was either financed or guaranteed by Fannie Mae and Freddie Mac. In addition, the GSEs are at the forefront of the Administration's efforts to address foreclosures through the Home Affordable Refinance Program and Home Affordable Modification Program. The GSEs are also implementing recently announced initiatives for state and local housing finance agencies.

These actions were taken under the Housing and Economic Recovery Act of 2008 (HERA). HERA authorized Treasury to purchase obligations and other securities issued by the GSEs without any limit on dollar amount, but only up through December 31, 2009. To date, Fannie Mae and Freddie Mac have drawn only $60 billion and $51 billion, respectively, under the PSPAs. Current estimates for the fourth quarter provided to Treasury by the regulator of the GSEs (the Federal Housing Finance Agency, or FHFA) suggest that Fannie Mae could draw an additional $25 billion (bringing its total outstanding drawn amount to $85 billion total) and that Freddie Mac is unlikely to make an additional draw this quarter.

Their overall financial performance, however, is deteriorating at a concerning rate. Because of high unemployment and home price deterioration, both GSEs will continue to experience significant losses. We have worked with FHFA and the Federal Reserve to conduct stress tests to gauge their need for further support if the housing market deteriorates significantly and unemployment and underemployment continue at elevated levels. While we do not believe that the GSEs will require the full $200 billion that we have already committed to each company, these stress tests found plausible "tail" scenarios that would result in Fannie Mae needing more than the existing $200 billion commitment. At least one mortgage market analyst (Barclays Capital) has reached similar conclusions in published research notes.

Treasury's authority to purchase GSE obligations and securities expires at year end. Therefore, after December 31, our ability to make further changes to the PSPAs, particularly with respect to the commitment amount, is constrained. This limitation poses several challenges:

1. Risk of outsized losses: Stress tests have found plausible "tail" scenarios that would result in Fannie Mae posting large enough losses that it needs more than the existing $200 billion commitment within 2 years. Since we can envision extreme, but plausible, scenarios with this outcome, market participants can do the same. In fact, some market analysts are projecting a need for an increase in the PSPAs. This can introduce uncertainty at a time of fragile economic recovery. Foreign holders of Agency securities remain concerned about the firms' financial stability and are sensitive to any perceptions in a change to the commitment of the U.S. Government to maintaining solvency.
2. Central role during crisis: The GSEs are supporting [70] percent of all mortgages originated in this country in 2009. For the foreseeable future, to avert further deterioration in housing markets, we need to support these companies to continue to play their customary role in financing home purchases and enabling mortgage refinancing.
3. Near term outlook for housing: We are likely to face a confluence of negative events in Q1 and Q2 of 2010 as "shadow" inventory moves to liquidation; transitions to permanent mortgage modifications under HAMP will likely be lower than many expected, and the Federal Reserve and Treasury buying programs for Agency-guaranteed MBS will be ending.
4. Conflicting message: Our short-term policy towards the GSEs, while necessary, is increasingly at odds with our overall message on TARP and regulatory reform. In the case of GSEs, we are allowing "failed" firms to continue to operate by injecting additional government support, rather than resolving them. We are increasing our support for these institutions, while ramping down other programs. We do not want to increase our support for the GSEs in such a way that the progress in winding down TARP is undermined.
5. Uncertain long term situation: It is clear that the timeline for legislating GSE reform is likely to be much longer than the previous Administration expected when the PSPAs were established. It is conceivable that this matter will not be taken up by Congress until 2011.
6. Chance of prejudicing longer term reform: Our Regulatory Reform White Paper suggested that we would publish a set of recommendations on long-term GSE reform with the President's Budget in February. We remain on track to deliver this report and outline the objectives of long-term reform. But moving forward on reform will likely require changes to the basic structure of the GSEs. We must be mindful that our actions in the near term do not either detract from our message in February or prejudice the ability to achieve long-term reform.

Recommendation

We considered many possible options, including taking no action, but concluded that the risks to the housing market warrant a policy response to ensure that we do not prematurely withdraw support before the recovery is self-sustaining.

Our plan is to announce the following steps before year-end:

1. Modify each PSPA so that the current fixed-dollar-amount cap on Treasury's funding commitment is replaced by a formula: the cap will be an amount equal to the sum of (a) $200 billion, plus (b) an amount equal to the cumulative losses less cumulative gains in net

worth realized by the respective GSE after the date of the PSPA modification. In no event, however, will the cap be reduced below $200 billion.

2. This formulaic cap will be maintained for three years. From there it will be fixed at: (a) $200 billion (if there were cumulative gains over the three year period), or (b) the cap amount resulting from the formula above, and will be available to absorb any additional losses realized after that three-year period.
3. As in February, we will allow the GSEs additional room to maintain or grow their portfolios for a limited time (one year). The presumption would be that the orderly natural runoff of the GSEs' retained portfolios already under way would occur in 2010 as previously planned. Creating this headroom in the retained portfolio could help confidence in mortgage markets by providing flexibility to increase their portfolio purchases with the approval of the FHFA and Treasury if the environment develops adversely and such purchases would have a meaningful stabilizing impact.

While the total amount of funding made available to Treasury under HERA is unlimited in dollar amount, this recommended set of increases may be controversial. However, it would be a strong statement that the U.S. Government will make sure that these institutions continue to function even during a possibly extended period before Congressional action on this matter and continued uncertainty about their financial situation is resolved.

Prior to announcement, we believe it would be appropriate to do some limited Congressional consultation (this matter is highly market sensitive). From a communications standpoint, our public framing of these actions will be critical. Our initial thoughts on basic messaging would involve:

- We have taken additional steps to ensure that the GSEs can serve the vital function they are playing today for American households. At a time of great difficulty for US homeowners, our support of these entities is critical to ensure accessible and affordable mortgage financing.
- In an environment where banks have been pulling back, the GSEs have supported origination of $400 billion of mortgages in 2009, approximately 70 percent of all mortgages originated in the country in 2009.
- The GSEs are today at the heart of our efforts to create more sustainable modifications and mortgages for troubled borrowers seeking to remain in their homes.
- We do not expect this additional authority to be used. It is unlikely that either GSE will reach the $200 billion existing cap unless the housing market worsens sharply from here. We expect the GSEs will continue to shrink their portfolios in the ordinary course.
- But this action is the financially responsible path to prepare for unlikely contingencies in the midst of this housing crisis.
- We view these measures as temporary. They are designed to support these institutions until Congress determines a more sustainable long-term path. We intend to provide principles and options for reform with the President's Budget in February.

Overall, we believe these measures will build on the progress we have made in the housing market and while extraordinary, we believe they are necessary and authorized by HERA.
Some market research has begun to anticipate a need for increases in the PSPAs to cover the risk of outsized losses, but this action is not broadly expected. It is not yet in the political sphere. We expect the following criticisms:

- Moral hazard. Some argue that a formula-based approach to the cap will alter the behavior of the GSEs and cause them to act in a way adverse to the taxpayer interest. We believe the cap generally, even at the $200 billion limit, has not particularly impacted GSE behavior positively or negatively. The GSEs operate under a strict conservatorship with FHFA responsible for supervising the companies with a "preservation of assets" mandate. Treasury will also fortify its own contractual rights with respect to monitoring actions around the portfolio to protect taxpayers further.

- Fiscal irresponsibility: Some will say we should wind-down the GSEs instead of continuing to allow them to operate in conservatorship. This is entirely impractical in the current circumstances.
- Focus on GSEs: This will fan the flames of the critique that the GSEs had a central role in causing the housing crisis. Given their role in our mortgage modification program and initiatives such as our support for state and local housing finance agencies, some may say we want unlimited ability to use the GSEs to cover the costs of housing stabilization programs without seeking appropriations. Our steps are designed to provide for market stability.
- Retained portfolio: Market participants do not now expect retained portfolios to increase. Providing for additional capacity within the $900 billion cap will be noted..

Background
The Housing and Economic Recovery Act of 2008 (HERA), which was enacted on July 30, 2008, provided the Treasury with powers to ensure that Fannie Mae and Freddie Mac (government-sponsored enterprises, or GSEs) were able to serve their purpose of providing a stable and liquid mortgage market with broadly available access for consumers. HERA put no dollar limit on the Secretary's authority to purchase obligations and other securities issued by the GSEs, but it did set a sunset date of December 31, 2009.

Initially on September 7, 2008, Treasury and the regulator of the GSEs (Federal Housing Finance Agency, or FHFA) announced a set of joint actions under the authorities provided by HERA:

(a) Fannie Mae and Freddie Mac were placed into federal conservatorship with FHFA appointed as conservator;
(b) Treasury executed preferred stock purchase agreements (PSPAs) with Fannie Mae and Freddie Mac, under which Treasury purchased preferred stock issued by Fannie Mae and Freddie Mac and committed to advance funds that allowed them each to draw up to $100 billion from Treasury in order to maintain a positive net worth;
(c) Treasury committed to an effectively unlimited credit facility for each GSE to provide liquidity support; and
(d) Treasury announced its intent to purchase a substantial amount of GSE-guaranteed mortgage-backed securities (MBS) in the open market.

The PSPAs were specifically designed to provide comfort to the GSEs creditors and to investors in MBS guaranteed by the GSEs that both Fannie Mae and Freddie Mac would be able to meet their obligations on an ongoing basis. This had the dual benefit of helping to provide stability to the financial system and adding to mortgage affordability by providing additional reassurance to debt investors.

On February 19, 2009, Treasury increased the $100 billion cap on its funding commitment to Fannie Mae and Freddie Mac under the PSPAs to $200 billion and created some additional capacity for the GSEs in their own portfolios. As of today, Fannie Mae and Freddie Mac have drawn $60 billion and $51 billion, respectively, under the PSPAs. Current estimates for the fourth quarter provided to Treasury by FHFA suggest that Fannie Mae could draw an additional $25 billion ($85 billion total) and that Freddie Mac is unlikely to make an additional draw this quarter. The portfolios have continued to shrink despite the new authority. Thus far, the increases we put in place in February have indeed been precautionary and have not been used.

Both GSEs continue to experience losses driven chiefly by credit-related expenses. Serious delinquency rates (borrowers more than 90 days past due) on underlying mortgages have increased in the current environment of weak house prices and high unemployment and underemployment. Serious delinquency rates have reached 4.72 percent of outstanding loans for Fannie Mae and 3.33 percent for Freddie Mac.

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

December 24, 2009

ACTION MEMORANDUM FOR SECRETARY GEITHNER

FROM: Lee Sachs, Counselor to the Secretary, Office of Domestic Finance

Michael S. Barr, Assistant Secretary, Financial Institutions

SUBJECT: Determination under Section 1117 of the Housing and Economic Recovery Act of 2008 for Purchase of Obligations and Securities of Regulated Entities

Recommendation

That you approve and sign the proposed Determination relating to the purchase of obligations and securities from the regulated entities.

____________Approve ____________Disapprove ____________Let's Discuss

Background

Section 1117 of the Housing and Economic Recovery Act of 2008 ("the Act") authorizes the Treasury to purchase any obligations and other securities issued by the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac") (collectively the Government Sponsored Enterprises or "Housing GSEs") and the twelve Federal Home Loan Banks, on such terms and conditions and in such amounts as you may determine.

In connection with exercising this authority, the Act requires you to make a determination that such exercise is necessary to: (1) provide stability to the financial markets; (2) prevent disruptions in the availability of mortgage finance; and (3) protect the taxpayer. The Act also provides that in making the determination that the actions are necessary to protect the taxpayer, you must take into consideration: (i) the need for preferences or priorities regarding payments to the Government; (ii) limits on maturity or disposition of obligations or securities to be purchased; (iii) the regulated entities' plans for the orderly resumption of private market funding or capital market access; (iv) the probability of the regulated entities fulfilling the terms of any such obligation or other security, including repayment; (v) the need to maintain the regulated entities' status as private-shareholder owned companies; and (vi) restrictions on the use of regulated entity resources, including limitations on the payment of dividends and executive compensation and any such other terms and conditions as appropriate for those purposes.

The overall conditions in the mortgage and housing markets have been, and remain, challenging for many market participants. Both Fannie Mae and Freddie Mac are exposed to these markets through their guarantees of mortgage backed securities and mortgage investments in their portfolios. As the assets supporting Fannie Mae's and Freddie Mac's guarantee and investment portfolios have deteriorated, the costs of raising additional capital and funding themselves have risen. Both enterprises had experienced challenges in raising capital given current conditions. Given these concerns as well as other findings related to unsafe and unsound practices and conditions at both Housing GSEs, the Director of the Federal Housing Finance Agency ("FHFA") made the determination in September 2008 to place Fannie Mae and Freddie Mac in conservatorship.

Initially on September 7, 2008, Treasury and FHFA announced a set of joint actions under the authorities provided by HERA:

(a) Fannie Mae and Freddie Mac were placed into federal conservatorship with FHFA appointed as conservator;
(b) Treasury executed preferred stock purchase agreements (PSPAs) with Fannie Mae and Freddie Mac, under which Treasury purchased preferred stock issued by Fannie Mae and Freddie Mac and committed to advance funds that allowed them each to draw up to $100 billion from Treasury in order to maintain a positive net worth;
(c) Treasury committed to a short-term credit facility for each GSE to provide liquidity support (Government Sponsored Entity Credit Facility); and
(d) Treasury announced its intent to purchase a substantial amount of GSE-guaranteed mortgage-backed securities (MBS) in the open market (GSE Mortgage Backed Security Purchase Program).

The PSPAs were specifically designed to provide comfort to the Housing GSEs creditors and to investors in MBS guaranteed by the Housing GSEs that both Fannie Mae and Freddie Mac would be able to meet their obligations on an ongoing basis. This had the dual benefit of helping to provide stability to the financial system and adding to mortgage affordability by providing additional reassurance to debt investors.

In May 2009, Treasury increased the $100 billion cap on its funding commitment to Fannie Mae and Freddie Mac under the PSPAs to $200 billion and created some additional capacity for the Housing GSEs in their own portfolios. As of today, Fannie Mae and Freddie Mac have drawn $60 billion and $51 billion, respectively, under the PSPAs. Current estimates for the fourth quarter provided to Treasury by FHFA suggest that Fannie Mae could draw an additional $25 billion ($85 billion total) and that Freddie Mac is unlikely to make an additional draw this quarter. The portfolios have continued to shrink despite the new authority. Thus far, the increases to Treasury's funding commitment and to the permitted retained portfolio size put in place in May have indeed been precautionary and have not been used.

Both Housing GSEs continue to experience losses driven chiefly by credit-related expenses. Serious delinquency rates (borrowers more than 90 days past due) on underlying mortgages have increased in the current environment of weak home prices and high unemployment and underemployment. Serious delinquency rates have reached 4.72 percent of outstanding loans for Fannie Mae and 3.33 percent for Freddie Mac.

Exercise of Authority

In order to provide stability to financial markets, prevent disruptions in mortgage finance availability, and protect the taxpayers, we recommend that you exercise the authority granted to Treasury by amending the PSPAs in three ways. First, the Treasury will replace the existing fixed $200 billion cap on Treasury advances with a formulaic cap for the next three years that will automatically adjust upwards quarterly by the cumulative amount of any losses realized by either Housing GSE and downward by the cumulative amount of any gains, but not below $200 billion, and will become fixed at the end of the three years. Second, Treasury will adjust the retained portfolio runoff requirements such that any reduction is measured from the $900 billion total permitted portfolio size for each Housing GSE and the target date for the first 10% reduction is postponed by one year to December 31, 2010. Third, Treasury will delay the Periodic Commitment Fee setting process for one additional year to December 10, 2010. Treasury will also make minor technical changes to the definitions of the terms "Mortgage Assets" and "Indebtedness" to address compliance issues.

The PSPAs provide for purchases in senior preferred stock from each Housing GSE to help ensure that they each maintain a positive net worth. The three changes to the PSPAs described above will further improve market stability by providing additional security to Housing GSE debt holders, senior and subordinated, and improve mortgage availability by providing additional confidence to investors in Housing GSE mortgage backed securities.

In designing these three changes to the PSPAs, specific steps were taken to protect the taxpayer. In particular, consideration was given to the six factors set forth in the Act.

The need for preferences or priorities – The PSPAs continue to protect the taxpayer by providing the Treasury with senior preferred stock that has a liquidation preference over all other classes of equity, including existing preferred stock. The PSPAs also continue to protect the taxpayer by: (i) prohibiting Fannie Mae and Freddie Mac from issuing any additional subordinated debt; and (ii) restricting Fannie Mae and Freddie Mac from increasing the aggregate amount of their indebtedness to more than 120% of the amount of their permitted mortgage portfolio size as of December 31, 2010. In addition, the terms of the PSPAs require Fannie Mae and Freddie Mac to remit to Treasury the net proceeds from the issuance of any equity which is to be applied to redeem amounts outstanding under the liquidation preference (and which shall be applied first against any accrued and unpaid dividends).

Limits on maturity or disposition of obligations or securities – In considering appropriate limits on the duration of the PSPAs, it was determined that in order to facilitate market stability the PSPAs should continue until the earlier of reaching a formulaic cap that will automatically adjust upwards quarterly by the cumulative amount of any losses realized by either Housing GSE and downward by the cumulative amount of any gains, but not below $200 billion or until all liabilities of Fannie Mae and Freddie Mac have been satisfied. In addition, beginning in 2011 the Treasury will begin to charge the Housing GSEs a periodic commitment fee that will be payable quarterly to compensate the taxpayers for the ongoing support provided to the Housing GSEs under the terms of the PSPAs.

Housing GSEs plans for orderly resumption of private market funding or capital market access – Under conservatorship, Fannie Mae and Freddie Mac continue to operate as going concerns, and the support of the PSPAs, and Treasury's corresponding capital commitment so that each Housing GSE maintains a positive net worth should continue to strengthen their ability to secure financing in the capital markets.

Probability of the Housing GSEs fulfilling the terms of their obligations - The structure of the PSPAs with their liquidation preference over all other equity, including preferred equity, combined with the PSPAs' restrictions on debt issuance, enhance the probability of both Fannie Mae and Freddie Mac ultimately repaying amounts owed.

Need to maintain the Housing GSEs' status as private shareholder-owned companies – Fannie Mae and Freddie Mac may emerge from conservatorship to resume independent operations, or they may emerge in some other form determined by Congress. Conservatorship preserves the status and claims of the preferred and common shareholders. The value of the warrants issued to the government under the terms of the PSPAs could potentially increase in value, thereby providing enhanced value to the taxpayers. Upon the government's exercise of the warrants, the Housing GSEs would be required under the terms of the PSPAs to apply the net cash proceeds to pay-down the liquidation preference of the senior preferred stock.

Restrictions on the use of corporation resources – The terms of the PSPAs prohibit Fannie Mae and Freddie Mac from declaring any dividends on outstanding preferred or common stock until the senior preferred stock has been fully redeemed. The PSPAs also prohibit the redemption of any outstanding preferred or common stock without the prior consent of the Treasury until the senior preferred stock has been fully redeemed. The PSPAs require that the Director of FHFA consult with the Treasury before entering into any new compensation arrangements or increasing amounts or benefits payable under existing compensation agreements with certain executive officers. Also, compensation at Fannie Mae and Freddie Mac has been made subject to review and approval by Treasury's Special Master for Execution Compensation, Kenneth R. Feinberg.

Attachments:

Tab 1: Determination
Tab 2: Summary of Senior Preferred Stock Purchase Agreements
Tab 3: Amendments to Amended and Restated Senior Preferred Stock Purchase Agreements

SUMMARY
Treasury Senior Preferred Stock Purchase Agreements

Fannie Mae and Freddie Mac (collectively, GSEs) debt and mortgage backed securities (MBS) outstanding today amount to about $5 trillion, and are held by central banks and investors around the world. Investors have purchased GSE securities in part because the ambiguities in their Congressional charters created a perception of government backing. These ambiguities helped to foster enormous growth in GSE debt outstanding, and the breadth of these holdings pose a systemic risk to our financial system. Because the US government contributed to these ambiguities, we have a responsibility both to avert and ultimately address the systemic risk now posed by the scale and breadth of the holdings of GSE debt and MBS.

Treasury established a Senior Preferred Stock Purchase Agreement (PSPA) with each GSE which ensures that each enterprise does not have a negative net worth. This measure adds to market stability by providing additional security to GSE debt holders – senior and subordinated – and increasing mortgage affordability by providing additional confidence to investors in GSE MBS. This commitment also will eliminate any mandatory triggering of receivership.

These PSPAs are the most effective means of averting systemic risk and protecting the taxpayer. They are more efficient than a one-time equity injection - Treasury will use them only as needed and on terms that Treasury deems appropriate.

The PSPAs provide significant protections for the taxpayer, in the form of senior preferred stock with a liquidation preference, an upfront $1 billion issuance of senior preferred stock from each GSE, quarterly dividend payments, warrants representing an ownership stake of 79.9% in each GSE going forward, and a quarterly fee starting in 2011.

Terms of the PSPAs:

- The PSPAs are contracts between the Department of the Treasury and each GSE. They are indefinite in length. The PSPAs currently have a funding commitment cap of $200 billion each. The amendments to the PSPAs described in this memorandum will result in the PSPAs having a formulaic cap for the next three years that will automatically adjust upwards quarterly by the cumulative amount of any losses realized by either GSE and downward by the cumulative amount of any gains, but not below $200 billion, and will become fixed at the end of the three years. This cap has been chosen to demonstrate a strong commitment to the GSEs' creditors and MBS holders.

- If the Federal Housing Finance Agency determines that a GSE's liabilities have exceeded its assets under generally accepted accounting principles, Treasury will advance funds under its funding commitment to the GSE in an amount equal to the difference between liabilities and assets. The liquidation preference of the previous received senior preferred stock (discussed below) will automatically increase dollar-for-dollar by the amount of each Treasury advance of funds under its funding commitment. These PSPAs protect the senior and subordinated debt and mortgage backed securities of the GSEs. The GSEs' common stock and existing preferred shareholders will bear any loss ahead of the government.

- In exchange for entering into the PSPAs with the GSEs, Treasury immediately received the following compensation:
    - $1 billion of senior preferred stock in each GSE
    - Warrants for the purchase of common stock of each GSE representing 79.9% of the common stock of each GSE on a fully-diluted basis at a nominal price.

- The senior preferred stock accrues dividends at 10% per year. The rate shall increase to 12% if, in any quarter, the dividends are not paid in cash, until all accrued dividends have been paid in cash.

- The senior preferred stock is not entitled to voting rights. In a conservatorship, voting rights of all stockholders are vested in the Conservator.

- Under the proposed changes to the terms of the PSPAs, beginning March 31, 2011, the GSEs shall pay the Department of the Treasury on a quarterly basis a periodic commitment fee that will compensate the Treasury for the explicit support provided by the PSPAs. The Secretary of the Treasury and the conservator shall determine the periodic commitment fee in consultation with the Chairman of the Federal Reserve. The previous terms of the PSPAs provided that the GSEs would begin to pay the periodic commitment fee as of March 31, 2010.

- The following covenants apply to the GSEs as part of the PSPAs:
    - Without prior consent of the Treasury, the GSEs shall not:
        - Make any payment to purchase or redeem its capital stock (other than senior preferred stock), or pay any dividends (other than dividends on senior preferred stock)
        - Issue capital stock of any kind
        - Enter into any new or adjust any existing compensation agreements with "named executive officers" without consulting with the Treasury
        - Terminate conservatorship other than in connection with receivership
        - Sell, convey, or transfer any assets outside the ordinary course of business except as necessary to meet their obligation under the PSPAs to reduce their portfolio of retained mortgages and MBS
        - Increase its funded senior debt to more than 120% of its permitted mortgage portfolio size as of December 31, 2010
        - Consolidate, merge or sell substantially all of its assets

- Under the proposed changes to the terms of the PSPAs, each GSE's retained mortgage and MBS portfolio shall not exceed $900 billion as of December 31, 2010, and shall decline by 10% per year until the retained mortgage and MBS portfolio reaches $250 billion. The previous terms of the PSPAs provided that the cap on the MBS portfolio would be $850 billion as of December 31, 2009 and would begin to decline by 10% as of December 31, 2009.

DETERMINATION

WHEREAS, Section 1117 of the Housing and Economic Recovery Act of 2008 (the "Act") authorizes the Secretary of the Treasury (the "Secretary") to purchase any obligations and other securities ("purchase authority") issued by the Federal National Mortgage Association ("Fannie Mae"), the Federal Home Loan Mortgage Corporation ("Freddie Mac"), and any Federal Home Loan Bank (collectively, the "regulated entities"), on such terms and conditions as the Secretary may determine and in such amounts as the Secretary may determine;

WHEREAS, Section 1117 of the Act provides that in connection with the Secretary's use of his purchase authority, the Secretary must determine that such actions are necessary to: (i) provide stability to the financial markets; (ii) prevent disruptions in the availability of mortgage finance; and (iii) protect the taxpayer;

WHEREAS, Section 1117 of the Act also provides that in making the determination that such actions are necessary to protect the taxpayer, the Secretary shall take into consideration: (i) the need for preferences or priorities regarding payments to the Government; (ii) limits on maturity or disposition of obligations or securities to be purchased; (iii) the regulated entities' plans for the orderly resumption of private market funding or capital market access; (iv) the probability of the regulated entities fulfilling the terms of any such obligation or other security, including repayment; (v) the need to maintain the regulated entities' status as private-shareholder owned companies; and (vi) restrictions on the use of regulated entity resources, including limitations on the payment of dividends and executive compensation and any such other terms and conditions as appropriate for those purposes; and

WHEREAS, on September 7, 2008, Henry M. Paulson, Jr., as the Secretary on that date, made the requisite determination, based on the three criteria described above and after having taken into consideration the six factors described above, in connection with certain other actions taken on that date, including the execution by the United States Department of the Treasury (the "Treasury") of the original Senior Preferred Stock Purchase Agreement with each of Fannie Mae and Freddie Mac dated as of that date (collectively, the "Original Agreements"), and, pursuant to the Original Agreements, the purchase of senior preferred stock and common stock warrants of Fannie Mae and Freddie Mac in amounts not to exceed the maximum amounts specified therein.

WHEREAS, on May 6, 2009, I, as the Secretary, made the requisite determination, based on the three criteria described above and after having taken into consideration the six factors described above, in connection with the execution by the Treasury of the Amendment to the Amended and Restated Senior Preferred Stock Purchase Agreement with each of Fannie Mae and Freddie Mac dated as of that date, (collectively, the "First Amendments"), which First Amendments (i) increased Treasury's funding commitment to each of Fannie Mae and Freddie Mac to the amended maximum amounts specified therein, and (ii) amended the terms of the Original Agreements in certain other respects.

NOW, THEREFORE, I HEREBY DETERMINE, based on the three criteria described above and after taking into consideration the six factors described above and such other information available to me as I deem appropriate, that the execution by the Treasury of the Second Amendment to the Amended and Restated Senior Preferred Stock Purchase Agreement with each of Fannie Mae and Freddie Mac (collectively, the "Second Amendments"), which Second Amendments (i) modify the Treasury's funding commitment to each of Fannie Mae and Freddie Mac to provide them with additional funding in amounts not to exceed the new formulaic maximum amounts specified therein, and (ii) amend the terms of the Original Agreements, as previously amended, in certain other respects, are necessary to provide stability to the financial markets, prevent disruptions in the availability of mortgage finance, and protect the taxpayer.

Timothy F. Geithner
Timothy F. Geithner.
December 24, 2009

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. <u>Amendment to Section 1 (Adding Definition for New Defined Term "Surplus Amount")</u>.

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. <u>Amendment to Section 2.1 (Relating to the Commitment)</u>.

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 "<u>Commitment</u>"); <u>provided</u>, 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. <u>Amendment to Section 2.5 (Relating to Termination of Purchaser's Obligations)</u>.

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

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

December 20, 2010

ACTION MEMORANDUM FOR SECRETARY GEITHNER

FROM: Jeffrey A. Goldstein
Under Secretary for Domestic Finance

SUBJECT: Periodic Commitment Fee for GSE Preferred Stock Purchase Agreements (PSPAs)

Recommendation

That you waive the Periodic Commitment Fee (PCF) for 2011 and reconsider next year.

TFG Approve ________ Disapprove ________ Let's Discuss

Background:

- The amended PSPA agreements between Treasury and GSEs specify that a Periodic Commitment Fee (PCF) be set by December 31, 2010.
- The date for setting the PCF was previously moved from December 31, 2009 to December 31, 2010 as part of the broader amendments to the PSPAs on December 24, 2009. Therefore, no PCF has been set or paid to date.
- Treasury may waive the PCF for one year at a time in its sole discretion based on adverse conditions in the mortgage market.
- The PCF is to be mutually agreed to by Treasury and FHFA, in consultation with the Federal Reserve. The PCF was designed to fully compensate Treasury for providing its ongoing financial commitment.

Considerations:

Reasons to Waive the PCF for 2011

Housing markets remain fragile

- Private capital has yet to return to the market
  - Fannie Mae, Freddie Mac, and FHA/GNMA currently account for over 95% of mortgage originations – the historic average is around 40%
  - The spread between prime jumbos and conforming mortgages is still elevated and is currently around 100 basis points – the historic average is closer to 20 basis points
  - Since September 2008, there has only been one private label new issue securitization to come to the market (Redwood Sequoia deal)
- Nearly 11 million borrowers are underwater on their mortgages
- Mortgage delinquency rates remain elevated (5.2% for prime, 36.5% for subprime, and 11.9% for FHA)
- Foreclosure starts and completions remain elevated

Given the size of current GSE draws, imposing a PCF would only lead to increased Treasury draws and not generate increased return for the taxpayer

- According to the FHFA stress tests in the base case, both GSEs are expected to require additional draws through the end of 2011 to cover net income losses and required dividend payments (although projected draws are < $1 billion for Freddie Mac in Q3 and Q4) (see appendix)

Other than timing, no real additional taxpayer value is created

- Even if the GSEs generated positive surplus of net income after dividends, that surplus can be used to offset potential draws in future quarters

Potentially confusing message to the market

- Last year we stated that the fragility of the housing market was one of the rationales for postponing setting the commitment fee; by setting the fee this year (at any level), we could be viewed as implicitly making an affirmative statement on the health of the housing market

Waiving the PCF for 2011 preserves full optionality to set the PCF next year if housing markets are more stable and if the GSEs are generating positive net income in excess of their dividend commitments

Reasons to Set the PCF

- Makes clear the Administration's commitment to ensure existing common equity holders will not have access to any positive earnings from the GSEs in the future
- Illustrates further commitment to recouping taxpayer support

If you decided to set the PCF, there are two potential options:
Option 1 – Set the PCF as a percentage of the liquidation preference of the outstanding preferred stock
Option 2 – Set the PCF equal to any generated positive net income (subject to further legal review)
These would have to be mutually agreed by FHFA in consultation with the Federal Reserve

Appendix:

FHFA "Base Case" (Scenario 2) Projections - FNMA
($ in billions)

	Gross Draw	Dividend	Net Income	AOCI (1) Change	Cumulative Gross Draw
4Q10					$104.6
1Q11	$9.6	$2.3	-$7.6	$0.3	114.2
2Q11	8.8	2.6	-6.4	0.3	122.9
3Q11	7.9	2.9	-5.4	0.3	130.9
4Q11	8.7	3.1	-5.8	0.3	139.6

FHFA "Base Case" (Scenario 2) Projections - FHLMC
($ in billions)

	Gross Draw	Dividend	Net Income	AOCI (1) Change	Cumulative Gross Draw
4Q10					$72.6
1Q11	$1.2	$1.8	-$0.4	$0.9	73.8
2Q11	1.3	1.8	-0.4	0.9	75.1
3Q11	0.6	1.9	0.4	0.9	75.7
4Q11	0.2	1.9	0.7	0.9	75.9

(1) AOCI = Accumulated Other Comprehensive Income
Retained earnings changes from changes in the value of certain AFS assets

REFORMING AMERICA'S HOUSING FINANCE MARKET

A REPORT TO CONGRESS

February 2011

INTRODUCTION

This paper lays out the Administration's plan to reform America's housing finance market to better serve families and function more safely in a world that has changed dramatically since its original pillars were put in place nearly eighty years ago.

Our plan champions the belief that Americans should have choices in housing that make sense for them and for their families. This means rental options near good schools and good jobs. It means access to credit for those Americans who want to own their own home, which has helped millions of middle class families build wealth and achieve the American Dream. And it means a helping hand for lower-income Americans, who are burdened by the strain of high housing costs.

But our plan also dramatically transforms the role of government in the housing market. In the past, the government's financial and tax policies encouraged housing purchases and real estate investment over other sectors of our economy, and ultimately left taxpayers responsible for much of the risk incurred by a poorly supervised housing finance market.

Going forward, the government's primary role should be limited to robust oversight and consumer protection, targeted assistance for low- and moderate-income homeowners and renters, and carefully designed support for market stability and crisis response. Our plan helps ensure that our nation's economic health will not be jeopardized again by the fundamental flaws in the housing market that existed before the financial crisis. At the same time, this plan recognizes the fragile state of our housing market and is designed to ensure that reforms are implemented at a stable and measured pace to support economic recovery over the next several years.

Under our plan, private markets – subject to strong oversight and standards for consumer and investor protection – will be the primary source of mortgage credit and bear the burden for losses. Banks and other financial institutions will be required to hold more capital to withstand future recessions or significant declines in home prices, and adhere to more conservative underwriting standards that require homeowners to hold more equity in their homes. Securitization, alongside credit from the banking system, should continue to play a major role in housing finance subject to greater risk retention, disclosure, and other key reforms. Our plan is also designed to eliminate unfair capital, oversight, and accounting advantages and promote a level playing field for all participants in the housing market.

The Administration will work with the Federal Housing Finance Agency ("FHFA") to develop a plan to responsibly reduce the role of the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac") in the mortgage market and, ultimately, wind down both institutions. We recommend FHFA employ a number of policy levers – including increased guarantee fee pricing, increased down payment requirements, and other measures – to bring private capital back into the mortgage market and reduce taxpayer risk. As the market improves and Fannie Mae and Freddie Mac are wound down, it should be clear that the government is committed to ensuring that Fannie Mae and Freddie Mac have sufficient capital to perform under any guarantees issued now or in the future and the ability to meet any of their debt obligations. We believe that under our current Preferred Stock Purchase Agreements (PSPAs), there is sufficient funding to ensure the orderly and deliberate wind down of Fannie Mae and Freddie Mac, as described in our plan.

Successful reform will require more than just winding down Fannie Mae and Freddie Mac and reducing other government support to the housing market. In addition to fully implementing the reforms in the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") (Pub. L. 111-203), the Administration will mobilize all tools available to address the nation's broken system of mortgage servicing and foreclosure processing. Taken together, these steps will help restore trust in the underlying foundation of the mortgage market so borrowers, lenders, and investors have the confidence to purchase a home, issue a loan, or make an investment.

The government must also help ensure that all Americans have access to quality housing that they can afford. This does not mean our goal is for all Americans to be homeowners. We should continue to provide targeted and effective support to families with the financial capacity and desire to own a home, but who are underserved by the private market, as well as a range of options for Americans who rent their homes.

Finally, our plan presents several proposals for structuring the government's long-term role in a housing finance system in which the private sector is the dominant provider of mortgage credit. We evaluate these proposals according to their effects on four key criteria: access to mortgage credit; incentives for investment in the housing sector; taxpayer protection; and financial and economic stability. We ask Congress to work with us to determine the right balance of priorities for a new, predominantly private housing finance market as soon as possible.

Reform will not come overnight. Some reforms can take place immediately, like improvements to consumer protection and government oversight, while others will be implemented more gradually as the housing market heals.

We welcome the opportunity to work with Congress, independent regulators and agencies, and a wide range of stakeholders and partners to meet the goals laid out in the pages below.

HOUSING FINANCE FROM THE GREAT DEPRESSION TO THE GREAT RECESSION

Nearly eighty years ago, in the midst of the Great Depression, the federal government began implementing sweeping reforms to the American financial system. These reforms – deposit insurance, limits on the risks banks can take, better transparency and investor protections in securities markets, a stronger Federal Reserve – helped build a financial system that provided a solid foundation for America's unprecedented prosperity.

Improving how housing was financed was an important part of these broader Depression-era reforms. In the 1930s, following severe mortgage market disruptions, widespread foreclosures, and sinking homeownership rates, the government created the Federal Housing Administration ("FHA"), Fannie Mae, the Federal Home Loan Banks ("FHLBs") and, several decades later, Freddie Mac to help promote secure and sustainable homeownership for future generations of Americans.

Fannie Mae and Freddie Mac held true to their original mission for many years. They established appropriate benchmarks for conforming loans that drove improved standards within the broader mortgage industry. They helped reduce rates for borrowers by bringing transparency and standardization to the housing finance market. They played a central role in the development of securitization of conventional mortgages, which expanded access to homeownership for responsible borrowers, providing a much-needed link between places with established banking services and growing parts of the country without local funding sources for mortgages. For decades, borrowers, lenders, and investors benefited from the deep, liquid markets these institutions helped establish. This same marketplace gave American families access to simple, straightforward products, protecting them from sudden financial shocks and helping them build savings in their homes.

But in the years leading up to the recent financial crisis, trillions of dollars worth of financial decisions were made across the U.S. economy and around the world on the faulty expectation that national house prices would only rise. Twenty years of economic stability had desensitized every player in the housing market to the possibility that home prices could fall.

Indeed, despite occasional regional price declines, national home values in America had not declined on a consistent basis since the Depression. But in the years leading up to the recent crisis, a robust expansion in credit, fueled by processes and financial instruments designed to shift risk away from originators, combined with other factors, fed a rising demand for housing that lifted prices well above sustainable values. Average home values in many parts of the country skyrocketed. Mortgages became tools for speculative, short-term investments and a means to access easy cash. Lulled into a false sense of an ever-rising real estate market, some homebuyers took on more debt than they could afford to purchase homes beyond their means, and existing homeowners used their homes like ATM machines by converting home equity to cash.

By mid-2006, however, housing prices across a broad range of markets began to turn, eventually declining consistently for the first time since the 1930s. Almost no one in the housing finance market was prepared. Homeowners, investors, and financial institutions – including Fannie Mae and Freddie Mac – did not have enough capital supporting their investments to absorb the resulting losses. In 2008, credit markets froze. Our nation's financial system – which had outgrown and outmaneuvered a regulatory framework largely designed in the 1930s – was driven to the brink of collapse. Millions of Americans lost their jobs, families lost their homes, and small businesses shut down. Fannie Mae and Freddie Mac experienced catastrophic losses and were placed into conservatorship, where they remain today.

Fundamental Flaws in the Housing Finance Market

No single cause can fully explain the crisis. Misbehavior, misjudgments, and missed opportunities – on Wall Street, on Main Street, and in Washington – all came together to push the economy to the brink of collapse. Several fundamental flaws in our housing finance system contributed to the crisis and must be corrected to protect American families from the instabilities and excesses that helped bring us to a crisis point.

- *Poor consumer protections allowed risky, low-quality mortgage products and predatory lending to proliferate:* Unregulated brokers and originators promoted complex mortgage products that “reset” to sharply higher rates after a few years, or required no income documentation or down payment. Some allowed borrowers to defer principal and interest payments, increasing their indebtedness over time. Often, brokers and originators had incentives to steer borrowers into these higher-cost loans, even if they qualified for more affordable options. Some speculators knowingly took on loans they could not afford, betting that future housing price increases would bail them out. Millions of borrowers who purchased these products proved unable to make required payments, resulting in widespread defaults and foreclosures once housing prices started to fall.

- *An inadequate and outdated regulatory regime failed to keep the system in check:* Regulatory boundaries largely unchanged from the 1930s allowed large parts of the financial system that were deeply involved in housing finance to operate with virtually no oversight. To be sure, there were some problems that arose from violations of the law. In many cases, however, weak and fragmented regulation and enforcement also allowed lenders to "shop" for weaker oversight and drove deteriorating standards in lending practices. Securitizers and investors could essentially opt-out of the parts of the system with heavier regulation and use whatever underwriting practices they saw fit. Other actors in the system were allowed to avoid consistent regulation and choose favorable jurisdictions.

- *A complex securitization chain lacked transparency, standardization, and accountability:* The market increasingly relied on an opaque and complex securitization chain – comprised of mortgage brokers, originators, securitizers, ratings agencies, and investors – to provide the money that helped fuel the rapid rise in home prices. Brokers and originators could profit from selling poorly underwritten mortgages to securitizers without regard to those loans' future performance. Ratings agencies and investors failed to recognize that the deterioration in underwriting standards had undermined the quality of complex mortgage-backed securities. An overall lack of transparency and clear rules made it difficult for regulators and investors to track and recognize risk as it moved through the securitization chain.

- *Inadequate capital in the system left financial institutions unprepared to absorb losses.* Systemically-significant financial institutions were not required to hold adequate capital against the true mortgage risk on their balance sheets because these institutions were allowed to hold less capital against securities backed by mortgages than if they kept the same mortgages themselves. When home prices started to fall and these institutions experienced substantial losses, they had inadequate capital to weather the storm, putting the health of the entire financial system and broader economy at risk.

- *The servicing industry was ill-equipped to serve the needs of borrowers, lenders, and investors once housing prices fell.* The servicing industry, which processes borrower payments and forwards the proceeds to investors who own the pool of mortgages, was unprepared and poorly structured to address the higher levels of default and foreclosure that occurred after the housing market collapse. Servicing contracts did a poor job defining the obligations of servicers to minimize losses on defaulting loans. Servicers' flat fee compensation structure also failed to provide appropriate incentives for servicers to invest the time, effort, and resources necessary to prevent foreclosure, even when doing so would have been in both the homeowner and mortgage investors' interests.

The Failure of Fannie Mae and Freddie Mac

Initially, Fannie Mae and Freddie Mac were largely on the sidelines while private markets generated increasingly risky mortgages. Between 2001 and 2005, private-label securitizations of Alt-A and subprime mortgages grew fivefold, yet Fannie Mae and Freddie Mac continued to primarily guarantee fully documented, high-quality mortgages.

But as their combined market share declined – from nearly 70 percent of new originations in 2003 to 40 percent in 2006 – Fannie Mae and Freddie Mac pursued riskier business to raise their market share and increase profits. Not only did they expand their guarantees to new and riskier products, but they also increased their holdings of some of these riskier mortgages on their own balance sheets.

Fannie Mae and Freddie Mac strayed farthest from their core business in 2006 and 2007 – the very moment the housing market was extending credit to the riskiest borrowers and home prices were peaking. When home prices began to fall and adjustable-rate mortgages with low teaser rates reset to higher rates, the Alt-A mortgages that Fannie Mae and Freddie Mac had accumulated started to default at alarming rates.

By 2008, mortgages across the product spectrum, including high-credit, well-documented prime mortgages, were defaulting at historically high rates. Fannie Mae and Freddie Mac's losses had become far too substantial for their thin capital buffers to absorb, and it became clear they would be unable to fully honor their debts and guarantees. In September of 2008, in consultation with the Bush Administration, FHFA placed Fannie Mae and Freddie Mac in conservatorship under the authority provided by the Housing and Economic Recovery Act of 2008 ("HERA") (Pub. L. 110-289), which Congress had passed to support the housing market two months earlier. The Treasury Department agreed to exercise its authority under HERA to provide financial support – to date, over $130 billion – so both Fannie Mae and Freddie Mac could honor their debt and guarantees. These measures, though unfortunate, were necessary to prevent a more severe disruption in the mortgage market and broader economy.

Fannie Mae and Freddie Mac's structural design flaws, combined with failures in management, were the primary cause of their collapse. Although some have suggested affordability goals played a major role, the mistakes that led to the failure of Fannie Mae and Freddie Mac – poor underwriting standards, under pricing risk, and insufficient capital with inadequate regulatory or investor oversight – closely mirrored mistakes in the private-label securities (PLS) market where affordability goals were not a factor. In fact, delinquency rates on many PLS securities and other loans held by banks and other private market institutions were far higher than on the loans held by Fannie Mae and Freddie Mac, including loans qualifying for the affordability goals. While Fannie Mae and Freddie Mac's affordability goals were poorly designed and did not effectively serve their purposes (as detailed below), fundamental structural flaws and poor decision-making are the principal reasons these institutions failed.

- *Fannie Mae and Freddie Mac's profit-maximizing structure undermined their public mission.* Fannie Mae and Freddie Mac's congressional charters require them to promote market stability and access to mortgage credit. But their private shareholder structure, coupled with a weak oversight regime, encouraged management to take on excessive risk in order to retain market share and maximize profits, jeopardizing their ability to support the mortgage market and leaving taxpayers to bear major losses. Their pursuit of profit leading up to the financial crisis caused them to fail when their broader public mandate to support the market was needed most.

- *Fannie Mae and Freddie Mac's perceived government backing conferred unfair advantages.* Fannie Mae and Freddie Mac benefited from preferential tax treatment, far lower capital requirements, and a widely perceived government guarantee – the commonly held assumption that large losses would be backstopped by the taxpayer. These advantages gave them substantial pricing power that helped them dominate segments of the market in which they participated, build up large investment portfolios at a cost far lower than their competitors, and take on irresponsible risks through their guarantee business that ultimately resulted in their failure.

- *Fannie Mae and Freddie Mac's capital standards were unfair and inadequate.* Fannie Mae and Freddie Mac were required to hold far less capital than other regulated private institutions. Since they did not have to maintain higher levels of capital, they could set the fee that they charged to guarantee mortgage-backed securities at artificially low levels. It also left them with an inadequate cushion to absorb losses once the housing crisis hit.

- *Fannie Mae and Freddie Mac's regulator was structurally weak and ineffective.* The Office of Federal Housing Enterprise Oversight ("OFHEO"), Fannie Mae and Freddie Mac's previous regulator, did not have adequate enforcement mechanisms or authority to set capital standards to constrain risky behavior. Over the years, Fannie Mae and Freddie Mac's aggressive lobbying efforts had successfully defeated efforts to bring them under closer supervision.

The financial crisis also exacerbated fundamental flaws in the FHLBs, which help mostly insured depository institutions access liquidity and capital to compete in an increasingly competitive marketplace. Prior to the crisis, the FHLBs suffered from inadequate regulatory oversight, and were allowed to build large investment portfolios that subjected them to excess risk, while providing concentrated funding to banks engaging in unsound business practices. Today, eight of the twelve banks are under regulatory orders with respect to their capital or have voluntarily suspended dividends or the repurchase of excess stock.

Because each of the twelve FHLBs is also liable for the losses of other FHLBs, additional losses could adversely affect the entire FHLB system, damaging the mortgage finance market and potentially constraining access to capital for financial institutions. Reforms to the FHLB system are necessary to restore its important primary role of providing a stable source of mortgage credit for financial institutions of all sizes.

The Current State of the Housing Market

Since taking office in January 2009, the Obama Administration has acted to help stabilize the housing market and provide critical support for struggling homeowners. The Administration worked with Congress to put in place expanded tax credits for first-time homebuyers, additional support for state and local housing agencies, neighborhood stabilization and community development programs, mortgage modification and refinancing initiatives, housing counseling programs, expanded support for mortgage credit through FHA, and strengthened consumer protections. The Administration has also provided ongoing financial support for Fannie Mae and Freddie Mac through the PSPAs following the Bush Administration's decision to put that support in place and FHFA's decision to place them into conservatorship.

These policies helped avert a deeper economic collapse and a more severe housing crisis. However, the housing market remains fragile and will take years to fully recover. An elevated unemployment rate, lower household wealth, and higher credit standards are constraining demand for housing. Sales of new and existing homes are well below their recent peaks. At the same time, the large inventory of unsold homes, including a backlog of foreclosed homes that have yet to appear on the market, will take an extended period to work through the system. As a result of both supply and demand factors, housing construction is at historically low levels, and home prices remain weak.

TOWARDS A NEW SYSTEM OF HOUSING FINANCE

The Obama Administration has already begun the critical process of reforming our nation's housing finance market. The Dodd-Frank Act, enacted in July 2010, provides vital protections for consumers and investors that will help end abusive practices in the mortgage market and improve the stability of the overall housing finance system.

Since Fannie Mae and Freddie Mac were placed into conservatorship, the FHFA has monitored their business operations closely and strengthened underwriting standards, reducing risk to the American taxpayers. Since 2008, FICO scores and loan-to-value ratios – both key measures of how likely a borrower will be to make mortgage payments – are meaningfully better on new mortgages. Fannie Mae and Freddie Mac have also increased their guarantee fees and adjusted their pricing to better reflect risk. The FHA has also implemented important changes and reforms over the last two years, including strengthening underwriting standards, improving processes and operations, and raising premiums to improve its financial condition.

But these measures are only first steps. We must move forward with additional reforms to better protect taxpayers and improve the long-term health of the housing market.

The Obama Administration's reform plan is designed to:

1. Pave the way for a robust private mortgage market by reducing government support for housing finance and winding down Fannie Mae and Freddie Mac on a responsible timeline.

2. Address fundamental flaws in the mortgage market to protect borrowers, help ensure transparency for investors, and increase the role of private capital.

3. Target the government's vital support for affordable housing in a more effective and transparent manner.

Any responsible reform effort that addresses the flaws in the pre-crisis housing market will make credit less easily available than before the crisis. Any such changes should occur at a measured pace that allows borrowers to adjust to the new market, that preserves widespread access to affordable mortgages for creditworthy borrowers, including lower-income Americans, and that supports, rather than threatens, the nation's economic recovery.

I. Paving the Way for a Robust Private Mortgage Market

In the wake of the financial crisis, private capital has not sufficiently returned to the mortgage market, leaving Fannie Mae, Freddie Mac, FHA, and the Government National Mortgage Association ("Ginnie Mae") to insure or guarantee more than nine out of every ten new mortgages.

Under normal market conditions, the essential components of housing finance – buying houses, lending money, determining how best to invest capital, and bearing credit risk – are fundamentally private sector activities. Although the government still has an important role to play in housing finance, private markets – subject to strong oversight and standards for consumer and investor protection – should be the primary source of mortgage credit and bear the burden for losses. The Obama Administration, in consultation with FHFA and Congress, will work to restrict the areas of mortgage finance in which Fannie Mae, Freddie Mac, and the FHLBs operate, so that overall government support is substantially reduced.

Our commitment to ensuring Fannie Mae and Freddie Mac have sufficient capital to honor any guarantees issued now or in the future and meet any of their debt obligations remains unchanged. Ensuring these institutions have the financial capacity to meet their obligations is essential to continued stability, and the Administration will not waver from its commitment. Given Fannie Mae and Freddie Mac's current role in the mortgage market, we must proceed carefully with reform to ensure government support is withdrawn at a pace that does not undermine economic recovery. We believe that under the PSPAs, there is sufficient funding to ensure the orderly and deliberate wind down of Fannie Mae and Freddie Mac, as described in our plan.

Winding Down Fannie Mae and Freddie Mac on a responsible timeline

The Administration will work with FHFA to determine the best way to responsibly reduce Fannie Mae and Freddie Mac's role in the market and ultimately wind down both institutions, creating the conditions for private capital to play the predominant role in housing finance. These efforts must be undertaken at a deliberate pace, which takes into account the impact that these changes will have on borrowers and the housing market.

- *Increasing guarantee fees to bring in more private capital.* We support ending the unfair capital advantages that Fannie Mae and Freddie Mac previously enjoyed and recommend FHFA require that they price their guarantees as if they were held to the same capital standards as private banks or financial institutions. This will mean that the price of the guarantee offered by Fannie Mae and Freddie Mac explicitly reflects its risk, and will help the private market compete on a level playing field, reducing Fannie Mae and Freddie Mac's market share over time. Although the pace of these price changes will depend significantly on market conditions, such changes should be phased in over the next several years.

- *Increasing private capital ahead of Fannie Mae and Freddie Mac guarantees.* In addition to increasing guarantee pricing, we will encourage Fannie Mae and Freddie Mac to pursue additional credit-loss protection from private insurers and other capital providers. We also support increasing the level of private capital ahead of Fannie Mae and Freddie Mac's guarantees by requiring larger down payments by borrowers. Going forward, we support gradually increasing the level of required down payment so that any mortgages insured by Fannie Mae or Freddie Mac eventually have at least a ten percent down payment.

- *Reducing conforming loan limits.* The conforming loan limit is the maximum size of a loan that Fannie Mae and Freddie Mac are allowed to guarantee. In order to further scale back the enterprises' share of the mortgage market, the Administration recommends that Congress allow the temporary increase in limits that was approved in 2008 to expire as scheduled on October 1, 2011 and revert to the limits established under HERA. We will work with Congress to determine appropriate conforming loan limits in the future, taking into account cost-of-living differences across the country. As a result of these reforms, larger loans for more expensive homes will once again be funded only through the private market.

- *Winding down Fannie Mae and Freddie Mac's investment portfolio.* Fannie Mae and Freddie Mac were allowed to behave like government-backed hedge funds, managing large investment portfolios for the profit of their shareholders with the risk ultimately falling largely on taxpayers. The PSPAs require a reduction in this risk-taking by winding down their investment portfolios at an annual pace of no less than 10 percent.

Implementing a wind down of Fannie Mae and Freddie Mac's future participation in the housing market requires recognition of both the fragile state of that market today and the private sector's need for clarity about the speed with which that transition will take place. As the market begins to heal and private investors return, we will seek opportunities, wherever possible, to accelerate Fannie Mae and Freddie Mac's withdrawal.

Returning FHA to its traditional role as targeted lender of affordable mortgages

In addition to winding down Fannie Mae and Freddie Mac, FHA should return to its pre-crisis role as a targeted provider of mortgage credit access for low- and moderate-income Americans and first-time homebuyers. (Today, FHA's market share is nearly 30 percent, compared to its historic role of between 10-15 percent.) As Fannie Mae and Freddie Mac's presence in the market shrinks, the Administration will coordinate program changes at FHA to ensure that the private market – not FHA – picks up that new market share.

To accomplish this objective, we recommend decreasing the maximum loan size that can qualify for FHA insurance – first by allowing the present increase in those limits to expire as scheduled on October 1, 2011, and then by reviewing whether those limits should be further decreased moving forward. As we begin to pursue increased pricing for guarantees at Fannie Mae and Freddie Mac, we will also increase the price of FHA mortgage insurance. We have already acted on this front, raising premiums two times since the beginning of this Administration. And we will put in place another 25 basis point increase in the annual mortgage insurance premium that is detailed in the President's 2012 Budget. This will continue the ongoing effort to strengthen the capital reserve account of FHA, and put it in a better position to gradually shrink its market share. Going forward we will coordinate reforms of Fannie Mae and Freddie Mac with changes at FHA to help ensure the private market, not FHA, fills the market opportunities created by reform.

Ensuring FHLB support for small- and medium-sized financial institutions

The Administration believes the FHLBs have played a vital role in our housing finance system by helping smaller financial institutions effectively access liquidity to compete in an increasingly competitive marketplace. But these institutions also developed significant weaknesses as the housing market evolved that should be addressed as part of housing finance reform. HERA has already placed the FHLBs under stricter regulatory oversight, but further reform is required. We will also work with Congress to consider additional means of advance funding for mortgage credit, including potentially the development of a covered bond market.

- *Focusing on small- and medium-sized financial institutions.* The Administration supports allowing each financial institution to be an active member in only a single FHLB Bank. We also support limiting the level of advances, which would only have an impact on large financial institutions that can access capital markets already.

- *Reducing portfolio investments.* Similar to Fannie Mae and Freddie Mac, several of the FHLBs were allowed to build up large investment portfolios. These portfolios should be reduced and their composition altered to better serve the FHLB's mission of providing liquidity and access to capital for insured depository institutions. We support FHFA's efforts to address this issue, and we will work with Congress to provide clarity to the FHLB's investment authority.

Improving coordination among existing government housing finance programs

In addition to changing the level of government support for the housing market, we also must reform the way government support is delivered. The Department of Housing and Urban Development, the Department of Agriculture, and the Department of Veterans Affairs will set up a task force to explore ways in which their housing finance programs can be better coordinated, or even consolidated, to serve the public more effectively. Though they serve different targeted groups of Americans, their programs and borrowers will benefit from greater coordination of systems, information, and market standards.

II. Restoring Trust and Integrity in the Broader Housing Market

Addressing Fannie Mae, Freddie Mac, FHA, and the FHLBs alone will not give rise to a housing finance market that meets the needs of families, lenders, and investors. Nor will it guarantee that private markets can effectively play a more dominant role in the mortgage market. Fundamental flaws occurred at almost every link in the housing finance chain.

The Administration supports the vigorous implementation of reforms to help address pre-crisis flaws and rebuild trust and integrity in the mortgage market. Taken together, these reforms will improve consumer protection, support the creation of safe, high-quality mortgage products with strong underwriting standards, restore the integrity of the securitization market, restructure the servicing industry, and establish clear and consolidated regulatory oversight.

The Dodd-Frank Act laid the groundwork for many of these reforms. We will implement its provisions in a thoughtful manner to protect borrowers and promote stability across the housing finance markets. Together, these reforms will form the foundation of a market in which borrowers, lenders, investors – along with the broader economy – will all be better off.

Empowering consumers to avoid unfair practices and make fully informed decisions

The Administration is committed to full implementation of the Dodd-Frank Act's consumer protection provisions, including the following:

- *Curbing abusive practices.* Under rules to be developed by the Bureau of Consumer Financial Protection ("CFPB"), which was created by the Dodd-Frank Act, lenders will be prohibited from originating high-cost loans with certain abusive features, and mortgage brokers and other originators will be prohibited from accepting financial rewards for steering borrowers into more expensive products than those for which they are qualified.

- *Promoting choice and clarity.* The CFPB also will have the authority to set clear, consistent rules that allow financial services providers to compete on a level playing field and let consumers clearly see the costs and features of consumer financial products and services. The CFPB will take steps to improve and simplify the required disclosures for mortgage loan transactions to promote fairness, transparency, and competition in the mortgage market.

- *Stronger underwriting standards, including requiring lenders to verify ability to pay*. Under rules to be prescribed by the CFPB, lenders will be required to make a reasonable and good-faith determination that all borrowers have a reasonable ability to repay their mortgage, including by verifying a borrower's income.

Increasing transparency, standardization, and accountability in the securitization chain

The Administration believes the securitization market should continue to play a key role in housing finance. That market, however, requires meaningful reform so private investors can confidently participate in the housing market and provide an alternative funding source for mortgages outside of the traditional banking system and government-supported institutions.

- *Requiring originators and securitizers to retain risk.* The Administration is working with federal regulators to set rules requiring securitizers or originators to retain five percent of a security's credit risk when sold to investors. Combined with an exemption for mortgages that meet high underwriting standards (Qualified Residential Mortgages, or "QRM"), this requirement will improve alignment of interests between mortgage originators, securitizers, and investors. Rules will be finalized in 2011 and become effective in 2012.

- *Improving access to information among all market participants*. The SEC will implement Dodd-Frank Act provisions that set stricter disclosure and reporting requirements so that regulators and investors can more easily understand the underlying collateral and risks of securities.

- *Strengthen transparency and disclosure in credit ratings agencies' analysis.* The Securities and Exchange Commission ("SEC") will establish an Office of Credit Ratings. This new office will have dedicated compliance resources with the ability to improve disclosure for ratings methodologies, set new requirements to prohibit conflicts of interest, and authorize the SEC to deregister ratings agencies that perform poorly.

Increasing capital standards to improve the safety and stability of the financial system

The Basel III Capital Accords will substantially increase the overall amount of capital that banks are required to hold on their balance sheets. These measures will improve the ability of banks to withstand future downturns, declines in home prices, and other sudden economic shocks, which will help improve the safety and stability of the financial system and broader economy. These new standards will also require banks to hold larger capital buffers against higher-risk mortgages that have a greater risk of default, providing strong incentives to originate higher-quality mortgages.

Strengthening regulatory oversight

The Dodd-Frank Act provides a comprehensive approach to monitor and constrain excessive risk in the financial system, and to strengthen the transparency and resilience of financial markets.

- *Closing regulatory gaps.* The newly created Financial Stability Oversight Council ("FSOC") has the authority to require consolidated supervision of any financial firm – regardless of legal form – whose failure could pose a threat to financial stability. The Act also eliminates regulatory arbitrage for nationally chartered depository institutions by eliminating the Office of Thrift Supervision and moving that authority into the Office of the Comptroller of the Currency.

- *Monitoring systemic risk.* The Dodd-Frank Act creates accountability in the FSOC for taking a comprehensive approach to monitoring the nation's financial system. The FSOC is charged with identifying threats 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, including mortgage markets.

Improving mortgage servicing and foreclosure processing

The Administration supports several immediate and near-term reforms to correct problems in mortgage servicing and foreclosure processing and help prevent their recurrence.

- *Establishing national standards for mortgage servicing.* Servicers should manage each loan that they service promptly and appropriately. The Administration supports national servicing standards that better align incentives and provide clarity and consistency to borrowers and investors regarding their treatment by servicers, especially in the event of delinquency.

- *Reforming servicing compensation to align industry incentives.* The Administration is working with FHFA, in coordination with HUD, to explore alternative servicing compensation structures to align industry incentives. Currently, servicers collect a flat fee that does not adjust to reflect the amount of work they are required to perform, resulting in overpayment for servicing current loans and underpayment for servicing delinquent loans. A compensation structure that corrects for the current structure's shortcomings could help ensure servicers are appropriately incentivized to invest the time and effort to work with troubled borrowers to avoid default or foreclosure.

- *Improving treatment of lien priority.* We should reduce conflicts of interests between holders of first and second mortgages and improve transparency for lenders and borrowers regarding the total debt secured by a given piece of property. Mortgage documents should require disclosure of second liens. In addition, mortgage documents should define the process for modifying a second lien in the event that the first lien becomes delinquent. This will prevent a second lien from standing in the way of a first lien modification and help prevent avoidable foreclosures. Finally, we should consider options for allowing primary mortgage holders to restrict, in certain circumstances, additional debt secured by the same property.

III. A System with Transparent and Targeted Support for Access and Affordability

The Administration believes that we must continue to take the necessary steps to ensure that Americans have access to an adequate range of affordable housing options. This does not mean all Americans should become homeowners. Instead, we should make sure that all Americans who have the credit history, financial capacity, and desire to own a home have the opportunity to take that step. At the same time, we should ensure that there are a range of affordable options for the 100 million Americans who rent, whether they do so by choice or necessity.

In the past, broader government efforts to support affordability through Fannie Mae and Freddie Mac's affordable housing goals proved inefficient and ineffective. Their affordability goals were inadequately responsive to the unique needs of underserved families and communities. They were misaligned with lending in the primary market. And most egregiously, they did not exclude high-cost, predatory loans. As we establish new ways to ensure access and affordability, we must learn from these failed efforts and design policies that are better targeted, more transparent, and focused on providing support that is financially sustainable for families and communities.

We recommend focusing initially on four primary areas of reform:

- A reformed and strengthened FHA.
- A commitment to affordable rental housing.
- Measures to ensure that capital is available to creditworthy borrowers in *all* communities, including rural areas, economically distressed regions, and low-income communities.
- A flexible and transparent funding source to support targeted access and affordability initiatives.

A reformed and strengthened FHA

The Administration is committed to ensuring creditworthy first-time homebuyers and families with modest incomes can access a mortgage. The Administration will make sure that creditworthy borrowers that have incomes up to the median level for their area have access to these mortgages, but we will do so in a way that does not allow FHA to expand during normal economic times to a share of the market that is unhealthy or unsustainable.

To make sure that FHA is financially strong enough to provide this key support, and that those taking out FHA-insured single-family loans are taking on sustainable mortgages, the Administration will explore ways to further reduce the risk exposure of FHA. While FHA has already changed its policy to require that borrowers with lower FICO scores put down larger down payments, FHA will consider other options, such as lowering the maximum loan-to-value ratio for qualifying mortgages more broadly. In considering how to apply such options, FHA will continue to balance the need to manage prudently the risk to FHA and the borrower with its efforts to ensure access to affordable loans for lower- and middle-income Americans.

We will work with Congress to give FHA more flexibility to respond to stress in the housing market and manage its risk more effectively. This will mean giving FHA flexibility to adjust fees and programmatic parameters more nimbly than it can today. FHA should also have the technology and talent needed to run what should be a world-class financial institution.

A renewed commitment to affordable rental housing

As we move forward to address the challenges of affordability and access, we must address how those issues impact renters. Today, renters often face significant affordability challenges. Half of all renters spend more than a third of their income on housing, and a quarter spend more than half. And for low-income renters, adequate and affordable homes are increasingly scarce. For every 100 extremely low-income American families, for example, only 32 adequate rental homes are affordable.

Promoting a housing finance market that provides liquidity and capital to support affordable rental options can alleviate the high rental burdens that many low-income households face. It can also expand rental options for low-income households in urban, suburban, and rural communities of opportunity, with good jobs for parents and quality schools for children.

Private credit markets have generally underserved multifamily rental properties that offer affordable rents, preferring to invest in high-end developments. By contrast, Fannie Mae and Freddie Mac developed expertise in profitably providing financing to the middle of the rental market, where housing is generally affordable to moderate-income families. As we wind down Fannie Mae and Freddie Mac, it will be critical to find ways to maintain funding to this segment of the market.

The Administration will explore ways to provide greater support for rental housing. One option would be to do so by expanding FHA's capacity to support lending to the multifamily market. Key to this would be utilizing existing multifamily expertise so that FHA and other entities continue the industry's current best practices and retain valuable human capital. We will consider a range of reforms, such as risk-sharing with private lenders, to reduce the risk to FHA and the taxpayer, and the development of programs dedicated to hard-to-reach property segments, including the smaller properties that contain one-third of all rental apartments.

Ensuring that capital is available to creditworthy borrowers in all communities

We will work to ensure that all mortgage market participants are complying with laws that prohibit discrimination in providing capital to borrowers and communities. To support that effort, we will work with Congress to require greater transparency in the mortgage market, requiring securitizers to disclose information on the credit, geographic, and demographic characteristics of the underlying loans they package into securities. This will make it easier to determine whether market participants are complying with their legal obligations, and also make clear to the public what communities these institutions are and are not serving.

We will work with Congress to ensure that *all* communities and families – including those in rural and economically distressed areas, as well as those that are low- and moderate-income – have the access to capital needed for sustainable homeownership and a range of rental options. We will consider measures to make sure that secondary market participants are providing capital to all communities in ways that reflect activity in primary markets, consistent with their obligations of safety and soundness.

Dedicated funds for targeted homeownership and rental affordability

Although FHA and other federal affordable housing policies do a great deal to provide access and affordability, we recognize that a more balanced system will require additional resources to address clear gaps. The Administration will thus advocate for a dedicated, budget-neutral financing mechanism to support homeownership and rental housing objectives that current policies cannot adequately address. This funding stream would support the development and preservation of more affordable rental housing for the lowest-income families to address serious supply shortages, similar to the Housing Trust Fund that the President has proposed to be capitalized. It would support down-payment assistance and counseling to help qualified low- and moderate-income homebuyers, in a form that does not expose them or financial institutions to excessive risk or cost. We would scale up support for proven nonprofit partnerships for affordable housing production and preservation that can attract much larger amounts of private capital. And funding would help to overcome market failures that make it hard to develop a secondary market for targeted affordable housing mortgages, such as that for small rental properties.

These components target specific needs in flexible ways that can engage a range of partners and respond to local priorities and opportunities. We will work with Congress to ensure that funding will be budget neutral, transparent, and targeted to clearly defined objectives and programs.

A RESPONSIBLE PATH FORWARD FOR REFORM

The reform measures outlined in this report will help reshape the housing finance market by putting private capital back at the center of a healthier system, reducing taxpayer risk, and increasing protections for consumers and investors. However, given the still-fragile state of the housing market, implementing these reforms fully will take time. The Administration will proceed deliberately so that the mortgage-finance chain and the broader capital markets are not disrupted during this transition.

The importance of a responsible transition

Proceeding with a prudent transition plan and providing the necessary financial support to Fannie Mae and Freddie Mac during that period is essential to protecting the health of the economic recovery and is in the best interests of taxpayers.

A careful transition path offers the best prospects for maximizing recovery on the investments we have made in these institutions and minimizing future losses. Prematurely constraining Fannie Mae and Freddie Mac's ability to guarantee loans or precipitously winding them down could limit the availability of mortgage credit, shock the housing market, and expose taxpayers to additional losses on the loans Fannie Mae and Freddie Mac already guarantee.

The losses that the federal government has covered at Fannie Mae and Freddie Mac under HERA authority are virtually all attributable to bad loans that those firms took on during the height of the housing bubble. Over the last two years, Fannie Mae and Freddie Mac have implemented stricter underwriting standards and increased their pricing. As a result, the new loans being guaranteed by Fannie Mae and Freddie Mac today are of much higher quality than in the past and are unlikely to pose a significant risk of loss to taxpayers.

As Fannie Mae and Freddie Mac are wound down, we must design a transition that allows for continued support of the housing market, so that Americans continue to have the ability to take out a mortgage to buy a home or refinance their existing mortgage. We will continue to work with FHFA to ensure that talent is retained so that mortgage credit continues to flow and risk is contained during the transition, and that the wind down is as successful as possible and supports taxpayers' interests.

The government is committed to ensuring that Fannie Mae and Freddie Mac have sufficient capital to perform under any guarantees issued now or in the future and the ability to meet any of their debt obligations. The Administration will not pursue policies or reforms in a way that would impair the ability of Fannie Mae and Freddie Mac to honor their obligations.

A path forward

Determining the appropriate path for how to responsibly wind down Fannie Mae and Freddie Mac and reduce the size of FHA will be challenging and will require great care. As members of the Federal Housing Finance Oversight Board ("FHFOB"), the Advisory Board to FHFA, the Secretaries of Treasury and HUD will make recommendations on the appropriate mix of incentives and deadlines for FHFA to pursue to wind down these institutions at a pace that recognizes the fragile state of the housing market.

We support the creation of a joint FHFA and FHA working group to consider changes to pricing and other standards. We recommend that FHFA and FHA seek comment from the public on the most appropriate pace of the transition and issue a timeline for tightening standards and raising pricing. This working group should provide regular updates to the FHFOB and FSOC, as reforms are implemented. Throughout the transition, FHFA and FHA should continue to seek comment and revise timelines as necessary to account for changing market conditions and accelerate the transition where possible.

As the reforms outlined in the Administration's plan are implemented and new standards at Fannie Mae, Freddie Mac, FHA, and the FHLBs are established, we will ultimately need to complete the transition to a more privatized market. We face a consequential choice about how to structure the government's ultimate role within that market. This report outlines three proposals for Congress and the Administration to consider together. Each of these proposals has unique advantages and disadvantages that deserve thorough evaluation through a robust public dialogue.

Options for the Long-Term Structure of Housing Finance

There has been robust discussion about the long-term future of the American mortgage market and a wide range of options proposed for its reform that differ both in the structure and scale of the government's future role.

As part of this discussion, we considered the range of ways other countries support housing finance. Though there are lessons to be drawn from the diversity of systems, they are complex. In most countries lacking a widely available guarantee or other means of direct government support, mortgages are financed through the banking system, which often enjoys indirect government backing. Some countries utilize their regulatory framework, or establish firm underwriting standards, to promote liquid mortgage markets. And some countries, particularly in Europe, use so-called covered bonds to channel credit to housing.

Like the U.S., several countries have government-supported entities that guarantee or hold mortgages, though in none are they as large as they have historically been in the United States. The U.S. is also the only high-income country in which securitization plays a major role in housing finance. In countries where securitization is present, it generally plays a smaller role and takes different forms than those we are familiar with in this country. The U.S. system, however, is one of the only countries in the world where the majority of mortgages are pre-payable, 30-year fixed-rate mortgages.

Although international comparisons offer useful lessons and new ideas, we believe that Americans' housing needs can best be met by a system that takes four key factors into consideration:

Access to Mortgage Credit. Government support for housing finance can expand access to mortgage credit for creditworthy American families. By attracting additional capital into the housing finance system, it can lower the cost of mortgages and increase the availability of certain kinds of mortgage products, such as the 30-year, fixed-rate mortgage. The government can also help standardize the national mortgage market by setting specific criteria for the types of mortgages that it will support. Government support can also increase access to secondary markets for smaller lenders and community banks, promoting a more competitive market and minimizing consolidation.

Incentive for Investment in Housing. Government support makes investment in housing more attractive. While this can broaden access and lower costs for borrowers and communities, it can also draw investment away from other areas that may lead to greater long-term growth or job creation and it can inflate the value of housing assets, possibly leading to larger boom and bust cycles. Without government support, however, some of the capital invested in the housing market today may simply move to investments outside the United States that offer better risk-weighted returns. Other government policies, such as tax incentives like the mortgage interest deduction and other tax credits can also encourage investment towards housing over other sectors in the economy.

Taxpayer Protection. Any time the government stands behind a loan, even indirectly, it takes on some degree of risk. While the government can charge market participants an insurance premium for accepting that risk, pricing risk properly can be difficult. If the government does not charge a fair price, it may encourage excessive risk-taking and increase the likelihood that the taxpayer will be forced to bear the cost of the government's losses. Political pressure to lower the price of government support increases the odds that the government will misprice risk and put taxpayers at risk. Requiring private capital to come ahead of government guarantees or providing a way to ensure taxpayer losses are repaid through future assessments, such as higher fees, may mitigate these risks.

Financial and Economic Stability. Government support can help promote financial stability by ensuring the flow of credit through periods of economic stress. However, if not properly structured, it can also encourage the private market to take on excessive risk and potentially destabilize the system.

While the options that have been proposed vary widely, each can be viewed as posing trade-offs between the four factors mentioned above.

Some advocates and experts have proposed approaches to our housing finance system that starkly illustrate this trade-off: one advocates a near complete privatization of the mortgage market, while others advocate for its near complete nationalization. Under the former, the government would restrict support for the mortgage market to narrowly targeted subsidies for lower-income Americans. Under the latter, the government would provide an explicit guarantee and directly bear most of the credit risk for almost the entire mortgage market.

While each of these approaches has positive attributes, the Administration does not believe that either represents a viable long-term strategy for the nation's housing market. Complete privatization would limit access to, and increase the cost of, mortgages for most Americans too dramatically and leave the government with very little it can do to ensure liquidity during a crisis. Near-complete nationalization runs too high a risk of crowding out private capital, distorting investment decisions, and putting too much taxpayer money at risk.

The Administration believes that the right course falls between these two extremes, with the government's role in the future mortgage market striking a balance between the factors outlined above: creditworthy Americans should have broad access to credit, but not at a cost of excessive taxpayer risk, distorted markets, or financial instability.

With that in mind, we should consider three possible courses for long-term reform.

Option 1: Privatized system of housing finance with the government insurance role limited to FHA, USDA and Department of Veterans' Affairs' assistance for narrowly targeted groups of borrowers

This option would dramatically reduce the government's role in insuring or guaranteeing mortgages, limiting it to FHA and other programs targeted to creditworthy lower- and moderate-income borrowers. While the government would continue to provide access for this targeted segment of borrowers, it would leave the vast majority of the mortgage market to the private sector.

The strength of this option is that it would minimize distortions in capital allocation across sectors, reduce moral hazard in mortgage lending and drastically reduce direct taxpayer exposure to private lenders' losses. With less incentive to invest in housing, more capital will flow into other areas of the economy, potentially leading to more long-run economic growth and reducing the inflationary pressure on housing assets. Risk throughout the system may also be reduced, as private actors will not be as inclined to take on excessive risk without the assurance of a government guarantee behind them. And finally, direct taxpayer risk exposure to private losses in the mortgage market would be limited to the loans guaranteed by FHA and other narrowly-targeted government loan programs: no longer would taxpayers be at direct risk for guarantees covering most of the nation's mortgages.

Though these are indeed significant benefits, this option has particularly acute costs in its potential impact on access to credit for many Americans. While FHA would continue to provide access to mortgage credit for low- and moderate-income Americans, the cost of mortgage credit for those who do not qualify for an FHA-insured loan – the majority of borrowers – would likely increase. While mortgage rates are likely to rise somewhat under any responsible reform proposal, including the three outlined here, the effect could be larger under this option. In particular, it may be more difficult for many Americans to afford the traditional pre-payable, 30-year fixed-rate mortgage. Additionally, smaller lenders and community banks could have a difficult time competing for business outside of the FHA segment of the market, which may in turn impact access to lending in the communities they have traditionally served more effectively than larger institutions.

Another concern with this option is the ability of the government to effectively step in to ensure access to capital during a crisis. Congress, FHA, the Federal Reserve, and other regulators would be able to play the countercyclical role that they have played in the recent downturn, but it is unlikely that they could play a still more robust role as might be needed in the absence of broader government support in the market. And absent sufficient government support to mitigate a credit crisis, there would be greater risk of a more severe downturn, and thus the risk of greater cost to the taxpayer. A related risk would exist if investors believe that the government would inevitably step in to save whatever private financial institutions or banks have become necessary to maintain the flow of mortgage credit. If so, this option will potentially fail to eliminate the risk of moral hazard.

Option 2: Privatized system of housing finance with assistance from FHA, USDA and Department of Veterans' Affairs for narrowly targeted groups of borrowers and a guarantee mechanism to scale up during times of crisis

As in the option above, FHA and other narrowly targeted programs would provide access to mortgage credit for low- and moderate-income borrowers, but the government's overall role in the housing finance system would be dramatically reduced. In this option, however, the government would also develop a backstop mechanism to ensure access to credit during a housing crisis.

This backstop would maintain a minimal presence in the market during normal times, but would be ready to scale up to a larger share of the market as private capital withdraws in times of financial stress. One approach would be to price the guarantee fee at a sufficiently high level that it would only be competitive in the absence of private capital. It would thus only expand when needed, and that need would be dictated by the market. An alternative approach would restrict the amount of public insurance sold to the private market in normal times, but allow the amount of insurance offered to ramp up to stabilize the market in times of stress.

The strength of this proposal is that it would be designed to address one of the primary concerns associated with the prior model – the inability of the government to soften a contraction of credit during a crisis – without necessarily taking on all the costs associated with a broad government guarantee during normal times. During normal times it would avoid the distortions in the housing market associated with a broad-based guarantee and thus reduce both moral hazard and taxpayer risk. Again, private capital would be more likely to flow to the most productive assets in the economy, private actors would be on the hook for their own risky decisions and the government would not be putting taxpayers at direct risk in backing the nation's mortgage market.

In addition to these benefits, the government would be in a better position than under Option One to manage another downturn in the housing market. As private capital pulls back, the government could better step in to ensure the availability of credit and thus help to stabilize a declining market. Though this would likely be more effective than relying only on Congress, FHA, and the Federal Reserve, there remains a significant operational challenge in designing and managing an organization that can remain small during normal economic times, yet has the capacity to take on much more business quickly during these times of need.

There are other costs to this model as well. Aside from the uncertainty around how well it would be able to scale up in times of crisis, there is the same concern with the access issues that we face with the prior option. Access to credit, particularly the pre-payable, 30-year fixed-rate mortgage, would likely be more expensive under this option than under the following one.

Option 3: Privatized system of housing finance with FHA, USDA and Department of Veterans' Affairs assistance for low- and moderate-income borrowers and catastrophic reinsurance behind significant private capital

Under this option, as in the previous options, the mortgage market outside of the FHA and other federal agency guarantee programs would be driven by private investment decisions with private capital taking the primary credit risk. However, to increase the liquidity in the mortgage market and access to mortgages for creditworthy Americans – as well as to ensure the government's ability to respond to future crises – the government would offer reinsurance for the securities of a targeted range of mortgages.

In one approach to such a system, a group of private mortgage guarantor companies that meet stringent capital and oversight requirements would provide guarantees for securities backed by mortgages that meet strict underwriting standards. A government reinsurer would then provide reinsurance to the holders of these securities, which would be paid out only if shareholders of the private mortgage guarantors have been entirely wiped out. The government reinsurer would charge a premium for this reinsurance, which would be used to cover future claims and recoup losses to protect taxpayers.

The strength of this option is that it likely provides the lowest-cost access to mortgage credit of the three options. While mortgage rates would be increased by the cost of the premium and the first-loss position of private capital, this reinsurance will likely attract a larger pool of investors to the mortgage market, increasing liquidity. This, in turn, could help to lower the prices and pricing volatility of mortgages and increase the availability of the pre-payable, 30-year fixed-rate mortgage. It will also provide a more competitive playing field for smaller lenders and community banks, which, in turn, could improve access in communities where those institutions have a good record of service. And finally, the government reinsurer's broad presence in the market could put it in a position to scale up to provide credit during a time of stress in the market more effectively.

However, this option, too, comes with costs. The increased flow of capital into the mortgage market could draw capital away from potentially more productive sectors of the economy and could artificially inflate the value of housing assets. And while the capital requirements, oversight of the private mortgage guarantors, and premiums collected to cover future losses will together help to reduce the risk to the taxpayer, the reinsurance of private-lending activity, by its nature, exposes the government to risk and moral hazard. If the oversight of the private mortgage guarantors is inadequate or the pricing of the reinsurance too low or recoupment of costs too politically difficult, then private actors in the market may take on excessive risk and the taxpayer could again bear the cost.

THE CHOICE AHEAD

In choosing among these options, care must be given to designing a system that maximizes the benefits we are seeking from government involvement in the mortgage market, while minimizing the costs. We must also consider how to utilize the existing systems and assets in our housing finance system, including those at Fannie Mae and Freddie Mac, as best as possible for the benefit of the taxpayer and the American people. But design choices alone will not tell us what the best path is for the future of our mortgage system, for we are faced with difficult trade-offs. We must decide what we take to be the right balance between providing broad access to mortgages for American families, managing the risk to taxpayers, and maintaining a stable and healthy mortgage market. As we see above, these priorities are not always well aligned, so we will have to make difficult decisions as we choose the path for long-term reform.

There will of course be significant debate about how to strike this difficult balance. But we must be careful not to let that debate keep us from the immediate task at hand: we need to scale back the role of government in the mortgage market, and promote the return of private capital to a healthier, more robust mortgage market.

We will continue to seek input and consult with a wide variety of constituents, market participants, academic experts, and consumer and community organizations on our plan for reform. Given the importance of the long-term stability of the housing market and the critical role the government continues to play in the current financial circumstances, this approach to housing finance reform, built upon significant input from various stakeholders, should form the basis for a strong bi-partisan solution that results in a stronger housing finance market for all Americans.

The housing finance system *must* be reformed. It is the vital link to sustainable homeownership and rental options for millions of Americans, and it is central to our nation's economy. We allowed its flaws to go unchecked for too long, contributing to a financial collapse that has strained families, decimated communities, and pushed the economy into the worst recession since the Great Depression. The Obama Administration here provides a path of reform, which will lead to a future system with more private capital, better-aligned incentives, more oversight, and less risk to the taxpayer – in short, to a healthier, more stable system of housing finance.

MOODY'S
INVESTORS SERVICE

SECTOR COMMENT

Plan To Raise Fannie Mae and Freddie Mac Guarantee Fees Raises Question of Support

Extracted from "Moody's Weekly Credit Outlook", dated September 26, 2011

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In a speech on 19 September at the American Mortgage Conference, Edward DeMarco, acting director of the Federal Housing Finance Agency (FHFA), the regulator of Fannie Mae and Freddie Mac (the government-sponsored enterprises, or GSEs), supported a series of periodic, gradual increases in GSE guarantee fees[1] with the goal of shrinking the GSEs' presence. This is consistent with the US government's goal as stated in a February 2011 Treasury report.[2] Actions that lessen the relevance of Fannie Mae and Freddie Mac are credit negative for GSE bondholders because the government is embarking on a process to reduce reliance on GSEs without clearly articulating, among other things, if bondholders will be protected beyond the current capital support.

In February 2011, the Treasury report stated the administration's intention to wind down Fannie Mae and Freddie Mac. One method mentioned was to gradually increase guarantee fees so as to enable private capital to more effectively compete with the GSEs. Less clear was the timing of the wind-down, whether bondholders might receive further protections, and the future role of the US government in the housing market.

Only the inadequacy of the GSEs capital base is clear, a point with which the FHFA seems to agree, based on Mr. DeMarco's comments at the conference: "It ought to be clear to everyone at this point, given the enterprises' losses since being placed into conservatorship and the terms of the Treasury's financial support agreements, that the enterprises will not be able to earn their way back to a condition that allows them to emerge from conservatorship."

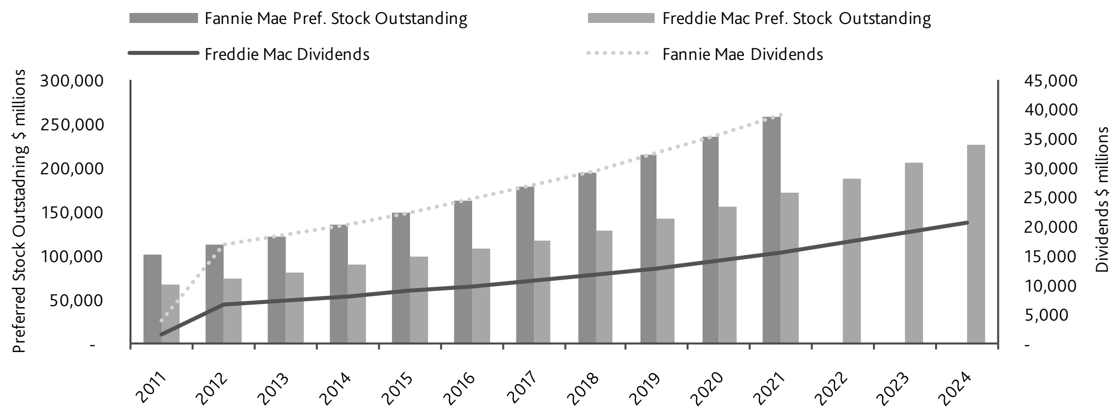
Our Aaa ratings on Fannie Mae's and Freddie Mac's senior unsecured debt are entirely based on US government support, without which the GSEs' capitalization level and overall financial profile would not support. As shown in Exhibit 1, preferred shares outstanding and dividends will continue to increase even if Fannie Mae and Freddie Mac can break even after provisioning for credit losses. In effect, Fannie Mae and Freddie Mac will be borrowing money from the US Treasury in order to pay the US Treasury its 10% dividend on the senior preferred stock.

What is Moody's Weekly Credit Outlook?

Moody's Weekly Credit Outlook provides our research clients with timely opinions on breaking credit market developments and trends. Published every Monday morning, the newsletter will help you start your week informed of Moody's latest opinions from across the organization.

1 A 10-basis-point increase in guarantee fees was also included in President Obama's economic plan.
2 Reforming America's Housing Finance Market: A Report to Congress, February 2011.

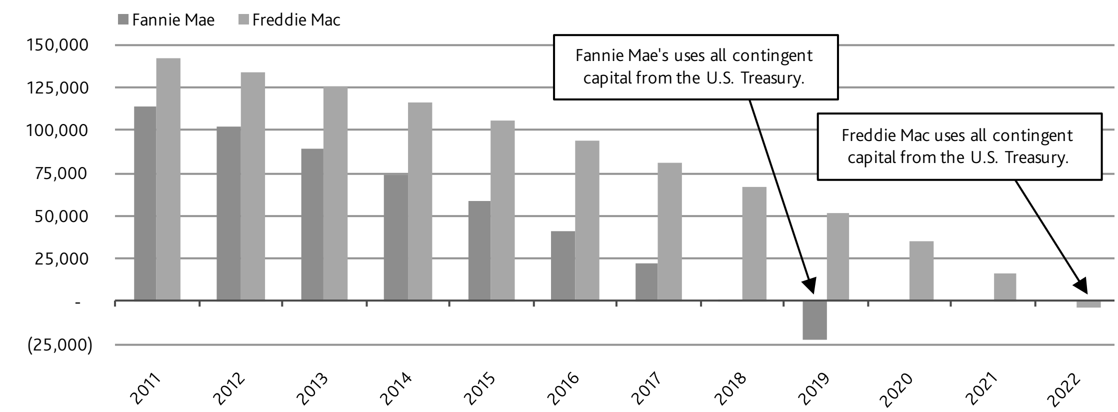
EXHIBIT 1
GSE Preferred Stock Outstanding and Dividend



Source: Fannie Mae and Freddie Mac financial statements, Moody's

Furthermore, dividends on the US Treasury's senior preferred stock will eliminate Fannie Mae's contingent capital by 2019 and Freddie Mac's by 2022 (see Exhibit 2). This assumes that the GSEs are able to fully offset credit losses, which we believe is unlikely.

EXHIBIT 2
Fannie Mae's and Freddie Mac's Contingent Capital



Source: Fannie Mae and Freddie Mac financial statements, Moody's

Our view of US government support for Fannie Mae and Freddie Mac is predicated on the importance of the two institutions to mortgage finance and the importance of mortgage finance to the US economy. The government's actions to preserve Fannie Mae and Freddie Mac, as well as statements by senior government officials lead us to believe that the likely path of GSE reform will include further support for current creditors, if necessary.

However, if GSE reform proves too contentious to arrive at a consensus, or if it excludes explicit support and results in less relevant GSEs with insufficient contingent capital, it would be credit negative and prompt a review of their Aaa ratings. In this case, the GSEs' debt ratings would depend on the companies' capital position and financial profile, and would likely be multiple notches below the current Aaa ratings.

Report Number: 136281

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MOODY'S
INVESTORS SERVICE

FEDERAL HOUSING FINANCE AGENCY

NEWS RELEASE

For Immediate Release
October 27, 2011

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FHFA Updates Projections of Potential Draws for Fannie Mae and Freddie Mac

Washington, DC –The Federal Housing Finance Agency (FHFA) today released updated projections of the financial performance of Fannie Mae and Freddie Mac, including potential draws under the Senior Preferred Stock Purchase Agreements with the U.S. Department of the Treasury. FHFA first released financial projections in October 2010, and these updated projections show similar results for two out of three scenarios, and a decrease in cumulative Treasury draws in one scenario. Through the FHFA Conservator's Report, FHFA tracks actual performance versus projections on a quarterly basis.

(Attachment follows)

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The Federal Housing Finance Agency regulates Fannie Mae, Freddie Mac and the 12 Federal Home Loan Banks. These government-sponsored enterprises provide more than $5.7 trillion in funding for the U.S. mortgage markets and financial institutions.

Federal Housing Finance Agency

Projections of the Enterprises' Financial Performance

October 2011

Contents

Summary

- This report provides updated information on possible future Treasury draws by Fannie Mae and Freddie Mac (the "Enterprises") under specified scenarios, using consistent assumptions for both Enterprises. FHFA published initial projections of the Enterprises' financial performance in October 2010. The report on the initial projections can be found in FHFA's Projections of the Enterprises' Financial Performance, October 2010. The projections have been updated to reflect the current outlook for house prices, interest rates, and recent trends in borrower behavior. The projection period has been extended an additional year.
- To date, the Enterprises have drawn $169 billion from Treasury under the terms of the Senior Preferred Stock Purchase Agreements (PSPAs), as amended, between the Treasury and each of the Enterprises. FHFA worked with the Enterprises to develop forward-looking financial projections across three possible house price paths. **Under the three scenarios used in the projections, cumulative Treasury draws (including dividends) at the end of 2014 range from $220 billion to $311 billion. In the initial projections released in October 2010, cumulative Treasury draws (including dividends) at the end of 2013 ranged from $221 billion to $363 billion.**
- The difference in the range of ending cumulative Treasury draws between the October 2010 projections and the October 2011 projections can be attributed primarily to the fact that actual results for the first year of the projection period in the October 2010 projections were substantially better than projected. (See page 8 for further details.)
- The projections reported here are not expected outcomes. They are modeled projections in response to "what if" exercises based on assumptions about Enterprise operations, loan performance, macroeconomic and financial market conditions, and house prices. The projections do not define the full range of possible outcomes. Actual outcomes may be very different. This effort should be interpreted as a sensitivity analysis of future draws to possible house price paths.
- FHFA provided the Enterprises with key assumptions for each scenario. The Enterprises used their respective internal models to project their financial results based on the assumptions provided by FHFA. While this effort achieves a degree of comparability between the Enterprises, it does not allow for actions that the Enterprises might undertake in response to the economic conditions specified in the scenarios. Those Enterprise-specific business changes could lead to different results across the scenarios than are presented in these projections.

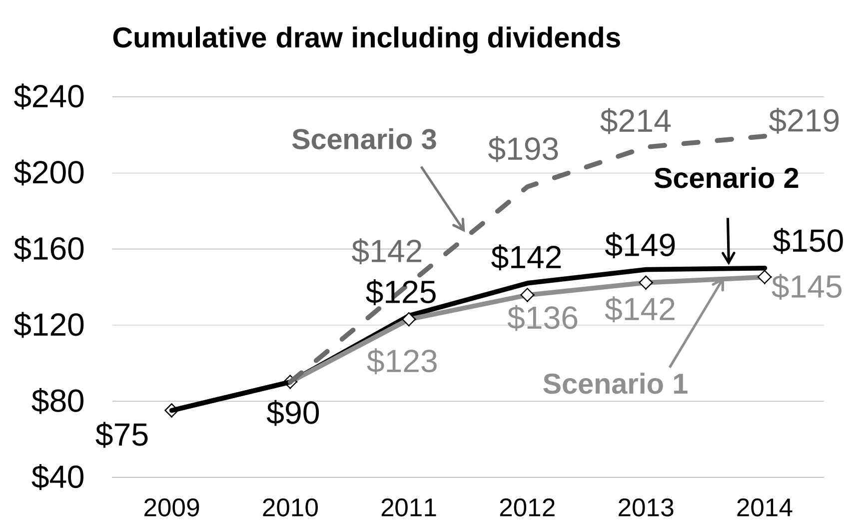
Results

The assumptions used in each of the three scenarios are described on page 11. The projected combined cumulative Treasury draws for both Enterprises through December 31, 2014 reach $220 billion under Scenario 1, $226 billion under Scenario 2, and $311 billion under Scenario 3. Fannie Mae's cumulative draws are higher than Freddie Mac's in part because Fannie Mae's mortgage book of business is approximately fifty percent larger than Freddie Mac's. In addition, Fannie Mae's serious delinquency rates are higher than Freddie Mac's.

Figure 1: Cumulative Treasury Draws* *($ in billions)*

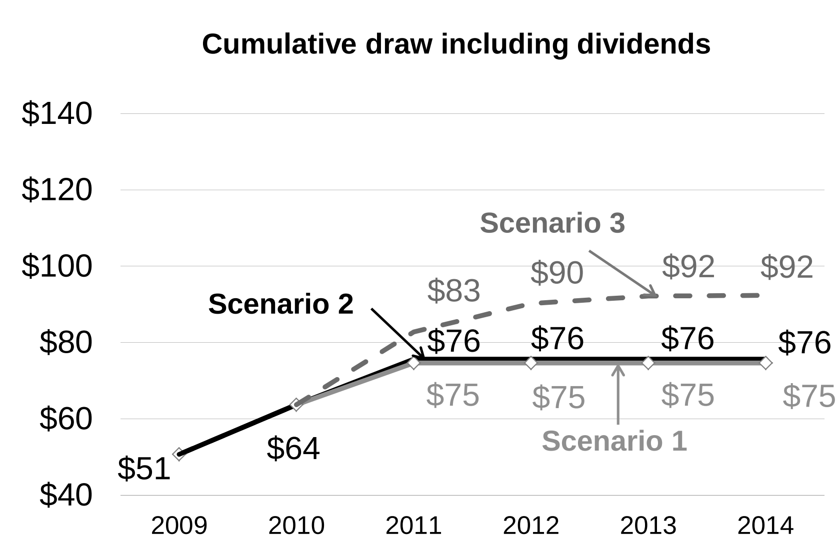
Fannie Mae

*Includes any projected net deficit at the end of 2014



Freddie Mac

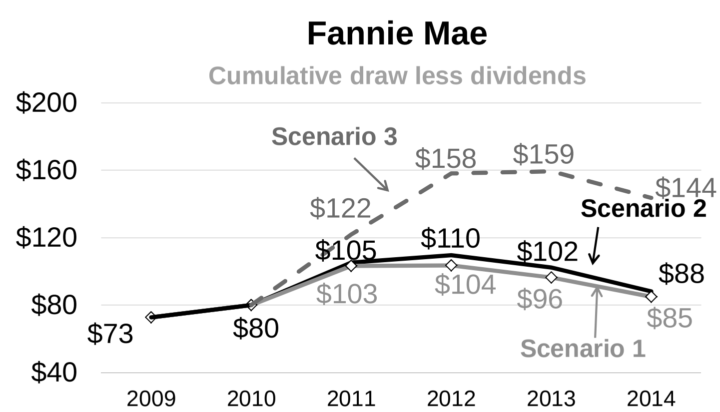
*Includes any projected net deficit at the end of 2014

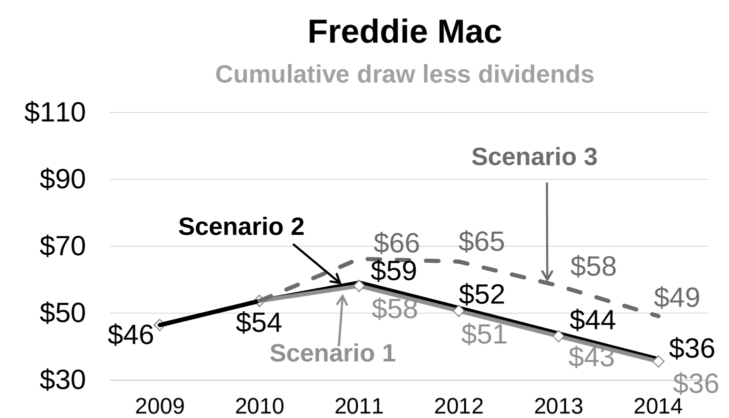


Results (continued)

The Enterprises are required to pay a 10 percent dividend on the amount of funds drawn by the Enterprises under the Senior Preferred Stock Purchase Agreements (PSPAs) with Treasury. The PSPAs do not allow for dividends to reduce prior draws. However, for illustrative purposes, if dividend payments were subtracted from the projected cumulative draws, the net amounts would reach $121 billion under Scenario 1, $124 billion under Scenario 2, and $193 billion under Scenario 3. Most dividends to date have been paid from funds acquired with additional draws. The projections show a portion of future dividends being paid out of comprehensive income.

Figure 2: Cumulative Treasury Draws less dividends paid *($ in billions)*





Cumulative Treasury Draw through 2014 (Fannie Mae)

	Scenario 1	Scenario 2	Scenario 3
Related to operating losses and other*	$105	$110	$161
Related to senior preferred dividends	40	40	58
Cumulative Treasury Draw	$145	$150	$219
Senior preferred dividends (not financed through Treasury Draws)	$20	$22	$18
Total senior preferred dividends	$60	$62	$76

Cumulative Treasury Draw through 2014 (Freddie Mac)

	Scenario 1	Scenario 2	Scenario 3
Related to operating losses and other*	$58	$59	$66
Related to senior preferred dividends	17	17	26
Cumulative Treasury Draw	$75	$76	$92
Senior preferred dividends (not financed through Treasury Draws)	$22	$22	$17
Total senior preferred dividends	$39	$39	$43

*Operating losses and other refers to net losses reported on the income statement, changes in unrealized losses reported on the balance sheet, and the impact of other accounting changes for consolidation and security impairments.
In accordance with Senior Preferred Stock Purchase Agreements (PSPAs), the Enterprises are not permitted to paydown the Treasury draw amounts, even if the Enterprises generate positive net income or total comprehensive income.
Numbers may not foot due to rounding.

Results (continued)

Credit-related expenses, particularly the provision for credit losses, continue to drive projected Treasury draws across all three scenarios. Fannie Mae's credit-related expenses increase by $57 billion from Scenario 1 to Scenario 3, and for Freddie Mac that increase amounts to $23 billion. Thus $80 billion of the projected $92 billion difference in Treasury draws across those scenarios is directly related to credit-related expense projections.

Figure 3: Cumulative Financial Results (2009-2014) *($ in billions)*

	Fannie Mae					Freddie Mac				
	Scenario 1		Scenario 2		Scenario 3	Scenario 1		Scenario 2		Scenario 3
Revenues	$112		$112		$110	$104		$104		$103
Provision for credit losses	(135)		(139)		(189)	(64)		(66)		(86)
Other credit-related expenses[1]	(35)		(35)		(38)	(26)		(26)		(27)
Total Credit-related Expenses/Losses	**(170)**	→ 4	**(174)**	→ 53	**(227)**	**(90)**	→ 2	**(92)**	→ 21	**(113)**
Other expenses[2]	(33)		(33)		(33)	(26)		(26)		(26)
Net Income (Loss)	($91)		($94)		($150)	($12)		($14)		($36)
Capital Change										
Net Income	(91)		(94)		(150)	(12)		(14)		(36)
Dividends	(60)		(62)		(76)	(39)		(39)		(43)
Other[3]	21		21		21	21		22		31
Total Capital Change	(130)		(135)		(204)	(30)		(31)		(48)
Beginning Net Worth (12/31/2008)	(15)		(15)		(15)	(31)		(31)		(31)
Capital Deficit (2009-2014)	(145)		(150)		(219)	(61)		(62)		(79)
Senior Preferred Treasury Draw (2009-2014)	145	→ 5	150	→ 69	219	61	→ 1	62	→ 17	79
Cumulative Senior Preferred Treasury Draw[4]	**$145**		**$150**		**$219**	**$75**		**$76**		**$92**
Cumulative Draw less Dividends[4]	**$85**		**$88**		**$144**	**$36**		**$36**		**$49**

[1]Consists of foreclosed property expenses, SOP 03-3 losses, net, and other than temporary impairments.
[2]Consists of mark-to-market gains/losses, administrative expenses, tax expense/benefit and other expenses.
[3]Consists of change in accumulated other comprehensive income, and other accounting changes for consolidation and security impairments, less positive net worth as of 12/31/14, if any.
[4]Freddie Mac's cumulative draw includes $13.8 billion of Treasury draw received in 2008.
Projected financial results assume that the Senior Preferred Stock Purchase Agreement (PSPA) commitment fee has been waived at both Enterprises.
Numbers may not foot due to rounding.

Results (continued)

The Enterprises have received $169 billion from Treasury to maintain positive net worth. For the selected scenarios an additional $51 to $142 billion would be required to support the Enterprises over the projection period. In Scenarios 1 and 2, dividend payments to Treasury exceed additional Treasury draws. Per the terms of the Senior Preferred Stock Purchase Agreements with Treasury, senior preferred stock accrues dividends at 10 percent per year.

Figure 4: Additional Treasury Draws and Dividends (Jul 2011 through Dec 2014) *($ in billions)*

	Current Draw as of 06/30/11		Scenario 1		Scenario 2		Scenario 3	
	Total Draw	Total Dividends	Additional Draw	Additional Dividends	Additional Draw	Additional Dividends	Additional Draw	Additional Dividends
Fannie Mae	$104	$15	$41	$45	$46	$47	$115	$61
Freddie Mac	65	13	10	26	11	26	27	30
Total	$169	$28	$51	$71	$57	$73	$142	$91

Comparison of October 2011 Projections to October 2010 Projections

The projection period for the current projections and the previous projections runs three and a half years. The current projection period runs through the end of 2014. The prior projection period runs through the end of 2013.

- In the October 2011 projections, the ending combined cumulative Treasury draw is $1 billion lower for scenario 1 and $51 billion lower for scenario 3 than the ending cumulative Treasury draw in the October 2010 projections. The difference can be attributed to three primary factors:
  - Actual results for the first year of the projection period were substantially better than projected. The actual combined Treasury draw was $19 billion lower for scenario 1 and $73 billion lower for scenario 3 than the projections (See Figure 5). This factor is partially offset by the next two factors.
  - Projected Treasury draws for the remainder of the initial projection period were $14 billion higher for scenario 1 and $16 billion higher for scenario 3 in the October 2011 projections; and
  - The projection period has been extended through 2014, adding $3 billion in Treasury draws for scenario 1 and $6 billion in Treasury draws for scenario 3.
- Drivers of the differences in the projected pattern of financial results include the following factors:
  - Recent observed trends show that borrowers with high MTM LTV loans and modified loans are performing better than previously projected.
  - The number of serious delinquent loans has declined as transition rates to later stages of delinquency are lower than previously projected.
  - Foreclosure delays pushed some defaults into later years of the projection period and beyond.
  - Recent observed trends indicate higher REO sales prices than previously projected.
  - Net interest income is higher in the current projection results due to lower interest rates, resulting in decreased funding costs and slightly higher average portfolio balances, driven by slower portfolio liquidations than previously projected.
  - The house price path in scenario 3 used in the current projections is better through the second quarter of 2012 and worse thereafter, compared to the corresponding house price path used in the October 2010 projections.

Comparison of October 2011 Projections to October 2010 Projections (continued)

Figure 5: Comparison of Oct 2011 Projections to Oct 2010 Projections *($ in billions)*

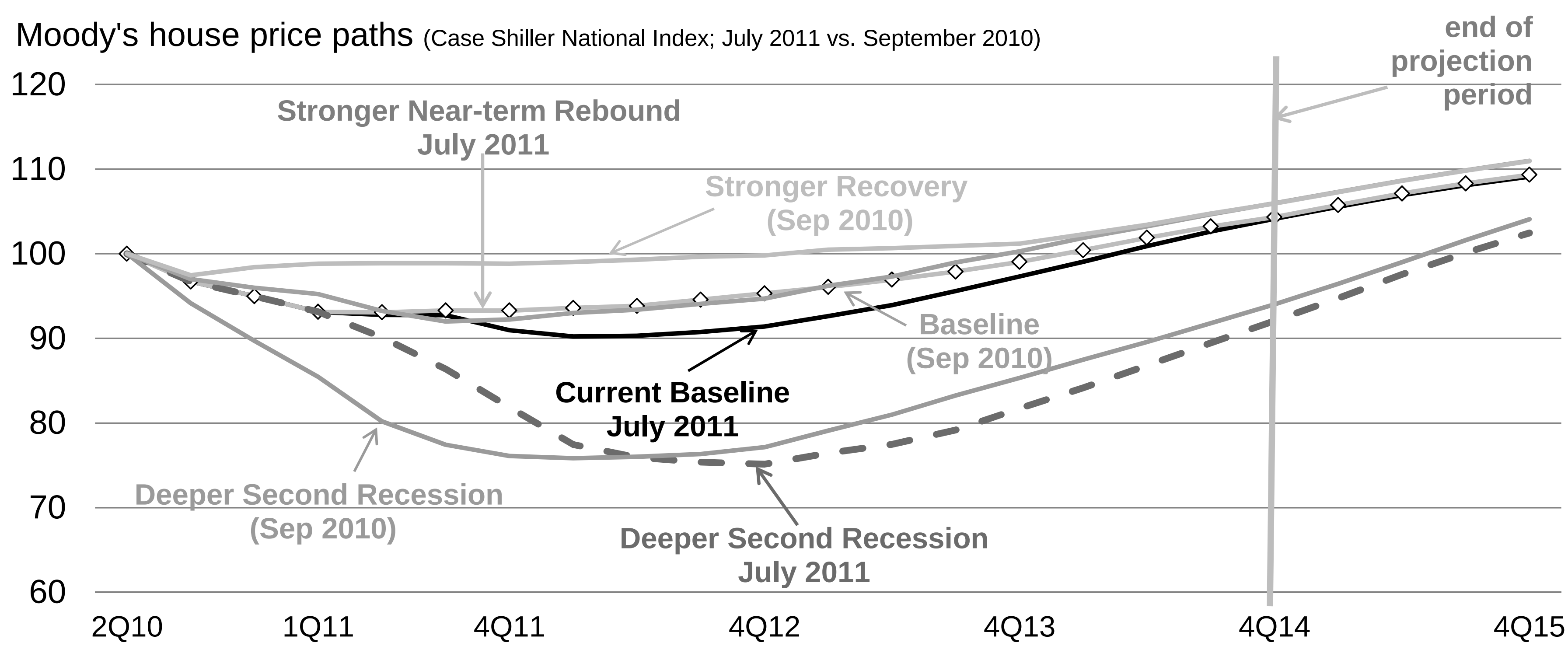
	Scenario 1	Scenario 2	Scenario 3
October 2010 Projections			
Beginning Cumulative Draw 6/30/10	148	148	148
Projected Treasury draw - Year 1 (Second half of 2010 and first half of 2011)	39	50	93
Projected Treasury draw - Years 2-$3^1/_2$ (Second half of 2011; 2012 and 2013)	34	40	121
Ending Cumulative Draw 2013	**221**	**238**	**363**
October 2011 Projections			
Beginning Cumulative Draw 6/30/10	148	148	148
Actual Treasury draw - Year 1 (Second half of 2010 and first half of 2011)	21	21	21
Beginning Cumulative Draw 6/30/11	169	169	169
Projected Treasury draw - Years 2-$3^1/_2$ (Second half of 2011; 2012 and 2013)	48	56	137
Projected Treasury draw - Year $3^1/_2$-$4^1/_2$ (2014)	3	1	6
Ending Cumulative Draw 2014	**220**	**226**	**311**
Difference in ending Cumulative Draw			
Actual versus Projection - Year 1 (Second half of 2010 and first half of 2011)	(19)	(29)	(73)
Difference in Projections - Years 2-$3^1/_2$ (Second half of 2011; 2012 and 2013)	14	16	16
Additional year of Projection (2014)	3	1	6
Total difference in ending cumulative draw	**(1)**	**(12)**	**(51)**

Numbers may not foot due to rounding

Comparison of October 2011 Projections to October 2010 Projections (continued)

Actual and forecasted house price paths for Scenarios 1 and 2 used in the October 2011 projections are worse compared to the corresponding house price paths used in the October 2010 projections. The house price path in Scenario 3 used in the October 2011 projections is better through the second quarter of 2012 and worse thereafter, compared to the corresponding house price path used in the October 2010 projections.

Figure 6: Comparison of Current and Previous House Price Paths



Projection Scenarios

Key factors that influence the Enterprises' financial results are listed in Figure 7. FHFA requested that the Enterprises project financial results for three scenarios. Because changes in house prices have had the largest impact on the Enterprises' financial results, we chose to change only this factor across the three scenarios.

Figure 7: Scenario Assumptions

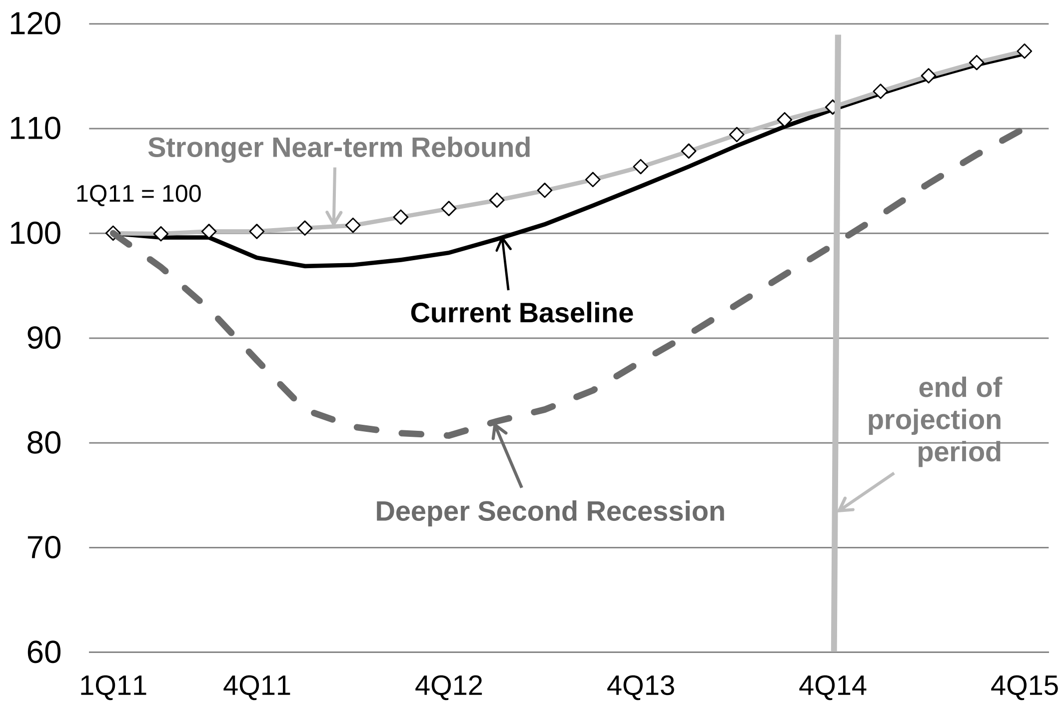
Factor	Scenario 1	Scenario 2	Scenario 3
House prices*	Moody's "Stronger Near-term Rebound" house price paths	Moody's "Current Baseline" house price paths	Moody's "Deeper Second Recession" house price paths
Interest rates	Future interest rates are implied by the forward curves as of June 30, 2011.	*Same as Scenario 1*	*Same as Scenario 1*
Securities prices	ABS and CMBS prices fall by 5 points at the beginning of the period	*Same as Scenario 1*	*Same as Scenario 1*
Agency MBS spreads	Agency MBS spreads to swaps remain unchanged.	*Same as Scenario 1*	*Same as Scenario 1*
Credit Guarantee growth	Zero growth in credit guarantees through year end 2014.	*Same as Scenario 1*	*Same as Scenario 1*
Retained Portfolio growth	Additions to retained portfolios are limited to nonperforming loans bought out of pools backing Fannie Mae's MBS and Freddie Mac's PCs.	*Same as Scenario 1*	*Same as Scenario 1*

*Moody's house price paths as of July 2011

House Price Assumptions

House price changes have been the major driver of credit losses at the Enterprises. A wide range of possible future paths exist for house prices at the national and local levels. Given the high level of uncertainty about overall economic conditions in general and the U.S. housing markets in particular, FHFA directed the Enterprises to project financial results for Moody's current baseline and two additional house price paths. Moody's considers "Deeper Second Recession" to be a downside alternative to the Current Baseline and "Stronger Near-term Rebound" to be an upside alternative to the Current Baseline.

Figure 8: Moody's House Price Paths *(Case-Shiller National Index; July 2011)*



Descriptions

Stronger Near-term Rebound ***(FHFA Scenario 1)***
An expansion of credit supports above-baseline growth. As a result, house prices start to increase after 2Q11, although additional increases are minimal in 2011 and 2012. The peak-to-trough decline is 33% based on the Case-Shiller National Index. From the trough in 2Q11 to the end of the forecast period house prices increase by 12%. Total new housing permits reach an annual pace above 1 million units by the first quarter of 2012.

Current Baseline ***(FHFA Scenario 2)***
Remaining home price declines contribute to a 35% peak-to-trough decline based on the Case-Shiller National Index. From the trough in 1Q12 to the end of the forecast period, house prices increase by 15%. Total new housing permits reach an annual pace above 1 million units by the second quarter of 2012.

Deeper Second Recession ***(FHFA Scenario 3)***
As a result of continuing high unemployment, the moderate rebound in housing construction that occurred over the first half of 2009 and then stalled reverses course. Housing starts resume their decline, bottoming out in mid-2012, more than 80% below their peak in 2005. The peak-to-trough decline is 46% based on the Case-Shiller National Index. From the trough in 4Q12 to the end of the forecast period house prices increase by 23%.

House Price Assumptions (continued)

Selection of House Price Assumptions

Figure 8 shows national-level paths for the Case-Shiller house price index associated with the selected Moody's house price paths. Scenario 2 uses house price paths associated with Moody's "Current Baseline (July 2011)." That house price path is derived from Moody's assumptions regarding monetary and fiscal policy, U.S. dollar, and energy prices. Scenario 1 and Scenario 3 use house price paths associated with better and worse economic performance relative to Moody's "Current Baseline (July 2011)."

Moody's describes the house price paths associated with "Stronger Near-term Rebound", as being consistent with "a 10% probability that the economy will perform better than in this scenario, broadly speaking, and a 90% probability that it will perform worse." Conversely, Moody's describes the house price paths associated with "Deeper Second Recession" as being consistent with "a 90% probability that the economy will perform better, broadly speaking, and a 10% probability that it will perform worse." FHFA chose the "Deeper Second Recession" house price path to ensure a stringent test that would provide information tied to a continued severe weakening in housing.

Use of Moody's Localized Forecasts

FHFA chose to base the scenarios on Moody's house price paths because Moody's is a widely used benchmark. Moody's provides a full set of quarterly, forward-looking house price paths for each of the 384 Metropolitan Statistical Areas (MSAs) and Divisions for which FHFA publishes a historical house price index. FHFA does not forecast house prices. Such localized forecasts enable the Enterprises to project credit losses on a more comparable basis as opposed to a simple national projection of peak-to-trough change in house prices, which would require each Enterprise to translate that house price path into its own local house price index.

Defining a house price path at just the national level for the Enterprises would limit the usefulness of the results because house prices often behave quite differently in different local markets. The mix of local market price projections associated with a given national average price projection can have a substantial impact on the aggregate loss projection for an Enterprise. Similarly, defining the path with only a peak-to-trough measure is problematic because the timing of the trough and the rate of recovery beyond the trough can also greatly affect expected losses.

Appendix

Financial Projections Procedures

FHFA directed the Enterprises to project revenue, mark-to-market gains and losses, credit-related expenses, administrative expenses, earnings, capital, and, ultimately, cumulative senior preferred Treasury draws under the three scenarios using their own respective models. Both Enterprises routinely prepare financial forecasts using their respective management assumptions. Modeling assumptions were changed at both Enterprises to conform to the assumptions listed in Figure 7.

FHFA directed that the projection period cover the remainder of 2011 and the next three years, similar to projection periods used by the Enterprises for routine management forecasts. Furthermore for the selected house price paths, by the end of the projection period the bulk of credit losses are recognized.

The Enterprises' models use projections of interest rates to calculate future net interest margins, gains and losses on the retained portfolio and derivatives used for hedging, and prepayment speeds on held or guaranteed mortgages, which influence both credit losses and guarantee fee revenue.

To project revenue, the Enterprises projected the size of the retained portfolios and credit guarantee books using assumptions provided by FHFA on business volume growth. Additions to retained portfolios were limited to nonperforming loans bought out of pools backing Fannie Mae's MBS and Freddie Mac's PCs. The balance of outstanding credit guarantees at each Enterprise remained unchanged over the forecast period.

Net interest income (which includes most of the Enterprises' guarantee fee income) is driven primarily by the size of the retained portfolio and net interest margin (the difference between yield on assets and funding costs). For this exercise, funding costs were influenced by the forward curve for swaps, and asset yields were influenced by the forward curve for swaps and the assumptions about the level of Agency MBS spreads to swaps.

Guarantee fee income is driven by the size of the credit guarantee book and guarantee fee pricing. To project the size of the credit guarantee books the Enterprises used assumptions provided by FHFA on new business volume and interest rates, which influence prepayment speeds on guaranteed mortgages. FHFA did not provide explicit assumptions about guarantee fee pricing. However, FHFA reviewed the pricing assumptions of each Enterprise for the projection period for consistency. For both Enterprises, guarantee fee pricing remained relatively unchanged over the projection period.

Projections of mark-to-market losses reflect changes in the value of securities held in the retained portfolio and changes in the value of derivatives used for hedging. The Enterprises' models use assumptions about future interest rates, securities prices, and spreads to project gains and losses on securities held in the retained portfolio and on derivatives used to hedge interest rate risk.

To project credit-related expenses, each Enterprise uses a multistep process. First, a statistical loan transition model projects the unpaid principal balance (UPB) of loans expected to default over the projection period. House price projections are used to determine the mark-to-market loan-to-value ratios of the guaranteed mortgages, which in turn influence the probabilities of default, and projections of loss given default. Next, a second model projects the severity of losses associated with defaulted loans resolved through various processes. The projections of distressed UPB are combined with the projections of loss severities to arrive at credit losses for each quarter. Next, each Enterprise projected loan loss reserves based on projections of credit losses, to determine its future provisions for credit losses. Finally, projections of credit-related expenses incorporate projections of future provisions for credit losses, foreclosed property expenses, and expenses incurred after foreclosure on the property.

The Enterprises used their own respective management assumptions to project administrative expenses.

FHFA reviews models and methodologies for internal consistency and comprehensiveness as part of the continuing supervision of the Enterprises. However, as with other regulator-driven financial projections that rely on internal models of banks, the internal models of one Enterprise will produce different answers than those of the other given the same set of assumptions and other inputs.

This modeling exercise is not the same as, nor did it follow all the same control procedures as the process followed for formal financial reporting. For instance, the projections did not incorporate management judgment as to how the specific assumptions employed might produce other changes in model assumptions. Nonetheless, FHFA believes that the results of this exercise provide a reasonable indication of plausible future Treasury draws under the specified scenarios, using comparable key assumptions for each Enterprise.

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

December 21, 2011

ACTION MEMORANDUM FOR SECRETARY GEITHNER

FROM: Cyrus Amir-Mokri, Assistant Secretary for Financial Institutions
Mary Miller, Assistant Secretary for Financial Markets

SUBJECT: 2012 Periodic Commitment Fee for GSE Preferred Stock Purchase Agreements

In December 2010, Treasury decided to waive the Periodic Commitment Fee (PCF) for calendar year 2011. (See attached Action Memo with your approval.) This memo seeks your approval to waive the PCF for calendar year 2012.

RECOMMENDATION

That you approve a waiver of the Periodic Commitment Fee (PCF) for calendar year 2012 and you instruct Treasury staff to communicate the PCF waiver to the Federal Housing Finance Agency (FHFA) on a quarterly basis.

TFG Approve ________ Disapprove ________ Let's Discuss

BACKGROUND

The Periodic Commitment Fee is intended to compensate taxpayers for the ongoing financial support that Treasury provides to Fannie Mae and Freddie Mac through the Preferred Stock Purchase Agreement (PSPA). Setting the PCF requires mutual agreement by Treasury and FHFA, in consultation with the Federal Reserve. However, in its sole discretion, Treasury may waive the PCF for up to one year at a time based on adverse conditions in the mortgage market.

On December 22, 2010, you approved the waiver of the PCF for calendar year 2011. The basis for the decision was that the expected financial draws by Fannie Mae and Freddie Mac were forecast to exceed the dividends those firms pay back to taxpayers under the PSPAs, and that, accordingly, setting the PCF would not produce any additional income for taxpayers. Last year's waiver did not generate significant interest from the media or others.

In approving the waiver for calendar year 2011, Treasury also decided that it would nevertheless re-evaluate the continued need for the waiver on a quarterly basis and would communicate that quarterly waiver assessment to FHFA in writing. (Deputy Secretary Wolin signed the most recent such communication to FHFA dated September 30, 2011 – see attachment.) No PCF has been set or paid to date.

REASONS THAT WAIVER OF THE PCF REMAINS APPROPRIATE

Given the size of current and expected GSE draws over time, imposing the PCF would not generate increased return for taxpayers because it would lead the GSEs to increase their Treasury draws

- Over the longer term, the GSEs are not expected to generate enough net income to cover required dividend payments and forecasted losses.
- Even if the GSEs generated positive net income after dividends in the near term, that income could be used to offset potential draws in future quarters.

Imposing the PCF could place greater strain on housing market recovery, which remains fragile

- Private capital has not adequately returned to the market and Fannie Mae, Freddie Mac, and FHA/GNMA continue to account for approximately 90% of mortgage originations – versus less than 40% five years ago.
- More than 10 million borrowers remain underwater on their mortgages.

Waiving the PCF at year-end preserves full optionality to set the PCF next year, if housing markets stabilize and the GSEs generate positive net income in excess of their dividend commitments. Consistent with the approach taken for calendar year 2011, we plan to communicate quarterly Treasury's waiver decision to FHFA in writing.

ATTACHMENTS

1. Secretary Geithner December 2010 Action Letter approving waiver for CY 2011
2. 3Q 2011 Letter to FHFA indicating approval of waiver for 3Q 2011
3. 4Q 2011 Letter to FHFA indicating approval of waiver for 4Q 2011
4. 1Q 2012 Draft Letter to FHFA indicating approval of waiver for 1Q 2012

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

December 20, 2010

ACTION MEMORANDUM FOR SECRETARY GEITHNER

FROM: Jeffrey A. Goldstein
Under Secretary for Domestic Finance

SUBJECT: Periodic Commitment Fee for GSE Preferred Stock Purchase Agreements (PSPAs)

Recommendation

That you waive the Periodic Commitment Fee (PCF) for 2011 and reconsider next year.

__TFG__ Approve ________ Disapprove ________ Let's Discuss

Background:

- The amended PSPA agreements between Treasury and GSEs specify that a Periodic Commitment Fee (PCF) be set by December 31, 2010.
- The date for setting the PCF was previously moved from December 31, 2009 to December 31, 2010 as part of the broader amendments to the PSPAs on December 24, 2009. Therefore, no PCF has been set or paid to date.
- Treasury may waive the PCF for one year at a time in its sole discretion based on adverse conditions in the mortgage market.
- The PCF is to be mutually agreed to by Treasury and FHFA, in consultation with the Federal Reserve. The PCF was designed to fully compensate Treasury for providing its ongoing financial commitment.

Considerations:

<u>Reasons to Waive the PCF for 2011</u>

Housing markets remain fragile

- Private capital has yet to return to the market
  - Fannie Mae, Freddie Mac, and FHA/GNMA currently account for over 95% of mortgage originations – the historic average is around 40%
  - The spread between prime jumbos and conforming mortgages is still elevated and is currently around 100 basis points – the historic average is closer to 20 basis points
  - Since September 2008, there has only been one private label new issue securitization to come to the market (Redwood Sequoia deal)
- Nearly 11 million borrowers are underwater on their mortgages
- Mortgage delinquency rates remain elevated (5.2% for prime, 36.5% for subprime, and 11.9% for FHA)
- Foreclosure starts and completions remain elevated

Given the size of current GSE draws, imposing a PCF would only lead to increased Treasury draws and not generate increased return for the taxpayer

- According to the FHFA stress tests in the base case, both GSEs are expected to require additional draws through the end of 2011 to cover net income losses and required dividend payments (although projected draws are < $1 billion for Freddie Mac in Q3 and Q4) (see appendix)

Other than timing, no real additional taxpayer value is created

- Even if the GSEs generated positive surplus of net income after dividends, that surplus can be used to offset potential draws in future quarters

Potentially confusing message to the market

- Last year we stated that the fragility of the housing market was one of the rationales for postponing setting the commitment fee; by setting the fee this year (at any level), we could be viewed as implicitly making an affirmative statement on the health of the housing market

Waiving the PCF for 2011 preserves full optionality to set the PCF next year if housing markets are more stable and if the GSEs are generating positive net income in excess of their dividend commitments

Reasons to Set the PCF

- Makes clear the Administration's commitment to ensure existing common equity holders will not have access to any positive earnings from the GSEs in the future
- Illustrates further commitment to recouping taxpayer support

If you decided to set the PCF, there are two potential options:
Option 1 – Set the PCF as a percentage of the liquidation preference of the outstanding preferred stock
Option 2 – Set the PCF equal to any generated positive net income (subject to further legal review)
These would have to be mutually agreed by FHFA in consultation with the Federal Reserve

Appendix:

FHFA "Base Case" (Scenario 2) Projections - FNMA
($ in billions)

	Gross Draw	Dividend	Net Income	AOCI (1) Change	Cumulative Gross Draw
4Q10					$104.6
1Q11	$9.6	$2.3	-$7.6	$0.3	114.2
2Q11	8.8	2.6	-6.4	0.3	122.9
3Q11	7.9	2.9	-5.4	0.3	130.9
4Q11	8.7	3.1	-5.8	0.3	139.6

FHFA "Base Case" (Scenario 2) Projections - FHLMC
($ in billions)

	Gross Draw	Dividend	Net Income	AOCI (1) Change	Cumulative Gross Draw
4Q10					$72.6
1Q11	$1.2	$1.8	-$0.4	$0.9	73.8
2Q11	1.3	1.8	-0.4	0.9	75.1
3Q11	0.6	1.9	0.4	0.9	75.7
4Q11	0.2	1.9	0.7	0.9	75.9

(1) AOCI = Accumulated Other Comprehensive Income
Retained earnings changes from changes in the value of certain AFS assets

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

June 30, 2011

The Honorable Edward DeMarco
Acting Director
Federal Housing Finance Agency
1700 G Street NW
Washington, DC 20552-0003

Dear Acting Director DeMarco:

As you know, in my letter to you dated March 31, 2011, I communicated to you our waiver, for the second quarter of Calendar Year (CY) 2011, of the "Periodic Commitment Fee" (PCF) under the Amended and Restated Preferred Stock Purchase Agreement dated as of September 26, 2008, as amended (the Agreement), between the United States Department of the Treasury (Treasury) and each of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (collectively, the Enterprises).

By this letter, please be advised that Treasury waives, for the third quarter of CY 2011, the PCF payable by each Enterprise. Treasury takes this step due to the continued fragility of the mortgage market and the belief that the imposition of the PCF at this time would not fulfill its intended purpose of generating increased compensation to the American taxpayer.

Treasury will reevaluate the situation during the next calendar quarter to determine whether the PCF should then be set. Treasury remains committed to protecting taxpayers and ensuring that future positive earnings of the Enterprises are returned to taxpayers as compensation for their investment.

Sincerely,

Jeffrey A. Goldstein

THE DEPUTY SECRETARY OF THE TREASURY
WASHINGTON

September 30, 2011

The Honorable Edward DeMarco
Acting Director
Federal Housing Finance Agency
1700 G Street NW
Washington, DC 20552-0003

Dear Acting Director DeMarco:

As you know, in the letter to you dated June 30, 2011, Treasury communicated to you its waiver, for the third quarter of Calendar Year (CY) 2011, of the "Periodic Commitment Fee" (PCF) under the Amended and Restated Preferred Stock Purchase Agreement dated as of September 26, 2008, as amended (the Agreement), between the United States Department of the Treasury (Treasury) and each of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (collectively, the Enterprises).

By this letter, please be advised that Treasury waives, for the fourth quarter of CY 2011, the PCF payable by each Enterprise. Treasury takes this step due to the continued fragility of the mortgage market and the belief that the imposition of the PCF at this time would not fulfill its intended purpose of generating increased compensation to the American taxpayer.

Treasury will reevaluate the situation during the next calendar quarter to determine whether the PCF should then be set. Treasury remains committed to protecting taxpayers and ensuring that future positive earnings of the Enterprises are returned to taxpayers as compensation for their investment.

Sincerely,

Neal S. Wolin

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

December 31, 2011

The Honorable Edward DeMarco
Acting Director
Federal Housing Finance Agency
1700 G Street, NW
Washington, DC 20552-0003

Dear Acting Director DeMarco:

As you know, in the letter to you dated September 30, 2011, Treasury communicated to you its waiver, for the fourth quarter of Calendar Year (CY) 2011, of the "Periodic Commitment Fee" (PCF) under the Amended and Restated Preferred Stock Purchase Agreement dated as of September 26, 2008, as amended (the Agreement), between the United States Department of the Treasury (Treasury) and each of the Federal National Mortgage Association and the Federal Loan Mortgage Corporation (collectively, the Enterprises).

By this letter, please be advised that Treasury waives, for the first quarter of CY 2012, the PCF payable by each Enterprise. Treasury takes this step due to the continued fragility of the mortgage market and the belief that the imposition of the PCF at this time would not fulfill its intended purpose of generating increased compensation to the American taxpayer.

Treasury will reevaluate the situation during the next calendar quarter to determine whether the PCF should then be set. Treasury remains committed to protecting taxpayers and ensuring that future positive earnings of the Enterprises are returned to taxpayers as compensation for their investment.

Sincerely,

Cyrus Amir-Mokri

FEDERAL HOUSING FINANCE AGENCY

NEWS RELEASE

For Immediate Release
February 21, 2012

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

FHFA Sends Congress Strategic Plan for Fannie Mae and Freddie Mac Conservatorships

Washington, DC – Federal Housing Finance Agency (FHFA) Acting Director Edward J. DeMarco today sent to Congress a strategic plan for the next phase of the conservatorships of Fannie Mae and Freddie Mac (the Enterprises). The plan builds on the Acting Director's February 2010 letter to Congress on the conservatorships and sets forth objectives and steps FHFA is taking or will take to meet FHFA's obligations as conservator. Fannie Mae and Freddie Mac were placed into conservatorships Sept. 6, 2008 and have since received more than $180 billion in taxpayer support.

FHFA identifies three strategic goals for the next phase of the conservatorships:

- **Build.** Build a new infrastructure for the secondary mortgage market;
- **Contract.** Gradually contract the Enterprises' dominant presence in the marketplace while simplifying and shrinking their operations; and
- **Maintain.** Maintain foreclosure prevention activities and credit availability for new and refinanced mortgages.

"With the conservatorships operating for more than three years and no near-term resolution in sight, it is time to update and extend the goals and directions of the conservatorships," DeMarco wrote. "FHFA is contemplating next steps to build an infrastructure for the secondary mortgage market that is consistent with existing policy proposals and will support any outcome of the leading legislative proposals. FHFA looks forward to working with Congress and the Administration on a resolution of the conservatorships and a comprehensive review of the nation's housing finance system," said DeMarco.

Link to February 2010 letter

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The Federal Housing Finance Agency regulates Fannie Mae, Freddie Mac and the 12 Federal Home Loan Banks. These government-sponsored enterprises provide more than $5.7 trillion in funding for the U.S. mortgage markets and financial institutions.

Federal Housing Finance Agency
Constitution Center
400 7th Street, S.W.
Washington, D.C. 20024
Telephone: (202) 649-3800
Facsimile: (202) 649-1071
www.fhfa.gov

February 21, 2012

The Honorable Timothy Johnson
Chairman
Committee on Banking, Housing,
and Urban Affairs
United States Senate
Washington, DC 20510

The Honorable Richard C. Shelby
Ranking Minority Member
Committee on Banking, Housing,
and Urban Affairs
United States Senate
Washington, DC 20510

The Honorable Spencer Bachus
Chairman
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

The Honorable Barney Frank
Ranking Minority Member
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

Dear Chairmen and Ranking Members:

I am pleased to transmit a strategic plan for the conservatorships of Fannie Mae and Freddie Mac (the Enterprises) that sets forth objectives and steps the Federal Housing Finance Agency (FHFA) is taking or will take to meet the agency's obligations as conservator.

In February 2010, I sent a letter to the then Chairmen and Ranking Members of FHFA's oversight committees to explain the goals of the conservatorships and how FHFA was seeking to meet those goals. That letter focused on the establishment and purposes of the conservatorships, and the activities of the Enterprises under conservatorship.

The conservatorships of Fannie Mae and Freddie Mac have now been in place since September 2008. With the conservatorships operating for more than three years and no near-term resolution in sight, it is time to update and extend the goals and directions of the conservatorships. FHFA is contemplating next steps to build an infrastructure for the secondary mortgage market that is consistent with existing policy proposals and will support any outcome of the leading legislative proposals.

In the attached strategic plan, FHFA identifies three strategic goals for the next phase of the conservatorships:

- Build. Build a new infrastructure for the secondary mortgage market;

- Contract. Gradually contract the Enterprises' dominant presence in the marketplace while simplifying and shrinking their operations; and
- Maintain. Maintain foreclosure prevention activities and credit availability for new and refinanced mortgages.

The strategic plan reviews each of these goals and describes actions FHFA is planning or is already taking to accomplish them. FHFA looks forward to working with Congress and the Administration on a resolution of the conservatorships and a comprehensive review of the nation's housing finance system.

I would be pleased to speak with you about these matters and answer any questions you may have. I believe the information contained in this letter will help mortgage industry participants and the public better understand the role of FHFA as conservator of Fannie Mae and Freddie Mac. Accordingly, I intend to release this plan at noon today.

Yours truly,

// s //

Edward J. DeMarco
Acting Director

Attachment

A Strategic Plan for Enterprise Conservatorships:

The Next Chapter in a Story that Needs an Ending

February 21, 2012

Summary

Since establishing conservatorships for Fannie Mae and Freddie Mac (the Enterprises) in 2008, the Federal Housing Finance Agency (FHFA) and the Enterprises have focused on three key goals:

- mitigating Enterprise losses, which ultimately accrue to taxpayers;
- ensuring families have access to mortgages to buy a home or refinance an existing mortgage; and
- offering borrowers in trouble on their mortgage an opportunity to modify their loan or otherwise avoid foreclosure.

Two years ago, FHFA sent Congress a letter setting forth the agency's understanding of its conservatorship obligations and how it planned to fulfill those obligations. It is time to update and extend that plan in view of the status of the Enterprises and the country's housing system today. In particular, with the conservatorships operating for more than three years and no near-term resolution in sight, it is time to assess the goals and directions of the conservatorships.

This assessment has been made in light of FHFA's statutory mandate to "take such action as may be necessary to put [Fannie Mae and Freddie Mac] in a sound and solvent condition." FHFA also needs to make sure strategic decisions about the Enterprises' future are in accord with the statutory purpose of the conservator for "reorganizing, rehabilitating, or winding up the affairs of a regulated entity."

This strategic plan outlines the steps FHFA has taken and will be taking to address these challenges. The plan sets forth three strategic goals for the next phase of conservatorship:

1. **Build.** Build a new infrastructure for the secondary mortgage market.

2. **Contract.** Gradually contract the Enterprises' dominant presence in the marketplace while simplifying and shrinking their operations.

3. **Maintain.** Maintain foreclosure prevention activities and credit availability for new and refinanced mortgages.

The strategic plan explores each of these goals and identifies particular actions FHFA is contemplating, or already taking, to accomplish them.

The first goal – building a new infrastructure – recognizes that the country would be without a secondary market for non-government-insured mortgages without the Enterprises. No private sector infrastructure exists today that is capable of securitizing the $100 billion per month in new mortgages being originated. Simply shutting down the Enterprises would drive up interest rates and limit mortgage availability. This goal establishes the steps FHFA and the Enterprises will take to create that necessary infrastructure, including a securitization platform and national

standards for mortgage securitization that Congress and market participants may use to develop the mortgage market of the future.

The second goal – contracting Enterprise operations – describes steps that FHFA plans to take to gradually shift mortgage credit risk from the Enterprises to private investors and eliminate the direct funding of mortgages by the Enterprises. This goal is consistent with the fundamental goals of the conservatorship, of the Enterprises operating in a sound and solvent condition, and of limiting future risk exposure in the face of uncertainty.

The third goal – maintaining foreclosure prevention efforts and credit availability – recognizes that the work begun three years ago is not finished. Programs and strategies to ensure ongoing mortgage credit availability, assist troubled homeowners, and minimize taxpayer losses while restoring stability to housing markets continue to require energy, focus, and resources.

Achieving these strategic goals will fulfill the legal requirements Congress assigned FHFA as conservator and also prepare the foundation for a new, stronger housing finance system in the future. Although that future may not include Fannie Mae and Freddie Mac, at least as they are known today, this important work in conservatorship can be a lasting, positive legacy for the country and its housing system.

Properly implemented, this strategic plan should benefit:

- Homeowners, by ensuring continued emphasis on foreclosure prevention and credit availability;
- Taxpayers, by furthering efforts to limit losses from past activities while simplifying risk management and reducing future risk exposure;
- Market participants, by creating a path by which the Enterprises’ role in the mortgage market is gradually reduced while maintaining market stability and liquidity; and
- Lawmakers, by building a foundation on which they may develop new legal frameworks and institutional arrangements for a sound and resilient secondary mortgage market of the future.

The public interest is best served by ensuring that Fannie Mae and Freddie Mac have the best available corporate leaders to carry out the work necessary to meet the critical goals set forth here. The managers and staff at each company also have critical roles to play since the numerous activities and changes necessary to accomplish the strategic goals will require substantial effort by many people at Fannie Mae and Freddie Mac.

The early chapters of the conservatorship story focused on market functioning and loss mitigation. More recent chapters have covered renewed efforts to enhance refinancing opportunities and real estate owned (REO) disposition. The strategic goals and performance objectives set forth here provide an outline for the next chapter of the story, one that focuses in earnest on building a secondary mortgage market infrastructure that will live beyond the

Enterprises. This next chapter will also see a gradual reduction in the Enterprises' dominant position in holding mortgage credit risk as private capital is encouraged back into that role.

The final chapter, though, remains the province of lawmakers. Fannie Mae and Freddie Mac were chartered by Congress and by law, only Congress can abolish or modify those charters and set forth a vision for a new secondary market structure.

One critical point: The steps envisioned in this strategic plan are consistent with each of the housing finance reform frameworks set forth in the white paper produced last year by the U.S. Department of the Treasury and the U.S. Department of Housing and Urban Development as well as with the leading congressional proposals introduced to-date. This plan envisions actions by the Enterprises that will help establish a new secondary mortgage market, while leaving open all options for Congress and the Administration regarding the resolution of the conservatorships and the degree of government involvement in supporting the secondary mortgage market in the future.

A Strategic Plan for Enterprise Conservatorships:

The Next Chapter in a Story that Needs an Ending

Introduction

The Housing and Economic Recovery Act of 2008 (HERA), which created the Federal Housing Finance Agency (FHFA), granted the Director of FHFA discretionary authority to appoint FHFA conservator or receiver of the Enterprises "for the purpose of reorganizing, rehabilitating, or winding up the affairs of a regulated entity."[1]

On September 6, 2008, well over three years ago, FHFA exercised that authority, placing the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (together, the Enterprises) into conservatorships. FHFA has since overseen the largest, most complex conservatorships in history.

Two years ago, FHFA sent Congress a letter setting forth the agency's understanding of its conservatorship obligations and how it planned to fulfill those obligations. It is time to update and extend that plan in view of the status of the Enterprises and the country's housing system today.

The two companies have received more than $180 billion in taxpayer support. The benefit to the country from maintaining their operations has been to ensure the secondary mortgage market continues to function. During this time, the Enterprises have completed more than 2 million foreclosure prevention actions, including more than 1 million loan modifications and they have refinanced more than 10 million mortgages. Together they are guaranteeing roughly $100 billion per month in new mortgage production, representing about 3 of every 4 mortgages being originated. But the Enterprises' ongoing operations are entirely dependent on taxpayer support provided through the Senior Preferred Stock Purchase Agreements with the U.S. Department of the Treasury.

The future of the Enterprises and the housing finance system continues to be the subject of many questions and much debate. A new structure for housing finance requires congressional action,

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[1] Housing and Economic Recovery Act of 2008, Section 1367 (a)(2), amending the Federal Housing Enterprises Financial Safety and Soundness Act, 12 USC 4617(a)(2).

but no clear legislative consensus has emerged from the Administration or Congress. In the meantime, like other large, complex financial institutions, the Enterprises require strategic direction though they face an uncertain future. Market participants are also seeking answers about the future.

This strategic plan provides lawmakers and the public with an outline for how FHFA as conservator intends to guide the Enterprises over the next few years. FHFA has developed this plan because of the following:

- The Enterprises' boards of directors and management teams can more readily fulfill the goals of conservatorship with a clear and transparent course of action.
- As investors in the Enterprises today, taxpayers deserve a plan on how their continued support will be used.
- Proposals for rebuilding the secondary mortgage market vary in their reliance on government credit guarantees but most assume some sort of securitization infrastructure to take the place of the Enterprises or assume the Enterprises' securitization infrastructures are used in some way in the future.
- Lawmakers have asked FHFA for ideas on a stable transition from a secondary market dominated by the Enterprises to one that could operate without them.
- FHFA committed to provide a strategic plan for the next stage of the conservatorships in response to a request from the Chairman of the House Financial Services Subcommittee on Oversight and Investigations in December 2011.

As with any strategic plan, this document is not a step-by-step guide. Rather, it sets forth certain broad objectives that are consistent with FHFA's legal mandate and the policy direction that has emerged from the Administration and Congress. Importantly, this plan is consistent with each of the housing finance reform frameworks set forth in the white paper produced last year by Treasury and the U.S. Department of Housing and Urban Development (HUD) and with the leading congressional proposals introduced to-date. This plan envisions actions by the Enterprises that will help establish a new secondary mortgage market, while leaving open all options for Congress and the Administration regarding the resolution of the conservatorships and the degree of government involvement in supporting the secondary mortgage market in the future.

FHFA remains committed to its obligation to ensure a stable and liquid secondary mortgage market while preserving and conserving Enterprise assets to minimize taxpayer losses. FHFA looks forward to continuing to work with Congress and the Administration on a resolution of the conservatorships and a comprehensive review of the country's housing finance system.

Background: The Early Chapters of the Conservatorship Story

The Law

As conservator and regulator, FHFA has three legal obligations that direct the agency's activities and decisions involving the Enterprises.

First, HERA specified two conservator powers, stating that the agency may "take such action as may be

(i) necessary to put the regulated entity in a sound and solvent condition; and

(ii) appropriate to carry on the business of the regulated entity and preserve and conserve the assets and property of the regulated entity."[2]

FHFA has reported on numerous occasions that, with taxpayers providing the capital supporting Enterprise operations, this "preserve and conserve" mandate directs FHFA to minimize losses on behalf of taxpayers.

Second, although each Enterprises is in conservatorship, without statutory changes their mission of supporting a stable and liquid mortgage market remains the same as before the conservatorships. FHFA has a statutory responsibility to ensure each Enterprise "operates in a safe and sound manner"[3] and that "the operations and activities of each regulated entity foster liquid, efficient, competitive, and resilient national housing finance markets."[4]

Third, under the Emergency Economic Stabilization Act of 2008 (EESA), FHFA has a statutory responsibility to "implement a plan that seeks to maximize assistance for homeowners and use its authority to encourage the servicers of the underlying mortgages, and considering net present value to the taxpayer, to take advantage of … available programs to minimize foreclosures."[5]

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[2] 12 USC 4617(b)(2)(D)

[3] 12 USC 4513(a)(1)(B)(i)

[4] 12 USC 4513(a)(1)(B)(ii)

[5] 12 USC 5220(b)(1)

Conservatorship Goals

In 2008, the immediate objectives of conservatorship were to help restore confidence in the companies, enhance their capacity to fulfill their mission, and mitigate the systemic risk that contributed directly to instability in financial markets. Because the private mortgage securitization market had already retreated and there were no other effective secondary market mechanisms in place, the Enterprises' continued operations were necessary for most Americans to obtain a mortgage or refinance an existing mortgage.

Since 2008, several government efforts have kept the country's housing finance system functioning, including:

- the Treasury Department's financial backstop of Enterprise debt and mortgage-backed securities (MBS);
- Treasury's and the Federal Reserve's MBS purchases;
- FHFA's and the Enterprises' actions to ensure the continued functioning of the secondary mortgage market; and
- the Federal Housing Administration's (FHA) rapidly growing market presence.

As a result, credit has remained available, albeit with more restrictive underwriting terms, and more than 10 million Americans have refinanced Fannie Mae and Freddie Mac mortgages.

During these years, these same government agencies together with the Enterprises and other market participants undertook a series of efforts to help families avoid foreclosure through loan modification programs and foreclosure alternatives. For FHFA and the Enterprises, these efforts directly relate to the "preserve and conserve" mandate because such activities are designed to reduce credit losses on mortgages originated primarily in the years before conservatorship. In addition, these efforts are consistent with FHFA's other mandates, including the EESA mandate to maximize assistance for homeowners. Since conservatorship began, the Enterprises have completed more than two million foreclosure prevention actions, including more than one million loan modifications.

Today, loss mitigation efforts focus on helping households as early as possible when they become delinquent on their mortgages, and employing innovative strategies for returning foreclosed properties back to the market. The continued high level of mortgage delinquencies shows that more is left to do, but several programs now exist to address these challenges. FHFA and the Enterprises will remain vigilant in ensuring that appropriate assistance and support is offered to all homeowners in distress through loan modifications and other foreclosure avoidance tools.

Three years into conservatorship, it is time to update and extend the goals of conservatorship in light of FHFA's statutory mandate and the market environment that has evolved since 2008. As noted, the operations of the Enterprises in conservatorship are unlike anything the country has experienced. The conservatorship structure was designed to allow a temporary period for an institution to stabilize and return to the market or to lead to an orderly disposition of a firm.

Unlike the banking industry, there are not thousands of potential firms ready to step into the business of mortgage securitization. Indeed, outside of the securitization available through the Government National Mortgage Association (Ginnie Mae) for loans primarily backed by FHA, there is little else in place today to assume the secondary market functions served by the Enterprises.

What Needs to Be Done Now

Policymakers need to address the future structure of housing finance, which would allow for a smooth transition from today's market. Without action by Congress, FHFA must continue to look to the existing statutory provisions that guide the conservatorships. In particular, FHFA must consider what it means to "take such action as may be necessary to put [Fannie Mae and Freddie Mac] in a sound and solvent condition" when it is clear that the draws the companies have taken from the Treasury are so large they cannot be repaid under any foreseeable scenarios.

Without further statutory direction, FHFA views the mandate to restore the Enterprises to a sound and solvent condition as best accomplished not only through aggressive loss mitigation efforts, but also by reducing the risk exposure of the companies, through appropriate underwriting and pricing of mortgages. Such actions are consistent with what would be expected of a private company operating without government support. At the same time, the unanticipated length of the conservatorships poses additional risks for taxpayers and markets not contemplated by HERA. FHFA views those risks as best managed by contracting the Enterprises' footprint in the marketplace.

To achieve these outcomes, FHFA will need to make strategic decisions regarding the Enterprises' level of participation in the market while developing ways for the taxpayers to ultimately derive value, consistent with FHFA's "preserve and conserve" mandate.

Reviewing the Existing Landscape: Considerations for Moving Forward

In view of FHFA's statutory mandates and in light of the current environment, it is necessary to define new goals for the Enterprises operating in conservatorship. Key issues and circumstances FHFA faces include the following:

- The Enterprises' losses are of such magnitude that the companies cannot repay taxpayers in any foreseeable scenario.

- The operational infrastructures at each company are working but require substantial investment to support future business. The question is whether to improve the current infrastructure or to consider this an opportunity to build something new.

- In the absence of other comparable market infrastructure, minimizing future taxpayer losses and ensuring market liquidity and stability requires preserving the Enterprises as working companies. But some of the things this approach requires, such as retaining some semblance of private sector pay comparability, have generated concerns because the companies receive substantial taxpayer assistance.

- Although the housing finance system cannot be called healthy, it is stable and functioning, albeit with substantial ongoing government support.

- Congress and the Administration have not reached consensus on how to resolve the conservatorships and define a path for housing finance. Legislative proposals have begun to emerge, but enactment soon appears unlikely.

Absence of consensus on a resolution of the conservatorships does not imply a lack of consensus on general direction. Both the Administration and Congress have expressed discomfort with the level of government involvement in the mortgage market and a desire for greater private sector participation and risk-taking. A central issue remains: whether a government guarantee is essential to a functioning mortgage market. On other market issues, some consensus has emerged on what is needed to fix the problems we have witnessed over the past several years. At a minimum there is a desire for greater standardization and more equitable and transparent treatment of borrowers and investors in mortgage origination, mortgage servicing, and securities disclosure.

Over the past two years, FHFA has initiated several long-term improvements to the housing finance system that address shortcomings in the current system, meet the goal of reducing taxpayer exposures, and provide flexibility for lawmakers as they move toward legislative action on housing finance. These improvements include the following:

- The Uniform Mortgage Data Program will improve the consistency, quality, and uniformity of data collected at the beginning of the lending process. Developing standard terms, definitions, and industry standard data reporting protocols will decrease costs for originators and appraisers and reduce repurchase risk. It will allow new entrants to use industry standards rather than having to develop their own proprietary data systems to compete with other systems already in the market. Common data definitions, electronic data capture, and standardized data protocols will improve efficiency, lower costs and enhance risk monitoring. Standardizing data will be a key building block of housing finance reform.

- The Joint Servicing Compensation Initiative is considering alternatives for future mortgage servicing compensation for single-family mortgage loans. The goals of any changes to the current Enterprise model of compensation will be improving service for borrowers, reducing financial risk to servicers, and providing flexibility for guarantors to better manage non-performing loans, while promoting continued liquidity in the "To Be Announced" mortgage securities market. More broadly, the goals of the initiative are to consider changes to the servicing compensation structure that would improve competition in the market for mortgage servicing and which could be replicated across any form of housing finance reform.

- The Servicing Alignment Initiative has produced a single, consistent set of protocols for servicing Enterprise mortgages from the moment they first become delinquent. This initiative responds to concerns about how delinquent mortgages have been serviced and it simplifies the rules for mortgage servicers by giving them just one set of procedures to follow whether a mortgage is owned by Fannie Mae or Freddie Mac. The first phase of this initiative has already been implemented. Developed in consultation with the federal banking agencies and state attorneys general, the new requirements could serve as the basis for establishing broad national mortgage servicing standards.

- The Loan-Level Disclosures Initiative will produce loan-level investor disclosures on Enterprise MBS, both at the time of origination and throughout a security's life. Improving MBS disclosures will help establish consistency and quality of data. With better information, private investors can efficiently measure and price mortgage credit risk, which will likely be a hallmark of any form of housing finance reform.

Writing the Next Chapter: Setting the Strategic Goals

Looking ahead, three broad goals will define the focus of the conservatorships for the next few years:

1. **Build.** Build a new infrastructure for the secondary mortgage market.

2. **Contract.** Gradually contract the Enterprises' dominant presence in the marketplace while simplifying and shrinking their operations.

3. **Maintain.** Maintain foreclosure prevention activities and credit availability for new and refinanced mortgages.

Achieving these strategic goals will fulfill the legal requirements Congress assigned FHFA as conservator and also prepare the foundation for a new, stronger housing finance system in the future. Although that future may not include Fannie Mae and Freddie Mac, at least as they are known today, this important work in conservatorship can be a lasting, positive legacy for the country and its housing system.

Properly implemented, this strategic plan should benefit:

- Homeowners, by ensuring continued emphasis on foreclosure prevention and credit availability;

- Taxpayers, by furthering efforts to limit losses from past activities while simplifying risk management and reducing future risk exposure;
- Market participants, by creating a path by which the Enterprises' role in the mortgage market is gradually reduced while maintaining market stability and liquidity; and
- Lawmakers, by building a foundation on which they may develop new legal frameworks and institutional arrangements for a sound and resilient secondary mortgage market of the future.

Strategic Goal 1: **Building a New Infrastructure**

The absence of any meaningful secondary mortgage market mechanisms beyond the Enterprises and Ginnie Mae is a dilemma for policymakers expecting to replace the Enterprises. This fact was a key motivation for the conservatorships and for the Treasury support agreements in the first place. Without an alternative market infrastructure that investors could rely on, new mortgages would have been largely unavailable if the Enterprises suddenly had been shut down.

The elements for rebuilding the market system are known and work on them can begin without knowing whether there will be a government guarantee apart from FHA in the mortgage market of the future. In fact, the four initiatives FHFA and the Enterprises have already begun would be essential to any new infrastructure.

A secondary mortgage market infrastructure without Fannie Mae and Freddie Mac would likely include the following elements:

- A framework to connect capital markets investors to homeowners – specifically, a securitization platform that bundles mortgages into any of an array of securities structures and provides all the operational support to process and track the payments from borrowers through to the investors.

- A standardized pooling and servicing agreement that replaces the Enterprises' current Servicer Participation Agreement and corrects the many shortcomings found in the pooling and servicing agreements used in the private-label MBS market before the housing bubble burst.

- Transparent servicing requirements that set forth requirements for mortgage servicers' responsibilities to borrowers and investors across a spectrum of issues including delinquent loan servicing, solicitation for refinance or loan modifications, and servicing transfers.

- A servicing compensation structure that promotes competition for, rather than concentration of, mortgage servicing. Such a structure would take full account of mortgage servicers' costs and requirements, and consider the appropriate interaction between origination and servicing revenue.

- Detailed, timely, and reliable loan-level data for mortgage investors at the time a security is issued and throughout the life of the security. Such transparency is a prerequisite for private capital to bear a meaningful portion of mortgage credit risk.

- A sound, efficient system for document custody and electronic registration of mortgages, notes, titles, and liens that respects local property laws but also enhances the liquidity of mortgages so that borrowers may benefit from a liquid secondary market for buying and selling mortgages. Such a system should be especially attuned to privacy and security issues while providing full transparency where required by law or in the interest of borrowers.

- An open architecture for all these elements, to facilitate entry to and exit from the marketplace and an ability to adapt to emerging technologies and legal requirements over time.

Securitization Platform

Beyond the initiatives FHFA and the Enterprises have begun, a cornerstone to building for the future is a new securitization platform. While competing securitization platforms may emerge in the future, back-office operations arguably lend themselves to a public utility construct, at least in the early stages of building a new secondary mortgage market infrastructure. The economies of scale are substantial as are the potential market benefits of standardization to a single securitization platform. Neither Enterprise has a securitization infrastructure capable of becoming a market utility today. Taking on that role would require substantial investment of both human capital and information technology resources.

Both Enterprises would have to draw from the American taxpayer to make such a long-term infrastructure investment, so it makes more sense to do this only once. FHFA will determine how Fannie Mae and Freddie Mac can work together to build a single securitization platform that would replace their current separate proprietary systems.

In the intermediate term, a single platform would allow for a single mortgage-backed security. Accomplishing this objective will take time. FHFA and the Enterprises will provide market participants with ample time to adjust to the new structure in order to minimize disruptions and uncertainty. Ensuring, indeed enhancing, liquidity for mortgage-backed securities will be a central objective.

For the platform to have long-term value, it should have an open architecture that will permit multiple future issuers of mortgage-backed securities to access the platform and it should be flexible enough to permit a wide array of securities and mortgage structures. Since this platform could become a type of public utility (in effect) that would outlast the Enterprises as we know them today, input from all market stakeholders will be sought.

The intended outcome of such an important infrastructure investment is to provide a sound securitization platform on which to rebuild the country's secondary mortgage market. The platform itself will be one way American taxpayers realize a return on their substantial investment in the Enterprises while also making it possible to retire the Enterprises' proprietary systems and programs from the marketplace. The platform will be designed to issue securities supported with or without a government guarantee.

Pooling and Servicing Agreements

Beyond building the operational infrastructure to issue mortgage-backed securities, building for the future also requires developing and implementing standards for underwriting, disclosures, servicing and other considerations. Creating a robust and standardized pooling and servicing agreement is key. The strategic goal is to learn from the Enterprises' existing practices and the shortcomings identified in the private-label mortgage-backed securities market and to solicit broad public input to build a better standard for the future. Input from investors and a careful review of applicable Securities and Exchange Commission rules and best practices will be essential.

As with the securitization platform, the goal is not to rebuild Fannie Mae and Freddie Mac but rather to leverage the experience and human capital expertise at these firms to build a new infrastructure for the future. The goal is not a proprietary system but rather an open system that promotes competition and transparency while forming a basis for a stable, liquid, and efficient secondary mortgage market.

Developing these standards will not only correct past problems, it will make the existing system better. We know how past shortcomings have harmed borrowers and investors. Since the point of a secondary mortgage market is to operate an infrastructure that most efficiently brings investor capital to individual families seeking to finance a home, standards must be more transparent and accessible for both of these "end-users."

Strategic Goal 2: **Contracting Enterprise Operations**

Since entering conservatorship in September 2008, Fannie Mae and Freddie Mac have bought or guaranteed roughly three of every four mortgages originated in the country. Mortgages guaranteed by FHA make up most of the rest. Reducing the Enterprises' position in the marketplace and doing so in a safe and sound manner, in the absence of other comparable private-sector players operating in this market, is the second strategic goal.

The Enterprises operate three lines of business: a single-family mortgage credit guarantee business, a multifamily mortgage credit guarantee business, and a capital markets business that finances single-family and multifamily mortgages by issuing debt securities in the capital markets.

Single-Family Credit Guarantees

The first strategic goal sets forth a plan for moving away from each company's proprietary securitization platform but it does not address the mortgage credit insurance business. It is that business for which the securitization platform provides the architecture for delivering the Enterprise guarantee to investors. Establishing a path for shifting mortgage credit risk from the Enterprises (and, thereby, taxpayers) to private investors is central to the second goal.

Gradually shifting mortgage credit risk from Fannie Mae and Freddie Mac to private investors could be accomplished in several ways. The following are under consideration or already being implemented:

- Increase guarantee fee pricing. Continued gradual increases in the Enterprises' guarantee fee (or, g-fee) pricing may move their pricing structure closer to the level one might expect to see if mortgage credit risk was borne solely by private capital. In September 2011, FHFA announced its intention to continue a path of gradual price increases based on risk and the cost of capital. In December 2011, in the Temporary Payroll Tax Cut Continuation Act of 2011, Congress directed FHFA to increase guarantee fees by at least an average of 10 basis points and further directed that FHFA consider the cost of private capital and the risk of loss in setting guarantee fees. Congress also encouraged FHFA to require guarantee fee changes that reduce cross-subsidization of relatively risky loans and eliminate differences in fees across lenders that are not clearly based on cost or risk.

- Establish loss-sharing arrangements. Most Enterprise mortgage securitization yields securities fully guaranteed by the Enterprises. Alternative securities structures could result in private investors bearing some or all of the credit risk. FHFA is considering various approaches, including senior-subordinated security structures.

- Expand reliance on mortgage insurance. As required by law, most mortgages purchased or guaranteed by the Enterprises with less than 20 percent borrower equity in the property have private mortgage insurance in the first-credit-loss position. While some mortgage insurers are facing financial challenges as a result of housing market conditions, others may have the capital capacity to insure a portion of the mortgage credit risk currently retained by the Enterprises. This could be accomplished through deeper mortgage insurance coverage on individual loans or through pool-level insurance policies.

Multifamily Credit Guarantees

Unlike the single-family credit guarantee business, each Enterprise's multifamily business has weathered the housing crisis and generated positive cash flow. In contrast to their common approach to their single-family businesses, Fannie Mae and Freddie Mac do not take the same approach to their multifamily businesses. For a significant portion of its business, Fannie Mae shares multifamily credit risk with loan originators through its delegated underwriting program. For a significant and increasing portion of its business, Freddie Mac shares multifamily credit risk with investors by issuing classes of securities backed by multifamily mortgages where the investor bears the credit risk. Both approaches are broadly accepted in the marketplace.

Rising rental rates and declining vacancy and delinquency rates reflect, in part, the shift of some households from home ownership to renting as well as other demographic trends. The demand for Enterprise employees with expertise in this specialized market is also strong; both companies have lost key personnel to other market participants.

Multifamily lending has played an important role in how the Enterprises have fulfilled past affordable housing mandates, but the activity itself is more akin to other commercial real estate lending than to the Enterprises' single-family businesses. In conservatorship, the Enterprises have seen their market share grow in the multifamily sector but they do not dominate that market as they do in single-family.

Given these conditions, generating potential value for taxpayers and contracting the Enterprises' multifamily market footprint should be approached differently from single-family, and it may be accomplished using a much different and more direct method. To evaluate how to accomplish the second strategic goal in the multifamily business, each Enterprise will undertake a market analysis of the viability of its multifamily operations without government guarantees. This will require market reviews of their respective business models and the likely viability of those models operating on a stand-alone basis after attracting private capital and adjusting pricing, if needed, to attract and retain that capital.

Capital Markets

Before conservatorship, many Enterprise observers and analysts thought capital market activities to be each company's source of greatest profits, controversy and risk. With the numerous subsidies inherent in the government-sponsored enterprise (GSE) charters granted by Congress, the Enterprises have long been able to borrow money in the capital markets by issuing debt securities at interest rates approaching those of Treasury securities. They did this not by virtue of their financial strength and strong capital base, but because of a broad perception in the marketplace that the government would not let the companies default on their obligations. With this borrowing advantage, which was unavailable to other investors, the Enterprises issued debt to buy mortgages, including their own MBS, in competition with private investors.

The Enterprises fund their retained portfolios through their capital markets operations, which need to continually monitor and hedge the interest rate risk inherent in mortgages, including the risk that changing interest rates could lead to either sudden mortgage prepayments or a slowdown in mortgage prepayments. Interest rate risk overwhelmed the savings and loan industry in the 1980s and made Fannie Mae technically insolvent in the early 1980s. Although capital markets operations were not the leading contributor to the losses that led the Enterprises into conservatorship and the accompanying taxpayer support, it remains a complex business activity requiring specialized and expert risk managers.

Today, this business line is already on a gradual wind-down path. The Treasury support agreements require the Enterprises to shrink their retained mortgage portfolios at a rate of 10 percent per year. Most mortgages the Enterprises add to their retained portfolios today are delinquent mortgages removed from their mortgage-backed securities. Each Enterprise also has certain legacy assets from before conservatorship, including private-label MBS, for which there is little or no liquidity in the marketplace. Thus, over time the Enterprises' retained portfolios are becoming smaller, but also less liquid.

Maximizing returns for taxpayers on the $1.4 trillion in mortgage assets currently owned and financed by the Enterprises is a key element of FHFA's mandate as conservator. The gradual wind-down of the retained portfolios since 2009 has led FHFA to consider strategic sales of assets that maximize value for the conservatorships. But depressed market prices for many of these assets, particularly when tied to market illiquidity rather than a permanent decline in asset value, argues for holding some of them for a longer period to minimize taxpayer loss.

In view of the need to retain capital market expertise to operate this business, accomplishing the second strategic goal for this line of business has two basic options: retain each company's in-house capital markets expertise to continue to manage these portfolios to maximize value while managing risk or retain a third-party investment firm(s) to manage each company's portfolio. The first is less disruptive but retains human capital risk, especially in view of proposed legislation on Enterprise compensation. The second option would hasten the shrinkage in Enterprise headcount but is likely to be the more costly, and it poses new control and oversight challenges for FHFA.

Strategic Goal 3: **Maintaining Foreclosure Prevention Efforts and Credit Availability**

Amidst the building up and winding down activities defined by the first two strategic goals, there remains a critical third goal: ensuring ongoing stability and liquidity in the marketplace for new mortgages and mortgage refinancing, and continuing the critical tasks of foreclosure prevention and loss mitigation. This third goal has been central to the conservatorships since they began and it continues to be essential today.

Together, the Enterprises purchase or guarantee roughly $100 billion in home purchase and refinanced mortgages each month. Market confidence in the Enterprises' ongoing ability to provide this stable, liquid flow of mortgage-backed securities to investors is essential to stabilizing house prices and ensuring stability in the value of nearly $3.9 trillion in outstanding Enterprise mortgage-backed securities.

Other ongoing Enterprise activities that must be continued and enhanced include:

- Successful implementation of the Home Affordable Refinance Program (HARP), including the significant program changes announced in October 2011.

- Continued implementation of the Servicing Alignment Initiative, including its rigorous approach to loss mitigation through loan modifications and other means by reaching out to borrowers at the first signs of distress.

- Renewed focus on short sales, deeds-in-lieu, and deeds-for-lease options that enable households and the Enterprises to avoid foreclosure. The frictions and barriers to more successful use of these tools should be identified and removed using the same renewed focus brought to HARP last year. Enhanced use of these foreclosure avoidance tools may have important benefits for borrowers, neighborhoods, and taxpayers. Given the large backlog of pending foreclosures, renewed focus on these alternatives is a near-term priority.

- Further development and implementation of the real estate owned (REO) disposition initiative announced by FHFA last year. Adding creative strategies for placing foreclosed homes back into the marketplace, including efforts to convert properties into rental units, remains a promising path to reduce losses and to stabilize house prices and neighborhoods hit hard by the housing crisis.

Beyond these sensible strategies to assist homeowners and reduce taxpayer losses, achieving the third strategic goal will require FHFA and the Enterprises to work harder to resolve certain long-standing concerns in the marketplace that may be suppressing a more robust recovery and limiting credit availability. Each of these will be particularly challenging to resolve as they are essential to conservatorship efforts to minimize losses and to put the Enterprises in a more sound and solvent condition to manage the new business being taken on with taxpayer support.

First, representations and warranties are a long-standing means for enhancing liquidity in the mortgage origination process while protecting the Enterprises from loans not underwritten to prescribed standards. Representations and warranties are a loan originator's assurance to an Enterprise that a mortgage sold to the Enterprise has been underwritten as specified by contract, and, if that is found not to be the case, the originator undertakes responsibility for buying the loan back at par. Enforcing these claims ensures the Enterprises are compensated for losses that are the legal responsibility of another party. Still, such enforcement is costly and some have argued it has delayed market recovery because it led to new mortgage originations being underwritten to stricter standards than the Enterprises require.

FHFA and the Enterprises will respond to this market concern by aligning and making policies for representations and warranties more transparent (consistent with the first strategic goal). As noted earlier, a long-term goal associated with the Uniform Mortgage Data Program is to reduce representation and warranty risk through up-front monitoring of loan quality. In conjunction with this initiative and, in the interim, defining more clearly under what conditions representations and warranties will be employed to put back mortgages is an objective under the third strategic goal. Completing the resolution of outstanding "put back" requests is a related objective.

Second, FHFA has filed 18 separate lawsuits in connection with alleged securities law violations in private-label mortgage-backed securities purchased by the Enterprises. Speedy resolution of these claims would also help restore some vibrancy to the mortgage market and put claims related to past deficiencies to rest.

Accomplishing the Strategic Goals: Human Capital and Business Realities

No business endeavor can be successful without careful consideration of human capital. The numerous activities and changes necessary to accomplish the three strategic goals described here cannot be accomplished solely by legislation or declaration. They require substantial effort by many people at both Fannie Mae and Freddie Mac.

The boards and executives responsible for the business decisions that resulted in the Enterprises entering conservatorship and subsequent taxpayer support are long gone. Nearly every current top executive at each company either joined the company *after* the conservatorships were established or were promoted from within to replace departed executives. It is also worth noting that shareholders of each Enterprise effectively have already lost their entire investment.

The public interest is best served by ensuring that Fannie Mae and Freddie Mac have the best available corporate leaders to carry out the work necessary to meet the critical goals set forth here. FHFA and the Enterprises' boards of directors currently are engaged in a search for a new chief executive officer (CEO) for each company. We are seeking accomplished corporate leaders willing to undertake the unique challenge of running a large, complex financial institution while fulfilling the public goals described here in an uncertain legislative environment. FHFA and the boards are seeking highly qualified executives willing to take on these daunting challenges as a form of public service, despite the ongoing criticism of the companies and their executives. The success of these new CEOs will depend directly on the stability and experience of the executive teams and staff already in place at each company. Disrupting what has taken more than three years to achieve will only add to taxpayer losses and threaten the fragile housing recovery.

FHFA and the Enterprise boards of directors have taken seriously the concerns raised by members of Congress and the public regarding executive compensation. For 2012, work on a new compensation structure that eliminates bonuses is nearly complete. The new structure will be all salary, some paid currently, but a larger portion will be deferred. The deferred salary will be at-risk, meaning it may be reduced (but not increased) from the target amount, and reductions would be based on shortcomings in achieving individual performance goals and corporate conservatorship goals tied to this strategic plan.

Mid-level managers and rank and file staff have been held to a pay freeze the past two years. Yet retention of these staff is at least as important as retaining senior management. The day-to-day running of the businesses and the countless decisions that result in gains or losses are made in these ranks. Even with the great uncertainty as to the future of their companies, many Enterprise staff have remained committed to the important work taking place there.

When the conservatorships were created, FHFA made clear to Enterprise employees, Congress, and the public that retaining corporate managers and staff was essential to the work of the conservatorships. Conservatorship did not turn once-private companies into government agencies, nor their workers into government employees. As with everything else with these conservatorships, there has been a challenging yet critical balancing required.

In addition to the senior managers and staff, the Enterprises' boards of directors have played, and continue to play, an important role in assisting Enterprise management and FHFA. Board members themselves are engaged in a form of public service while retaining fiduciary responsibility as board members, and they too face unique challenges as boards of companies in government conservatorship.

From FHFA's standpoint, part of what is being preserved and conserved at the Enterprises is the processes and procedures, including business decision-making and requirements, of private financial institutions. These are critical to safe and sound operations, and can be disrupted by a failure at the senior management or operational staff levels. Each board's oversight of its Enterprise helps to preserve and reinforce among managers and staff these important private-sector disciplines. Each board's review and consideration of risk management practices, key business decisions, human capital management, and other key functions greatly assists FHFA in its regulatory and conservatorship responsibilities by providing the discipline and rigor expected of corporate boards. In these ways, the boards help FHFA enhance the corporate value at each Enterprise for ultimate disposition by Congress.

Conservatorship: Writing the Final Chapter

The early chapters of the conservatorship story focused on market functioning and loss mitigation. More recent chapters have covered renewed efforts to enhance refinancing opportunities and REO disposition. The strategic goals and performance objectives set forth here provide an outline for the next chapter of conservatorship, one that focuses in earnest on building a secondary mortgage market infrastructure that will live beyond the Enterprises themselves. This next chapter will also see a gradual reduction in the Enterprises' dominant position in holding mortgage credit risk as private capital is encouraged back into that role.

The final chapter, though, remains the province of lawmakers. Fannie Mae and Freddie Mac were chartered by Congress and by law, only Congress can abolish or modify those charters. The strategic plan set forth here will move the housing finance system forward and enhance the foundation on which Congress can make decisions about the role of government in the future of the country's housing finance system. Congress then can decide on the disposition of the Enterprises and their business operations.

This plan does not anticipate Fannie Mae and Freddie Mac continuing as they existed before conservatorship. And though the Enterprises may well cease to exist at some point in the future, at least as they are known today, the country's $10 trillion single-family mortgage market will not go away. Therefore, an orderly transition to a new structure is needed.

Ensuring the ongoing liquidity and stability of the market, and establishing new conduits that connect local mortgage originators with the capacity of global capital market investors, will require new institutions and legal frameworks. The executives and employees of Fannie Mae and Freddie Mac are well situated to begin the process of building for that future and they can be expected to remain key contributors to housing finance in whatever new companies and institutional arrangements arise to replace Fannie Mae and Freddie Mac. Getting the most value for taxpayers and bringing stability and liquidity to housing finance during this long transition remain the overriding objectives of FHFA as conservator.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934
For the fiscal year ended December 31, 2011
Commission File No.: 0-50231

Federal National Mortgage Association

(Exact name of registrant as specified in its charter)

Fannie Mae

Federally chartered corporation *(State or other jurisdiction of incorporation or organization)*	**52-0883107** *(I.R.S. Employer Identification No.)*
3900 Wisconsin Avenue, NW Washington, DC *(Address of principal executive offices)*	**20016** *(Zip Code)*

Registrant's telephone number, including area code:
(202) 752-7000

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class	Name of Each Exchange on Which Registered
None	

Securities registered pursuant to Section 12(g) of the Act:
Common Stock, without par value
(Title of class)
8.25% Non-Cumulative Preferred Stock, Series T, stated value $25 per share
(Title of class)
8.75% Non-Cumulative Mandatory Convertible Preferred Stock, Series 2008-1 stated value $50 per share
(Title of class)
Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series S, stated value $25 per share
(Title of class)
7.625% Non-Cumulative Preferred Stock, Series R, stated value $25 per share
(Title of class)
6.75% Non-Cumulative Preferred Stock, Series Q, stated value $25 per share
(Title of class)
Variable Rate Non-Cumulative Preferred Stock, Series P, stated value $25 per share
(Title of class)
Variable Rate Non-Cumulative Preferred Stock, Series O, stated value $50 per share
(Title of class)
5.375% Non-Cumulative Convertible Series 2004-1 Preferred Stock, stated value $100,000 per share
(Title of class)
5.50% Non-Cumulative Preferred Stock, Series N, stated value $50 per share
(Title of class)
4.75% Non-Cumulative Preferred Stock, Series M, stated value $50 per share
(Title of class)
5.125% Non-Cumulative Preferred Stock, Series L, stated value $50 per share
(Title of class)
5.375% Non-Cumulative Preferred Stock, Series I, stated value $50 per share
(Title of class)
5.81% Non-Cumulative Preferred Stock, Series H, stated value $50 per share
(Title of class)
Variable Rate Non-Cumulative Preferred Stock, Series G, stated value $50 per share
(Title of class)
Variable Rate Non-Cumulative Preferred Stock, Series F, stated value $50 per share
(Title of class)
5.10% Non-Cumulative Preferred Stock, Series E, stated value $50 per share
(Title of class)
5.25% Non-Cumulative Preferred Stock, Series D, stated value $50 per share
(Title of class)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☑
Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act. Yes ☐ No ☑
Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☑ No ☐
Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☑ No ☐
Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☑
Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐ Accelerated filer ☑ Non-accelerated filer ☐ (Do not check if a smaller reporting company) Smaller reporting company ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☑
The aggregate market value of the common stock held by non-affiliates of the registrant computed by reference to the last reported sale price of the common stock quoted on the OTC Bulletin Board on June 30, 2011 (the last business day of the registrant's most recently completed second fiscal quarter) was approximately $383 million.
As of January 31, 2012, there were 1,158,072,058 shares of common stock of the registrant outstanding.

DOCUMENTS INCORPORATED BY REFERENCE: The information required by Item 11 in Part III will be included in an amendment to this annual report on Form 10-K filed on or before April 30, 2012.

TABLE OF CONTENTS

MD&A TABLE REFERENCE

PART I

We have been under conservatorship, with the Federal Housing Finance Agency ("FHFA") acting as conservator, since September 6, 2008. As conservator, FHFA succeeded to all rights, titles, powers and privileges of the company, and of any shareholder, officer or director of the company with respect to the company and its assets. The conservator has since delegated specified authorities to our Board of Directors and has delegated to management the authority to conduct our day-to-day operations. Our directors do not have any duties to any person or entity except to the conservator and, accordingly, are not obligated to consider the interests of the company, the holders of our equity or debt securities or the holders of Fannie Mae MBS unless specifically directed to do so by the conservator. We describe the rights and powers of the conservator, key provisions of our agreements with the U.S. Department of the Treasury ("Treasury"), and their impact on shareholders in "Business—Conservatorship and Treasury Agreements."

This report contains forward-looking statements, which are statements about matters that are not historical facts. Forward-looking statements often include words like "expect," "anticipate," "intend," "plan," believe," "seek," "estimate," "would," "should," "could," "may" or similar words. Actual outcomes may differ materially from those reflected in our forward-looking statements due to a variety of factors including, but not limited to, those discussed in "Risk Factors" and elsewhere in this report. Please review "Forward-Looking Statements" for more information on the forward-looking statements in this report.

You can find a "Glossary of Terms Used in This Report" in "Management's Discussion and Analysis of Financial Condition and Results of Operations ('MD&A')."

Item 1. Business

INTRODUCTION

Fannie Mae is a government-sponsored enterprise ("GSE") that was chartered by Congress in 1938. Our public mission is to support liquidity and stability in the secondary mortgage market, where existing mortgage-related assets are purchased and sold, and increase the supply of affordable housing. Our charter does not permit us to originate loans and lend money directly to consumers in the primary mortgage market. Our most significant activity is securitizing mortgage loans originated by lenders into Fannie Mae mortgage-backed securities that we guarantee, which we refer to as Fannie Mae MBS. We also purchase mortgage loans and mortgage-related securities. We use the term "acquire" in this report to refer to both our securitizations and our purchases of mortgage-related assets. We obtain funds to support our business activities by issuing a variety of debt securities in the domestic and international capital markets. During 2011, we concentrated much of our efforts on providing liquidity and support to the mortgage market, growing the strong new book of business we have been acquiring since the beginning of 2009, and minimizing losses on loans we acquired prior to 2009. We describe our business activities below.

We are a corporation chartered by the U.S. Congress. Our conservator, FHFA, is a U.S. government agency. Treasury owns our senior preferred stock and a warrant to purchase 79.9% of our common stock. Moreover, Treasury has made a commitment under a senior preferred stock purchase agreement to provide us with funds under specified conditions and, after 2012, up to a maximum amount, to maintain a positive net worth. The U.S. government does not guarantee our securities or other obligations.

As a federally chartered corporation, we are subject to extensive regulation, supervision and examination by FHFA, and regulation by other federal agencies, including Treasury and the Department of Housing and Urban Development ("HUD").

The conservatorship we have been under since September 2008 has no specified termination date. There can be no assurance as to when or how the conservatorship will be terminated, whether we will continue to exist following conservatorship, or what changes to our business structure will be made during or following the conservatorship.

Uncertainty about the future of our company and surrounding the compensation of our executives and other employees could jeopardize our ability to manage risks effectively, to operate our business in a safe and sound manner, to support the mortgage market and to help delinquent borrowers avoid foreclosure. Congressional action in 2011 and early 2012 included legislation that would place our employees on a government pay scale and would forbid bonus payments for senior executives. Such debate elevates voluntary turnover and impairs our ability to recruit qualified employees for critical roles in the company. A sudden and sharp decline in compensation would likely cause significant and swift employee turnover, restrict recruitment of qualified replacements and decrease engagement of remaining employees, which could have a material adverse effect on our ability to conduct business. See "Risk Factors" for further discussion of the risks to our business and our results of operations if we are unable to retain and hire qualified employees.

Our agreements with Treasury that provide for substantial U.S. government financial support also include covenants that significantly restrict our business activities. We provide additional information on the conservatorship, the provisions of our agreements with the Treasury, and its impact on our business below under "Conservatorship and Treasury Agreements" and "Risk Factors."

Our common stock is traded in the over-the-counter market and quoted on the OTC Bulletin Board under the symbol "FNMA." Our debt securities are actively traded in the over-the-counter market.

RESIDENTIAL MORTGAGE MARKET

The U.S. Residential Mortgage Market

We conduct business in the U.S. residential mortgage market and the global securities market. Total U.S. residential mortgage debt outstanding, which includes $10.3 trillion of single-family mortgage debt outstanding, was estimated to be approximately $11.2 trillion as of September 30, 2011, the latest date for which information was available, according to the Federal Reserve. After increasing every quarter since record keeping began in 1952 until the second quarter of 2008, single-family mortgage debt outstanding has been steadily declining since then. We owned or guaranteed mortgage assets representing approximately 28.0% of total U.S. residential mortgage debt outstanding as of September 30, 2011.

We operate our business solely in the United States and its territories, and accordingly, we generate no revenue from and have no long-lived assets other than financial instruments in geographic locations other than the United States and its territories.

Housing and Mortgage Market and Economic Conditions

Economic growth picked up in the fourth quarter of 2011. The inflation-adjusted U.S. gross domestic product, or GDP, rose by 2.8% on an annualized basis during the quarter, according to the Bureau of Economic Analysis advance estimate. The overall economy gained an estimated 472,000 jobs in the fourth quarter as a result of employment growth in the private sector. According to the U.S. Bureau of Labor Statistics as of February 2012, the economy created 1.8 million non-farm jobs in 2011. The unemployment rate was 8.5% in December 2011, compared with 9.0% in September 2011. In January 2012, nonfarm payrolls posted a strong increase of 243,000 jobs, and the unemployment rate declined further to 8.3%. In spite of the downside risks from Europe and elsewhere, we expect that housing will start to recover if the employment market continues to improve.

Total existing home sales rose 1.7% in 2011 from 2010, according to data available through January 2012, following a 3.5% decline in 2010, despite low mortgage rates and reduced home prices. Weak demand for homes, a weak labor market and elevated vacancy and foreclosure rates are the main obstacles to the housing recovery. Sales of foreclosed homes and preforeclosure, or "short," sales (together, "distressed sales") accounted for 32% of existing home sales in December 2011, compared to 36% in December 2010, according to the National Association of REALTORS®. Faced with fierce competition from distressed sales, new home sales declined in 2011 for the sixth consecutive year, falling 6.2% to a record low. Homebuilding activity was mixed in 2011, as single-family housing starts fell approximately 9% to a record low, while multifamily starts rose 54%.

At the end of 2011, the number of months' supply, or the inventory/sales ratio, was consistent with historical averages for both new and existing homes. While the demand for new homes was quite weak in 2011, the inventory was also very lean. The number of new homes available for sale reached an all-time low in December 2011, when, according to the Census' December 2011 New Residential Sales Report, the months' supply was 6.1 months. For existing homes, as a result of rising sales in the fourth quarter of 2011 and a persistent decline in the number of existing homes available for sale in the second half of 2011, the months' supply fell sharply in the fourth quarter. According to the National Association of REALTORS® January 2012 Existing Home Sales Report, the months' supply of existing unsold homes was 6.2 months as of December 31, 2011, compared with an 8.3 months' supply as of September 30, 2011 and an 8.1 months' supply as of December 31, 2010. Properties that are vacant and held off the market, combined with a portion of properties backing seriously delinquent mortgages not currently listed for sale, represent a significant shadow inventory putting downward pressure on home prices. The overall mortgage market serious delinquency rate, which has trended down since peaking in the fourth quarter of 2009, remained historically high at 7.7% as of December 31, 2011, according to the Mortgage Bankers Association National Delinquency Survey. We provide information about Fannie Mae's serious delinquency rate, which also decreased during 2011, in "Executive Summary—Credit Performance."

The table below presents several key indicators related to the total U.S. residential mortgage market.

Housing and Mortgage Market Indicators[1]

				% Change	
	2011	**2010**	**2009**	**2011**	**2010**
Home sales (units in thousands)	4,562	4,513	4,715	1.1%	(4.3)%
New home sales	302	323	375	(6.5)	(13.9)
Existing home sales	4,260	4,190	4,340	1.7	(3.5)
Home price depreciation based on Fannie Mae Home Price Index ("HPI")[2]	(3.2)%	(4.3)%	(4.7)%	—	—
Annual average fixed-rate mortgage interest rate[3]	4.5%	4.7%	5.0%	—	—
Single-family mortgage originations (in billions)	$ 1,362	$ 1,701	$ 1,884	(19.9)	(9.7)
Type of single-family mortgage origination:					
Refinance share	66%	68%	69%	—	—
Adjustable-rate mortgage share	6%	5%	4%	—	—
Total U.S. residential mortgage debt outstanding (in billions)[4]	$11,177	$11,360	$11,712	(1.6)	(3.0)

(1) The sources of the housing and mortgage market data in this table are the Federal Reserve Board, the Bureau of the Census, HUD, the National Association of Realtors, and the Mortgage Bankers Association. Homes sales data are based on information available through January 2012. Single-family mortgage originations, as well as refinance shares, are based on February 2012 estimates from Fannie Mae's Economic & Strategic Research group. The adjustable-rate mortgage share is based on mortgage applications data reported by the Mortgage Bankers Association. Certain previously reported data may have been changed to reflect revised historical data from any or all of these organizations.

(2) Calculated internally using property data information on loans purchased by Fannie Mae, Freddie Mac and other third-party home sales data. Fannie Mae's HPI is a weighted repeat transactions index, measuring average price changes in repeat sales on the same properties. Fannie Mae's HPI excludes prices on properties sold in foreclosure. The reported home price depreciation reflects the percentage change in Fannie Mae's HPI from the fourth quarter of the prior year to the fourth quarter of the reported year.

(3) Based on the annual average 30-year fixed-rate mortgage interest rate reported by Freddie Mac.

(4) Information for 2011 is through September 30, 2011 and has been obtained from the Federal Reserve's September 2011 mortgage debt outstanding release.

The decline in home prices slowed in 2011. We estimate that home prices on a national basis declined by 3.2% overall in 2011, with a decline of 1.6% in the fourth quarter of 2011. We estimate that home prices have declined by 23% from their peak in the third quarter of 2006. Our home price estimates are based on preliminary data and are subject to change as additional data become available.

We estimate that total single-family mortgage originations in 2011 decreased from 2010 levels by 20% to $1.4 trillion, with a purchase share of 34% and a refinance share of 66%.

Since the second quarter of 2008, single-family mortgage debt outstanding has been steadily declining due to a number of factors including declining home sales and prices, rising foreclosures, increased cash sales, and reduced home equity extraction. We anticipate another approximately 1.1% decline in single-family mortgage debt outstanding in 2012. Total U.S. residential mortgage debt outstanding fell during the third quarter of 2011 by an annualized rate of 2.1%.

Despite signs of stabilization and improvement, one out of thirteen borrowers was delinquent or in foreclosure during the fourth quarter of 2011, according to the Mortgage Bankers Association National Delinquency Survey. The housing market remains under pressure due to the high level of unemployment, which was a primary driver of the significant number of mortgage delinquencies and defaults in 2011. At the start of the recession in December 2007, the unemployment rate was 5.0%, based on data from the U.S. Bureau of Labor Statistics. The unemployment rate peaked at a 26-year high of 10.0% in October 2009, and remained as high as 8.3% in January 2012. We expect the unemployment rate to remain relatively flat in 2012.

The most comprehensive measure of the unemployment rate, which includes those working part-time who would rather work full-time (part-time workers for economic reasons) and those not looking for work but who want to work and are available for work (discouraged workers), was 15.1% in January 2012, substantially lower than the record high of 17.2% in October 2009.

The decline in home prices has left many homeowners with “negative equity” in their homes, which means their principal mortgage balance exceeds the current market value of their home. This increases the likelihood that borrowers will walk away from their mortgage obligations and that the loans will become delinquent and proceed to foreclosure. According to CoreLogic, approximately 11 million, or 22%, of all residential properties with mortgages were in a negative equity position in the third quarter of 2011. This potential supply also weighs on the supply/demand balance putting downward pressure on both home prices and rents. See “Risk Factors” for a description of risks to our business associated with the weak economy and housing market.

National multifamily market fundamentals, which include factors such as rents and vacancy rates, saw a second year of steady improvement during 2011, benefiting from increased rental demand coupled with limited new apartment supply. Vacancy rates continued to decline throughout most of 2011, bringing the sector back to pre-recession levels.

Based on preliminary third-party data, we estimate that the national multifamily vacancy rate fell to 6.25% in the fourth quarter of 2011, from 6.50% in the third quarter of 2011 and 7.25% in the fourth quarter of 2010. In addition, we estimate that average asking rents increased steadily for nearly two years, most recently increasing by 0.5% in the fourth quarter of 2011 on a national basis. The increase in overall rental demand was also reflected in an estimated increase of about 50,000 units in the net number of occupied rental units during the fourth quarter of 2011, according to preliminary data from Reis, Inc. That brings the total estimated net absorption for the year, (that is, the net change in the number of units occupied over the year), to 170,000 units.

Vacancy rates and rents are important to loan performance because multifamily loans are generally repaid from the cash flows generated by the underlying property. The year-long strengthening of these fundamentals helped boost property values and, in turn, spur apartment building sales during 2011 in most metropolitan areas.

While the strength of improving vacancy levels and rental rates will vary by metropolitan area, on a national basis the multifamily sector should continue to see steady demand in 2012. With job growth slowly improving, and, more importantly, the lack of new apartment supply becoming available over the next 12 to18 months, we expect that rental demand will continue to outstrip supply, thereby maintaining stable vacancy levels and healthy rent growth. As a result, the outlook remains steady for the multifamily sector over the coming year.

EXECUTIVE SUMMARY

Please read this Executive Summary together with our MD&A and our consolidated financial statements as of December 31, 2011 and related notes.

Our Business Objectives and Strategy

Our Board of Directors and management consult with and receive direction from our conservator in establishing our business objectives and strategy, taking into consideration our role in addressing housing and mortgage market conditions. We face a variety of different objectives that potentially conflict, which limits our ability to fully achieve all of them. Our objectives include:

- providing liquidity, stability and affordability in the mortgage market;
- minimizing credit losses from delinquent mortgages;
- providing assistance to the mortgage market and to the struggling housing market;
- limiting the amount of the investment Treasury must make under our senior preferred stock purchase agreement;
- returning to long-term profitability before taking into account the payment of dividends on our senior preferred stock to Treasury; and
- protecting the interests of the taxpayers.

In addition to these objectives, our conservator recently announced strategic goals that we will pursue. On February 21, 2012, the Acting Director of FHFA sent a letter to Congress in which he wrote, "With the conservatorships [of Fannie Mae and Freddie Mac] operating for more than three years and no near-term resolution in sight, it is time to update and extend the goals and directions of the conservatorships." He continued, "FHFA is contemplating next steps to build an infrastructure for the secondary mortgage market that is consistent with existing policy proposals and will support any outcome of the leading legislative proposals." With his letter, Acting Director DeMarco provided a strategic plan for the next phase of Fannie Mae and Freddie Mac's conservatorships. The plan identifies three strategic goals for the next phase of the conservatorships:

- **Build.** Build a new infrastructure for the secondary mortgage market;
- **Contract.** Gradually contract [Fannie Mae and Freddie Mac's] dominant presence in the marketplace while simplifying and shrinking their operations; and
- **Maintain.** Maintain foreclosure prevention activities and credit availability for new and refinanced mortgages.

As a result of our uncertain future and our status as a federally chartered corporation, we can be required to take actions in pursuit of objectives other than, or that conflict with, our business objectives. For example, as we discuss below in "Legislative and Regulatory Developments—Changes to Our Single-Family Guaranty Fee Pricing" in December 2011, Congress enacted the Temporary Payroll Tax Cut Continuation Act of 2011 which, among other provisions, requires that we increase our single-family guaranty fees by at least 10 basis points and remit this increase to Treasury to fund extensions of employment tax reductions and unemployment benefits, rather than retaining this incremental revenue. In accordance with the strategic goals recently announced by FHFA, we also expect to increasingly focus on building a new infrastructure for the secondary mortgage market and on actions that will gradually decrease our presence in the marketplace while simplifying and shrinking our operations.

We are concentrating our efforts on providing liquidity and support to the mortgage market, growing the strong new book of business we have been acquiring since the beginning of 2009, minimizing our losses on loans we acquired prior to 2009, and, in support of minimizing our losses, providing assistance where feasible to struggling homeowners.

We will continue to need funds from Treasury as a result of a number of factors, including the dividends we are required to pay Treasury on the senior preferred stock, ongoing adverse conditions in the housing and mortgage markets and the deteriorated credit performance of loans in our mortgage credit book of business that we acquired prior to 2009. In his February 2012 letter to Congress, Acting Director DeMarco wrote, "[I]t is clear that the draws [Fannie Mae and Freddie Mac] have taken from the Treasury are so large they cannot be repaid under any foreseeable scenarios." As a result of our draws, we do not expect to earn profits in excess of our annual dividend obligation to Treasury for the indefinite future.

There is significant uncertainty regarding the future of our company, including how long the company will continue to exist in its current form. The Administration, Congress and our regulators are considering options for the future state of Fannie Mae, Freddie Mac and the U.S. government's role in residential mortgage finance. In February 2011, Treasury and HUD released a report to Congress on reforming America's housing finance market. The report provides that the Administration will work with FHFA to determine the best way to responsibly reduce Fannie Mae's and Freddie Mac's role in the market and ultimately wind down both institutions. The report emphasizes the importance of proceeding with a careful transition plan and providing the necessary financial support to Fannie Mae and Freddie Mac during the transition period. On February 2, 2012, Treasury Secretary Geithner stated that the Administration intended to release new details around approaches to housing finance reform, including winding down Fannie Mae and Freddie Mac, in the spring of 2012 and to work with Congressional leaders to explore options for legislation, but that he does not expect housing finance reform legislation to be enacted in 2012. In his February 2012 letter to Congress, Acting Director DeMarco states that achieving the strategic goals for the next phase of conservatorship will "prepare the foundation for a new, stronger housing finance system in the future. Although that future may not include Fannie Mae and Freddie Mac, at least as they are known today, this important work in conservatorship can be a lasting, positive legacy for the country and its housing system." We discuss efforts to reform the GSEs and the housing finance system in more detail in "Legislative and Regulatory Developments—GSE Reform."

In 2011 we refined and began implementing a plan designed to support the creation of a sustainable housing finance system by improving our business processes, infrastructure and organizational structure. We expect to continue implementing the plan in phases with goals of providing value to our customers, simplifying and standardizing our operating model, and reducing our costs.

To provide context for analyzing our consolidated financial statements and understanding our MD&A, we discuss the following topics in this executive summary:

- Our provision of liquidity and support to the mortgage market;
- Our 2011 financial performance;
- Our strong new book of business and expected losses on loans we acquired prior to 2009;
- Our efforts to reduce losses on single-family loans we acquired prior to 2009, which we refer to as our "legacy book of business";
- Credit statistics for our single-family book of business;
- Our liquidity position; and
- Our outlook.

Providing Liquidity and Support to the Mortgage Market

Our Liquidity and Support Activities

We provide liquidity and support to the U.S. mortgage market in a number of important ways:

- We serve as a stable source of liquidity for purchases of homes and financing of multifamily rental housing, as well as for refinancing existing mortgages. We provided approximately $2.3 trillion in liquidity to the mortgage market in 2009 through 2011 through our purchases and guarantees of loans, which enabled homeowners to refinance 6.6 million mortgages, 1.9 million households to purchase a home, and financing for over 1.1 million units of multifamily housing.
- We are a consistent market presence as we continue to provide liquidity to the mortgage market even when other sources of capital have exited the market, as has been shown repeatedly over the last few years. We

estimate Fannie Mae, Freddie Mac and Ginnie Mae collectively guaranteed more than 99% of new single-family mortgage-related securities issuances in 2009 through 2011, which accounted for more than 85% of the single-family first-lien mortgages we currently estimate were originated in the United States in 2009 through 2011. Because our estimate of mortgage originations is subject to change as additional data become available, our estimated share of single-family first-lien mortgages for prior periods may change in the future, perhaps materially.

- We have strengthened our underwriting and eligibility standards to support sustainable homeownership. Our support enables borrowers to have access to a variety of conforming mortgage products, including long-term, fixed-rate mortgages, such as the prepayable 30-year fixed-rate mortgage that protects homeowners from interest rate swings.
- We helped over 900,000 homeowners retain their homes or otherwise avoid foreclosure in 2009 through 2011, which helped to support neighborhoods, home prices and the housing market. Moreover, borrowers' ability to pay their modified loans has improved in recent periods as we have enhanced the structure of our modifications. For loans modified outside of the Administration's Home Affordable Modification Program ("HAMP"), one year after modification, 67% of modifications we made in the fourth quarter of 2010 were performing, compared with 50% of modifications in the fourth quarter of 2009. For loans modified under HAMP, one year after modification, 74% of our HAMP modifications made in the fourth quarter of 2010 were performing, compared with 73% of our HAMP modifications in the fourth quarter of 2009.
- We helped borrowers refinance loans through our Refi Plus™ initiative, which provides expanded refinance opportunities for eligible Fannie Mae borrowers. We acquired approximately 732,000 loans refinanced under our Refi Plus initiative in 2011. Some borrowers may have increased their monthly payments as they took advantage of lower interest rates to reduce the terms of their loans, to switch from adjustable rates to fixed rates, or to switch from interest-only mortgages to fully amortizing mortgages. Even taking these refinancings into account, our acquisitions under Refi Plus reduced our borrowers' monthly mortgage payments by an average of $166.
- We support affordability in the multifamily rental market. Over 85% of the multifamily units we financed from 2009 through 2011 were affordable to families earning at or below the median income in their area.
- In addition to purchasing and guaranteeing loans, we provide funds to the mortgage market through short-term financing and other activities. These activities are described in more detail in "Business Segments—Capital Markets."

2011 Acquisitions and Market Share

In 2011, we purchased or guaranteed approximately $653 billion in loans, measured by unpaid principal balance, which includes approximately $67 billion in delinquent loans we purchased from our single-family MBS trusts. These activities enabled our lender customers to finance approximately 2,680,000 single-family conventional loans and loans for approximately 423,000 units in multifamily properties during 2011.

We currently estimate that our single-family market share was 41% in 2011, compared with 36% in 2010. These amounts represent our single-family mortgage acquisitions for each year, excluding delinquent loans we purchased from our MBS trusts, as a percentage of the single-family first-lien mortgages we currently estimate were originated in the United States that year. Because our estimate of mortgage originations in prior periods is subject to change as additional data become available, these market share estimates may change in the future, perhaps materially.

We remained the largest single issuer of mortgage-related securities in the secondary market during the fourth quarter of 2011, with an estimated market share of new single-family mortgage-related securities issuances of 54%. Our estimated market share of new single-family mortgage-related securities issuances was 43% in the third quarter of 2011 and 49% in the fourth quarter of 2010. The estimated market share increase from the third quarter of 2011 to the fourth quarter of 2011 is largely the result of increased investor demand for Fannie Mae MBS.

We remained a constant source of liquidity in the multifamily market. We owned or guaranteed approximately 21% of the outstanding debt on multifamily properties as of September 30, 2011 (the latest date for which information was available).

Summary of Our Financial Performance for 2011

Our financial results for 2011 reflect the continued weakness in the housing and mortgage markets, which remain under pressure from high levels of unemployment and underemployment, and the prolonged decline in home prices since their peak in the third quarter of 2006. Our credit-related expenses continue to be a key driver of our net losses for each period presented. The substantial majority of our credit-related expenses are from single-family loans we acquired prior to 2009, which decreased as a percentage of our single-family guaranty book of business to 47% as of December 31, 2011 from 60% as of December 31, 2010. Our credit-related expenses vary from period to period primarily based on changes in home prices, borrower payment behavior, the types and volumes of loss mitigation activities completed, and actual and estimated recoveries from our lender and mortgage insurer counterparties.

In addition, the decline in interest rates during 2011 resulted in significant fair value losses on our derivatives. These fair value losses on our derivatives were offset by fair value gains during 2011 related to our mortgage investments; however, only a portion of these investments is recorded at fair value in our financial statements. Derivative instruments are an integral part of how we manage interest rate risk and an inherent part of the cost of funding and hedging our mortgage investments. We expect high levels of period-to-period volatility in our results because our derivatives are recorded at fair value in our financial statements while some of the instruments they hedge are not recorded at fair value in our financial statements.

Total Comprehensive Loss

We recognized a total comprehensive loss of $16.4 billion for 2011, consisting of a net loss of $16.9 billion and other comprehensive income of $447 million. In comparison, our total comprehensive loss for 2010 was $10.6 billion, consisting of a net loss of $14.0 billion and other comprehensive income of $3.4 billion.

The increase in our net loss in 2011, as compared with 2010, was primarily due to an increase in net fair value losses and credit-related expenses, which were partially offset by an increase in net interest income. The primary drivers of these changes were:

- a $6.1 billion increase in net fair value losses primarily driven by losses on our risk management derivatives in 2011 due to a significant decline in swap rates during the period;
- a $2.9 billion increase in net interest income driven by lower interest expense on debt, which was partially offset by lower interest income on loans and securities;
- an $884 million increase in credit-related expenses primarily driven by a decline in actual and projected home prices.

The $3.0 billion decline in our other comprehensive income was primarily driven by lower gains on the fair value of our available-for-sale securities due to widening credit spreads in 2011 compared with narrowing spreads in 2010.

See "Consolidated Results of Operations" for more information on our results.

Net Worth

Our net worth deficit of $4.6 billion as of December 31, 2011 reflects the recognition of our total comprehensive loss of $1.9 billion and our payment to Treasury of $2.6 billion in senior preferred stock dividends during the fourth quarter of 2011. The Acting Director of FHFA will submit a request to Treasury on our behalf for $4.6 billion to eliminate our net worth deficit.

In the fourth quarter of 2011, we received $7.8 billion in funds from Treasury to eliminate our net worth deficit as of September 30, 2011. Upon receipt of the additional funds requested to eliminate our net worth deficit as of

December 31, 2011, the aggregate liquidation preference on the senior preferred stock will be $117.1 billion, which will require an annualized dividend payment of $11.7 billion. The amount of this dividend payment exceeds our reported annual net income for every year since our inception. Through December 31, 2011, we have paid an aggregate of $19.8 billion to Treasury in dividends on the senior preferred stock.

Table 1 below displays our senior preferred stock dividend payments to Treasury and Treasury draws since entering conservatorship in 2008.

Table 1: Treasury Dividend Payments and Draws

	2008	2009	2010	2011	Cumulative Total
		(Dollars in billions)			
Senior preferred stock dividends[1]	$ —	$ 2.5	$ 7.7	$ 9.6	$ 19.8
Treasury draws[2][3]	15.2	60.0	15.0	25.9[4]	116.1
Cumulative percentage of senior preferred stock dividends to Treasury draws	0.2%	3.3%	11.3%	17.1%	17.1%

[1] Represents total quarterly cash dividends paid to Treasury, during the periods presented, based on an annual rate of 10% per year on the aggregate liquidation preference of the senior preferred stock.

[2] Represents the total draws received from Treasury and / or being requested based on our quarterly net worth deficits for the periods presented. Draw requests are funded in the quarter following each quarterly net worth deficit.

[3] Treasury draws do not include the initial $1.0 billion liquidation preference of the senior preferred stock, for which we did not receive any cash proceeds.

[4] The treasury draw to eliminate the 2011 fourth quarter net worth deficit was $4,571 million.

Total Loss Reserves

Our total loss reserves, which reflect our estimate of the probable losses we have incurred in our guaranty book of business, including concessions we granted borrowers upon modification of their loans, increased to $76.9 billion as of December 31, 2011 from $75.6 billion as of September 30, 2011 and $66.3 billion as of December 31, 2010. Our total loss reserve coverage to total nonperforming loans was 31% as of December 31, 2011, compared with 30% as of September 30, 2011 and 26% as of December 31, 2010. The continued stress on a broad segment of borrowers from continued high levels of unemployment and underemployment and the prolonged decline in home prices have caused our total loss reserves to remain high for the past few years. In December 2011, we changed our definition of "total nonperforming loans." Under our new definition, we no longer reflect in this amount (1) our allowance for loan losses or (2) our allowance for accrued interest receivable related to these individually impaired loans. The amounts we report for prior periods have been revised from amounts we previously disclosed as a result of this change.

Our Strong New Book of Business and Expected Losses on Our Legacy Book of Business

We refer to the single-family loans we have acquired since the beginning of 2009 as our "new single-family book of business" and the single-family loans we acquired prior to 2009 as our "legacy book of business." In this section, we discuss our expectations regarding the profitability of our new single-family book of business, as well as the performance and credit profile of these loans to date. We also discuss our expectations regarding losses on the loans in our legacy book of business.

Factors that Could Cause Actual Results to be Materially Different from Our Estimates and Expectations

We present a number of estimates and expectations in this executive summary regarding the profitability of single-family loans we have acquired, our single-family credit losses and credit-related expenses, and our draws from and dividends to be paid to Treasury. These estimates and expectations are forward-looking statements based on our current assumptions regarding numerous factors, including future home prices and the future performance of our loans. Home prices are a key factor affecting the amount of credit losses and profitability we expect. As home prices decline, the loan-to-value ratios, or LTV ratios, on our loans shift higher, and both the probability of default and the severity of loss increase. Furthermore, the level of regional variation in home price declines affects our results, as we will incur greater credit losses if home prices decline more significantly in regions where we have a greater concentration of loans.

Our future estimates of our performance, as well as the actual amounts, may differ materially from our current estimates and expectations as a result of the timing and level of, as well as regional variation in, home price changes, changes in interest rates, unemployment, other macroeconomic variables, direct and indirect consequences resulting from failures by servicers to follow proper procedures in the administration of foreclosure cases, government policy, changes in generally accepted accounting principles ("GAAP"), credit availability, social behaviors, the volume of loans we modify, the effectiveness of our loss mitigation strategies, management of our real-estate owned ("REO") inventory and pursuit of contractual remedies, changes in the fair value of our assets and liabilities, impairments of our assets, and many other factors, including those discussed in "Risk Factors," "Forward-Looking Statements" and elsewhere in this report. For example, if the economy were to enter a deep recession, we would expect actual outcomes to differ substantially from our current expectations.

Building a Strong New Single-Family Book of Business

In 2009, we began to see the effect of actions we took, beginning in 2008, to significantly strengthen our underwriting and eligibility standards and change our pricing to promote sustainable homeownership and stability in the housing market. As a result of these changes and other market dynamics, we reduced our acquisitions of loans with higher-risk attributes. Compared with the loans we acquired in 2005 through 2008, the loans in our new single-family book of business have had better overall credit risk profiles at the time we acquired them and, based on their performance so far, we expect loans in our new single-family book of business to perform well over their lifetime.

Table 2, which displays information about the credit risk profile of our single-family loan acquisitions according to when we acquired the loans, illustrates the improvement in the credit risk profile of loans we acquired beginning in 2009 compared with loans we acquired in 2005 through 2008. Based on our experience, we expect that loans with characteristics such as higher FICO credit scores and lower original LTV ratios (that is, more equity initially held by the borrowers in the underlying properties) will perform better than loans with risk characteristics such as higher original LTV ratios, lower FICO credit scores or interest-only payment features, and Alt-A loans. Table 2 also displays information about the percentage of our single-family loans that were seriously delinquent (three or more months past due or in the foreclosure process) at the end of the first year following their acquisition, as well as our current expectation for whether loans we acquired will be profitable over their lifetime, by which we mean that we expect our fee income on these loans to exceed our credit losses and administrative costs for them.

Table 2: Characteristics of Acquired Single-Family Conventional Loans by Acquisition Period[1]

	Weighted Average FICO Credit Score at Origination	FICO Credit Score at Origination < 620	Original LTV Ratio	Original LTV Ratio >90[2]	Alt-A Loans[3]	Interest-Only Loans	SDQ Rate as of 4th quarter following Acquisition year	Expectation for Profitability
Year of Acquisition:								
New Single-Family Book of Business Acquisitions:								
2011	762	*	69%	9%	1%	1%	Not applicable	Profitable
2010	762	*	68%	7%	1%	1%	0.30%	Profitable
2009	761	*	67%	4%	*	1%	0.32%	Profitable
Weighted Average New Single-Family Book of Business Acquisitions	762	*	68%	6%	1%	1%	0.31%	Profitable
Legacy Single-Family Book of Business Acquisitions:[4]								
2005-2008	722	5%	73%	11%	14%	12%	3.04%	Not Profitable
2001-2004[5]	718	5%	71%	8%	9%	1%	0.53%	Profitable

* Represents less than 0.5% of the total acquisitions.

(1) Loans that meet more than one category are included in each applicable category.

(2) The majority of loans that we acquired in our new single-family book of business between 2009 and 2011 with original LTV ratios over 90% were loans acquired under our Refi Plus initiative. See "Changes in the Credit Profile of our Single-Family Acquisitions" for further information on Refi Plus.

(3) Newly originated Alt-A loans acquired in 2009 through 2011 consist of the refinance of existing loans.

(4) Loans acquired prior to 2001, which comprised approximately 1% of our single-family conventional guaranty book of business as of December 31, 2011, are not included in this table. We expect loans we acquired prior to 2001, in the aggregate, to be profitable over their lifetime.

(5) Although we do not expect loans we acquired in 2004 to be profitable over their lifetime, we expect loans we acquired in 2001 through 2004 will, in the aggregate, be profitable over their lifetime. We have combined loans acquired in 2004 with loans from prior years because we made significant changes to our acquisition policies that affected the loans we acquired in 2005 through 2008. We expect our credit losses from loans we acquired in 2004, which are due to home price declines and prolonged unemployment, will be significantly smaller than those generated by loans we acquired in 2005 through 2008.

While Table 2 covers all of the single-family conventional loans we acquired in each period presented (or, in the case of the serious delinquency rate, those still in our book of business four quarters after the end of the year they were acquired), Table 3 displays information about loans that remained in our single-family conventional guaranty book of business as of December 31, 2011.

Table 3: Selected Credit Characteristics of Single-Family Conventional Loans Held, by Acquisition Period

	As of December 31, 2011			
	% of Single-Family Conventional Guaranty Book of Business(1)	Current Estimated Mark-to-Market LTV Ratio(1)	Current Mark-to-Market LTV Ratio >100%(1)(2)	Serious Delinquency Rate(3)
Year of Acquisition:				
New Single-Family Book of Business:				
2011	19%	70%	4%	0.05%
2010	18	72	5	0.30
2009	16	73	6	0.62
Total New Single-Family Book of Business	53	71	5	0.31
Legacy Book of Business:				
2005-2008	31	103	45	9.39
2004 and prior	16	60	8	3.32
Total Single-Family Book of Business	100	79	18	3.91

(1) Calculated based on the aggregate unpaid principal balance of single-family loans for each category divided by the aggregate unpaid principal balance of loans in our single-family conventional guaranty book of business as of December 31, 2011.

(2) The majority of loans in our new single-family book of business as of December 31, 2011 with mark-to-market LTV ratios over 100% were loans acquired under our Refi Plus initiative. See "Changes in the Credit Profile of our Single-Family Acquisitions" for further information on Refi Plus.

(3) The serious delinquency rates for loans acquired in more recent years will be higher after the loans have aged, but we do not expect them to approach the levels of the December 31, 2011 serious delinquency rates of loans in our legacy book of business.

The performance we expect for our single-family loans

As Table 2 shows, we expect loans we have acquired since the beginning of 2009 to be profitable, in contrast to loans we acquired in 2005 through 2008. Our expectations regarding the ultimate performance of our loans are based on numerous expectations and assumptions, including those relating to expected changes in regional and national home prices, borrower behavior, public policy and other macroeconomic factors. If future conditions are more unfavorable than our expectations, loans we acquired in 2009, 2010 and 2011 could become unprofitable. For example, we expect that credit losses on these loans would exceed guaranty fee revenue if home prices declined nationally by approximately 10% from their December 2011 levels over the next five years, based on our home price index. See "Outlook" for our expectations regarding home price declines.

In our experience, an early predictor of the ultimate performance of a portfolio of loans is the rate at which the loans become seriously delinquent within a short period of time after acquisition. As Table 2 shows, the percentage of our 2009 and 2010 acquisitions that were seriously delinquent as of the end of the fourth quarter following their acquisition year was substantially lower than the average comparable serious delinquency rate for loans acquired in 2005 through 2008. Table 3 displays the serious delinquency rate for our loans as of December 31, 2011.

Changes in the Credit Profile of Our Single-Family Acquisitions

Single-family loans we purchased or guaranteed from 2005 through 2008 were acquired during a period when home prices were rising rapidly, peaked, and then started to decline sharply, and underwriting and eligibility standards were more relaxed than they are now. These loans were characterized by higher loan-to-value ("LTV") ratios and lower FICO credit scores than loans we have acquired since January 1, 2009. In addition, many of these loans were Alt-A loans or had other higher-risk loan attributes such as interest-only payment features. As a result of the sharp declines in home prices, 45% of loans we acquired from 2005 through 2008, measured by unpaid principal balance, had mark-to-market LTV ratios that were greater than 100% as of December 31, 2011, which means the principal balance of the borrower's primary mortgage exceeded the current market value of the borrower's home. The percentage of borrowers who owed more than their home's value is higher when second-lien loans are included. The sharp decline in home prices, the severe economic recession that began in December 2007 and continued through June 2009, and continuing high unemployment and underemployment have significantly and adversely impacted the performance of loans we acquired from 2005 through 2008. Our 2005 through 2008 acquisitions are becoming a smaller percentage of our single-family guaranty book of business, having decreased from 39% of our single-family guaranty book of business as of December 31, 2010 to 31% as of December 31, 2011.

Improvements in the credit risk profile of our acquisitions since the beginning of 2009 over acquisitions in prior years reflect changes that we made, beginning in 2008, to our pricing and eligibility standards and underwriting. These changes were intended to more accurately reflect the risk in the housing market and to significantly reduce our acquisitions of loans with higher-risk attributes. The improvements also reflect changes that mortgage insurers made to their eligibility standards. We believe the strong early performance of loans in our new single-family book of business despite the home price declines and high unemployment of the last few years is attributable to their strong credit risk profile.

The credit risk profile of loans in our new single-family book of business has been further influenced by the inclusion of a significant percentage of refinanced loans. One effect has been that the original LTV ratios of loans we acquired in each of 2010 and 2011 increased from the prior year as a result of our acquisition of loans with higher LTV ratios under our Refi Plus initiative. Refi Plus includes loans refinanced under the Home Affordable Refinance Program ("HARP"), which was established by the Administration to help borrowers who may otherwise be unable to refinance the mortgage loan on their primary residence due to a decline in home values. Original LTV ratios also increased in 2011 as a result of changes by mortgage insurers and the Federal Housing Administration ("FHA") that improved the economics of obtaining private mortgage insurance and drove an increase in our market share of home purchase mortgages with LTV ratios greater than 80%. We discuss refinancings and their impact on credit risk characteristics, as well as other changes in the credit risk characteristics of our loan acquisitions, in more detail in "MD&A—Risk Management—Credit Risk Management—Single-Family Mortgage Credit Risk Management."

Whether the loans we acquire in the future will exhibit an overall credit profile similar to our more recent acquisitions will depend on a number of factors, including our future pricing and eligibility standards and those of mortgage insurers and FHA, the percentage of loan originations representing refinancings, our future objectives, government policy, market and competitive conditions, and the volume and characteristics of loans we acquire under the recently announced changes to the terms of HARP.

Expected Losses on Our Legacy Book of Business

The single-family credit losses we realized in 2009 through 2011, combined with the amounts we have reserved for single-family credit losses as of December 31, 2011, as described below, total approximately $140 billion. A substantial majority of these losses are attributable to single-family loans we purchased or guaranteed from 2005 through 2008.

While loans we acquired in 2005 through 2008 will give rise to additional credit losses that we will realize when the loans are charged off (upon foreclosure or our acceptance of a short sale or deed-in-lieu of foreclosure), we estimate that we have reserved for the substantial majority of the remaining losses on these loans. Even though we believe a substantial majority of the credit losses we have yet to realize on these loans has already been reflected in our results of operations as credit-related expenses, our credit-related expenses have remained high as weakness in the housing and mortgage markets continues. We expect that our credit-related expenses will continue to be high in 2012 but that, overall, our credit-related expenses will be lower in 2012 than in 2011. The amount of credit-related expenses we incur each period will be affected by changes in expected and actual home prices, modifications and foreclosure activity during the period.

We expect our loss reserves will remain significantly elevated relative to historical levels for an extended period because (1) we expect future defaults on loans in our legacy book of business and the resulting charge-offs will occur over a period of years and (2) a significant portion of our reserves represents concessions granted to borrowers upon modification of their loans and will remain in our reserves until the loans are fully repaid or default. In addition, given the large existing and anticipated supply of single-family homes in the market, we anticipate that it will take years before our REO inventory is reduced to pre-2008 levels.

We show how we calculate our realized credit losses in "Table 15: Credit Loss Performance Metrics." Our reserves for credit losses described in this discussion consist of (1) our allowance for loan losses, (2) our allowance for accrued interest receivable, (3) our allowance for preforeclosure property taxes and insurance receivables, and (4) our reserve for guaranty losses (collectively, our "total loss reserves"), plus the portion of fair value losses on loans purchased out of unconsolidated MBS trusts reflected in our consolidated balance sheets that we estimate represents accelerated credit losses we expect to realize. For more information on our reserves for credit losses, see "Table 11: Total Loss Reserves."

The fair value losses that we consider part of our reserves are not included in our "total loss reserves." We recorded the majority of these fair value losses prior to our adoption in 2010 of accounting guidance on the transfers of financial assets and the consolidation of variable interest entities. Before we adopted this guidance, upon our acquisition of credit-impaired loans out of unconsolidated MBS trusts, we recorded fair value loss charge-offs against our reserve for guaranty losses. The amount of these charge-offs was the amount by which the acquisition cost of these loans exceeded their estimated fair value. We expect to realize a portion of these fair value losses as credit losses in the future (for loans that eventually involve foreclosures, short sales or deeds-in-lieu of foreclosure), yet these fair value losses have already reduced the mortgage loan balances reflected in our consolidated balance sheets and have effectively been recognized in our consolidated statements of operations and comprehensive loss through our provision for guaranty losses. We consider these fair value losses as an "effective reserve," apart from our total loss reserves, to the extent that we expect to realize these amounts as credit losses on the acquired loans in the future.

Reducing Credit Losses on Our Legacy Book of Business

To reduce the credit losses we ultimately incur on our legacy book of business, we have been focusing our efforts on the following strategies:

- Reducing defaults by offering borrowers solutions that enable them to keep their homes ("home retention solutions");
- Pursuing "foreclosure alternatives," which help borrowers avoid foreclosure and reduce the severity of the losses we incur overall;
- Efficiently managing timelines for home retention solutions, foreclosure alternatives, and foreclosures;
- Improving servicing standards and servicers' execution and consistency;
- Managing our REO inventory to minimize costs and maximize sales proceeds; and
- Pursuing contractual remedies from lenders, servicers and providers of credit enhancement.

As we work to reduce credit losses, we also seek to assist distressed borrowers, help stabilize communities, and support the housing market. In dealing with distressed borrowers, we first seek home retention solutions before turning to foreclosure alternatives. When there is no viable home retention solution or foreclosure alternative that can be applied, we seek to move to foreclosure expeditiously. Prolonged delinquencies hurt local home values and destabilize communities, as these homes often go into disrepair. As a general rule, the longer borrowers remain delinquent, the greater our costs, and the more prices for surrounding homes deteriorate.

Reducing Defaults. Home retention solutions are a key element of our strategy to reduce defaults, and the majority of our home retention solutions are loan modifications. Successful modifications allow borrowers who were having problems making their pre-modification mortgage payments to remain in their homes. While loan modifications contribute to higher credit-related expenses in the near term, we believe that successful modifications (those that enable borrowers to remain current on their loans) will ultimately reduce our credit losses over the long term from what they otherwise would have been if we had taken the loans to foreclosure. We completed approximately 213,000 loan modifications in 2011, bringing the total number of loan modifications we have completed since January 2009 to over 715,000. The substantial majority of these modifications involved deferring or lowering borrowers' monthly mortgage payments, which we believe increases the likelihood borrowers will be able to remain current on their modified loans. Borrowers' ability to pay their modified loans has improved in recent periods as we have enhanced the structure of our modifications. For loans modified outside of HAMP, one year after modification, 67% of modifications we made in the fourth quarter of 2010 were performing, compared with 50% of our fourth quarter 2009 modifications. For loans modified under HAMP, one year after modification, 74% of our HAMP modifications made in the fourth quarter of 2010 were performing, compared with 73% of our HAMP modifications made in the fourth quarter of 2009. We began changing the structure of our non-HAMP modifications in 2010 to lower borrowers' monthly mortgage payments to a greater extent, which improved the performance of our non-HAMP modifications overall. In addition, because post-modification performance was greater for our HAMP modifications than for our non-HAMP modifications, we began in September 2010 to include trial periods for our non-HAMP modifications, similar to those for HAMP modifications. Whether modifications are ultimately successful depends heavily on economic factors, such as unemployment rates, household wealth and income, and home prices, as well as borrowers' willingness to pay their loans. See "Table 46: Statistics on Single-Family Loan Workouts" and the accompanying discussion for additional information on our home retention efforts, as well as our foreclosure alternatives. For a description of the impact of modifications on our credit-related expenses, see "Consolidated Results of Operations—Credit-Related Expenses—Provision for Credit Losses."

Pursuing Foreclosure Alternatives. If we are unable to provide a viable home retention solution for a distressed borrower, we seek to offer a foreclosure alternative and complete it in a timely manner. Our foreclosure alternatives are primarily short sales, which are also known as preforeclosure sales, as well as deeds-in-lieu of foreclosure. Overall, these alternatives reduce the severity of our loss resulting from a borrower's default while enabling the borrower to avoid going through a foreclosure. We provide information about the volume of foreclosure alternatives we completed in 2011 in "Table 4: Credit Statistics, Single-Family Guaranty Book of Business."

Managing Timelines for Workouts and Foreclosures. We refer to home retention solutions and foreclosure alternatives as "workouts." We believe that home retention solutions are most effective in preventing defaults when completed at an early stage of delinquency. Similarly, our foreclosure alternatives are more likely to be successful in reducing our loss severity if they are executed expeditiously. Accordingly, it is important to us for our servicers to work with delinquent borrowers early in the delinquency to determine whether home retention solutions or foreclosure alternatives will be viable and, where no workout solution is viable, to reduce delays in completing foreclosure.

Circumstances in the foreclosure environment have resulted in foreclosures proceeding at a slow pace. As a result of the housing market downturn that began in 2006 and significantly worsened in 2008, the volume of foreclosures to be processed by servicers and states significantly increased in 2009 and the first nine months of 2010. In October 2010, a number of single-family mortgage servicers temporarily halted some or all of the foreclosures they were processing after discovering deficiencies in their foreclosure processes and the processes of their service providers. In response to the foreclosure process deficiencies, some states changed their foreclosure processes to require additional review and verification of the accuracy of pending and future foreclosure filings. Some states also added requirements to the foreclosure process, including mediation processes and requirements to file new affidavits. Further, some state courts have issued rulings calling into question the validity of some existing foreclosure practices. These actions halted or significantly delayed not only existing, but new foreclosures. In addition to the new legislative, regulatory, and judicial requirements applicable to servicers generally, five of the nation's largest mortgage servicers (Bank of America Corporation, JPMorgan Chase & Co., Wells Fargo & Company, Citigroup Inc., and Ally Financial Inc. (formerly GMAC)) have agreed in principle to implement certain new servicing and foreclosure practices as part of a settlement announced February 9, 2012, with the federal government and 49 state attorneys general.

While servicers have generally ended their outright foreclosure halts, they continue to process foreclosures at a slow pace as they update their procedures to remediate their process deficiencies and meet new legislative, regulatory and judicial requirements. Servicers and states are also dealing with the backlog of foreclosures resulting from these delays and from the elevated level of foreclosures resulting from the housing market downturn.

Foreclosures generally take longer to complete in states where judicial foreclosures are required than in states where non-judicial foreclosures are permitted. For foreclosures completed in 2011, measuring from the last monthly period for which the borrowers fully paid their mortgages to when we added the related properties to our REO inventory, the average number of days it took to ultimately foreclose ranged from a low of 391 days in Missouri, a non-judicial foreclosure state, to a high of 890 days in Florida, a judicial foreclosure state. As of December 31, 2011, Florida accounted for 30% of our loans that were in the foreclosure process.

The slow pace of foreclosures has significantly impacted our ability to reduce our serious delinquency rate. The serious delinquency rate for our single-family conventional loans decreased from 5.38% as of December 31, 2009 to 3.91% as of December 31, 2011, driven by our home retention solutions, as well as foreclosure alternatives and completed foreclosures. The decrease is also attributable to our acquisition of loans with stronger credit profiles since the beginning of 2009, as these loans are now more than 50% of our single-family guaranty book of business, resulting in a smaller percentage of our loans becoming seriously delinquent. While workouts reduced our population of seriously delinquent loans, for some seriously delinquent loans no workout solution is viable. Longer foreclosure timelines result in these loans remaining in our book of business for a longer time, which has caused our serious delinquency rate to decrease more slowly in the last year than it would have if the pace of foreclosures had been faster. Extended foreclosure timelines also increase our costs of holding loans in the foreclosure process. In addition, to the extent home prices decline while foreclosure proceedings are drawn out, the proceeds we ultimately receive from the sale of the foreclosed properties will be lower. We believe the changes in the foreclosure environment discussed above will continue to negatively affect our single-family serious delinquency rates, foreclosure timelines and credit-related expenses. Moreover, we believe these conditions will delay the recovery of the housing market because it will take longer to clear the market's supply of distressed homes. Distressed homes typically sell at a discount compared to non-distressed homes and, therefore, a lingering population of distressed homes will continue to negatively affect overall home prices. See "Risk Factors" for further information about the potential impact of the foreclosure process deficiencies and resulting changes in the foreclosure environment on our business, results of operations, financial condition and net worth.

Improving Servicing Standards and Execution. The performance of our mortgage servicers is critical to our success in reducing defaults, completing foreclosure alternatives and managing workout and foreclosure timelines efficiently, because servicers are the primary point of contact with borrowers. Improving servicing standards is therefore a key aspect of our strategy to reduce our credit losses. We are taking a number of steps to improve the servicing of our delinquent loans.

- In June 2011, we issued new standards for mortgage servicers under FHFA's Servicing Alignment Initiative. The initiative is aimed at establishing consistency in the servicing of delinquent loans owned or guaranteed by Fannie Mae and Freddie Mac. Among other things, the new servicing standards, which became effective October 1, 2011, are designed to result in earlier, more frequent and more effective contact with borrowers and to improve servicer performance by providing servicers monetary incentives for exceeding loan workout benchmarks and by imposing fees on servicers for failing to meet loan workout benchmarks or foreclosure timelines.
- In some cases, we transfer servicing on loan populations that include loans with higher-risk characteristics to special servicers with whom we have worked to develop high-touch protocols for servicing these loans. These protocols include lowering the ratio of loans per servicer employee, prescribing borrower outreach strategies to be used at early stages of delinquency, and providing distressed borrowers a single point of contact to resolve issues. Transferring servicing on higher-risk loans enables the borrowers (and loans) to benefit from these high-touch protocols while increasing the original servicer's capacity to service the remaining loans, creating an opportunity to improve service to the remaining borrowers.
- In September 2011, we issued our first ratings of servicers' performance under our Servicer Total Achievement and Rewards ("STAR") program. The STAR program is designed to encourage improvements in customer service and foreclosure prevention outcomes for homeowners by rating servicers on their performance in these areas.

While we believe these steps will improve the servicing of our loans, ultimately we are dependent on servicers' willingness, efficiency and ability to implement our home retention solutions and foreclosure alternatives, and to manage timelines for workouts and foreclosures.

Managing Our REO Inventory. Efficient management of our REO inventory of homes acquired through deed-in-lieu of foreclosure or foreclosure is another critical element of our strategy for reducing credit losses. Since January 2009, we have strengthened our REO sales capabilities by increasing resources, as we continue to manage our REO inventory to minimize costs and maximize sales proceeds. As Table 4 shows, the volume of our property dispositions increased in 2010 and 2011.

Neighborhood stabilization is a core principle in our approach to managing our REO inventory. As a result, we seek to keep properties in good condition and, in some cases, repair them to make them more marketable. Our goal is to obtain the highest price possible for the properties we sell. In 2011, we completed repairs to approximately 89,800 properties sold from our single-family REO inventory, at an average cost of approximately $6,200 per property. Repairing REO properties increases sales to owner occupants and increases financing options for REO buyers. In addition, we encourage homeownership through our "First Look" marketing period. During this "First Look" period, owner occupants, some nonprofit organizations and public entities may submit offers and purchase properties without competition from investors. Approximately 145,000 of the 244,000 single-family properties we sold in 2011 were purchased by owner occupants, nonprofit organizations or public entities.

We currently lease properties to tenants who occupied the properties before we acquired them into our REO inventory, which can minimize disruption by providing additional time to find alternate housing, help stabilize local communities, provide us with rental income, and support our compliance with federal and state laws protecting tenants in foreclosed properties. As of December 31, 2011, over 9,000 tenants leased our REO properties.

The changing foreclosure environment discussed above has delayed our acquisitions of REO properties. Given the large number of seriously delinquent loans in our single-family guaranty book of business and the large existing and anticipated supply of single-family homes in the market, we expect it will take years before our REO inventory approaches pre-2008 levels.

In February 2012, FHFA announced that it was beginning the pilot phase of an REO initiative that will allow qualified investors to purchase pools of foreclosed properties from us with the requirement to rent the purchased properties for a specified number of years. During the pilot phase, we will offer for sale pools of various types of assets including rental properties, vacant properties and nonperforming loans with a focus on the hardest-hit areas. The pilot transactions are expected to provide insight into how the participation of private investors can maximize the value of foreclosed properties and stabilize communities. We do not yet know whether this initiative will have a material impact on our future REO sales and REO inventory levels.

Pursuing Contractual Remedies. We conduct targeted reviews of our loans and, when we discover loans that do not meet our underwriting or eligibility requirements, we may make demands for lenders to repurchase these loans or compensate us for losses sustained on the loans. We also make demands for lenders to repurchase or compensate us for loans for which the mortgage insurer rescinds coverage. The volume of our repurchase requests remained high in 2011, and we expect it to continue to remain high.

We requested lenders to repurchase from us or reimburse us for losses associated with loans with an unpaid principal balance of $23.8 billion during 2011. As of December 31, 2011, approximately 57% of these requests had been successfully resolved through repurchase, reimbursement or other remedies, and approximately 40% remained outstanding. Also as of December 31, 2011, approximately 90% of the $13.1 billion in repurchase requests we made in 2010, as measured by unpaid principal balance, had been successfully resolved, and approximately 5% remained outstanding. During 2011, lenders repurchased from us or reimbursed us for losses on approximately $11.5 billion in loans, measured by unpaid principal balance, pursuant to their contractual obligations. In addition, as of December 31, 2011, we had outstanding requests for lenders to repurchase from us or reimburse us for losses on $10.4 billion in loans, of which 30% had been outstanding for more than 120 days.

These dollar amounts represent the unpaid principal balance of the loans underlying the repurchase requests, not the actual amounts we have received or requested from the lenders. When lenders pay us for these requests, they pay us either to repurchase the loans or else to make us whole for our losses in cases where we have acquired and disposed of the property underlying the loans. Make-whole payments are typically for less than the unpaid principal balance because we have already recovered some of the original unpaid loan balance through the sale of the REO. As a result, our actual cash receipts relating to these outstanding repurchase requests are significantly lower than the unpaid principal balance of the loans.

In cases where a lender fails to timely honor its repurchase obligations to us, we may take additional steps to address the issue, including requiring the lender to post collateral, suspending all or a portion of our agreements with the lender, or even terminating our arrangements to acquire new loans from them. We discuss our repurchase requests and the steps we may take to address lenders' failures to honor their repurchase obligations in "MD&A—Risk Management—Institutional Counterparty Credit Risk Management—Mortgage Seller/Servicers."

We are also pursuing contractual remedies from providers of credit enhancement on our loans, including mortgage insurers. We received proceeds under our mortgage insurance policies for single-family loans of $5.8 billion in 2011. See "Risk Management—Credit Risk Management—Institutional Counterparty Credit Risk

Management" for a discussion of our repurchase and reimbursement requests and outstanding receivables from mortgage insurers, as well as the risk that one or more of these counterparties fails to fulfill its obligations to us.

Impact of Our Actions to Reduce Our Credit Losses. We believe the actions we have taken to stabilize the housing market and minimize our credit losses will reduce our future credit losses below what they otherwise would have been. However, continuing change in broader market conditions makes it difficult to predict how effective these actions ultimately will be in reducing our credit losses. Moreover, it will be difficult to measure the ultimate impact of our actions, given that current conditions in the housing market are unprecedented.

For more information on the strategies and actions we are taking to minimize our credit losses, see "Risk Management—Credit Risk Management—Single-Family Mortgage Credit Risk Management."

Credit Performance

Table 4 presents information for each quarter of 2011 and for 2010 about the credit performance of mortgage loans in our single-family guaranty book of business and our workouts. The workout information in Table 4 does not reflect repayment plans and forbearances that have been initiated but not completed, nor does it reflect trial modifications that have not become permanent.

Table 4: Credit Statistics, Single-Family Guaranty Book of Business[(1)]

	2011					2010
	Full Year	Q4	Q3	Q2	Q1	Full Year
	(Dollars in millions)					
As of the end of each period:						
Serious delinquency rate[(2)]	3.91%	3.91%	4.00%	4.08%	4.27%	4.48%
Seriously delinquent loan count	690,911	690,911	708,847	729,772	767,161	801,640
Nonperforming loans[(3)]	$ 248,379	$248,379	$248,134	$245,848	$248,444	$ 251,631
Foreclosed property inventory:						
Number of properties	118,528	118,528	122,616	135,719	153,224	162,489
Carrying value	$ 9,692	$ 9,692	$ 11,039	$ 12,480	$ 14,086	$ 14,955
Combined loss reserves[(4)]	$ 71,512	$ 71,512	$ 70,741	$ 68,887	$ 66,240	$ 60,163
Total loss reserves [(5)]	$ 75,264	$ 75,264	$ 73,973	$ 73,116	$ 70,466	$ 64,469
During the period:						
Foreclosed property (number of properties):						
Acquisitions[(6)]	199,696	47,256	45,194	53,697	53,549	262,078
Dispositions	(243,657)	(51,344)	(58,297)	(71,202)	(62,814)	(185,744)
Credit-related expenses[(7)]	$ 27,218	$ 5,397	$ 4,782	$ 5,933	$ 11,106	$ 26,420
Credit losses[(8)]	$ 18,346	$ 4,548	$ 4,384	$ 3,810	$ 5,604	$ 23,133
Loan workout activity (number of loans):						
Home retention loan workouts[(9)]	248,658	60,453	68,227	59,019	60,959	440,276
Short sales and deeds-in-lieu of foreclosure	79,833	22,231	19,306	21,176	17,120	75,391
Total loan workouts	328,491	82,684	87,533	80,195	78,079	515,667
Loan workouts as a percentage of delinquent loans in our guaranty book of business[(10)]	27.05%	27.24%	28.39%	25.71%	25.01%	37.30%

(1) Our single-family guaranty book of business consists of (a) single-family mortgage loans held in our mortgage portfolio, (b) single-family mortgage loans underlying Fannie Mae MBS, and (c) other credit enhancements that we provide on

single-family mortgage assets, such as long-term standby commitments. It excludes non-Fannie Mae mortgage-related securities held in our mortgage portfolio for which we do not provide a guaranty.

(2) Calculated based on the number of single-family conventional loans that are three or more months past due and loans that have been referred to foreclosure but not yet foreclosed upon, divided by the number of loans in our single-family conventional guaranty book of business. We include all of the single-family conventional loans that we own and those that back Fannie Mae MBS in the calculation of the single-family serious delinquency rate.

(3) Represents the total amount of nonperforming loans including troubled debt restructurings and HomeSaver Advance ("HSA") first-lien loans. A troubled debt restructuring is a restructuring of a mortgage loan in which a concession is granted to a borrower experiencing financial difficulty. HSA first-lien loans are unsecured personal loans in the amount of past due payments used to bring mortgage loans current. We generally classify loans as nonperforming when the payment of principal or interest on the loan is two months or more past due. In December 2011, we changed our definition of "total nonperforming loans." Under our new definition, we no longer reflect in this amount (1) our allowance for loan losses or (2) our allowance for accrued interest receivable related to these individually impaired loans. The amounts we report for prior periods have been revised from amounts we previously disclosed as a result of this change.

(4) Consists of the allowance for loan losses for loans recognized in our consolidated balance sheets and the reserve for guaranty losses related to both single-family loans backing Fannie Mae MBS that we do not consolidate in our consolidated balance sheets and single-family loans that we have guaranteed under long-term standby commitments. For additional information on the change in our loss reserves see "Consolidated Results of Operations—Credit-Related Expenses—Provision for Credit Losses."

(5) Consists of (a) the combined loss reserves, (b) allowance for accrued interest receivable, and (c) allowance for preforeclosure property taxes and insurance receivables.

(6) Includes acquisitions through deeds-in-lieu of foreclosure.

(7) Consists of the provision for loan losses, the provision (benefit) for guaranty losses and foreclosed property expense (income).

(8) Consists of (a) charge-offs, net of recoveries and (b) foreclosed property expense; adjusted to exclude the impact of fair value losses resulting from credit-impaired loans acquired from MBS trusts.

(9) Consists of (a) modifications, which do not include trial modifications or repayment plans or forbearances that have been initiated but not completed; (b) repayment plans and forbearances completed and (c) HomeSaver Advance first-lien loans. See "Table 46: Statistics on Single-Family Loan Workouts" in "Risk Management—Credit Risk Management" for additional information on our various types of loan workouts.

(10) Calculated based on annualized problem loan workouts during the period as a percentage of delinquent loans in our single-family guaranty book of business as of the end of the period.

Our single-family serious delinquency rate has decreased each quarter since the first quarter of 2010. The decrease in our serious delinquency rate is the result of home retention solutions, as well as foreclosure alternatives and completed foreclosures. The decrease is also attributable to our acquisition of loans with stronger credit profiles since the beginning of 2009, as these loans are now more than 50% of our single-family guaranty book of business, resulting in a smaller percentage of our loans becoming seriously delinquent.

Although our single-family serious delinquency rate has decreased significantly since the first quarter of 2010, our serious delinquency rate and the period of time that loans remain seriously delinquent has been negatively affected in recent periods by the increase in the average number of days it is taking to complete a foreclosure. As described in "Reducing Credit Losses on Our Legacy Book of Business—Managing Timelines for Workouts and Foreclosures," high levels of foreclosures, continuing issues in the servicer foreclosure process and new legislative, regulatory and judicial requirements have lengthened the time it takes to foreclose on a mortgage loan in many states. We expect serious delinquency rates will continue to be affected in the future by home price changes, changes in other macroeconomic conditions, the length of the foreclosure process, the volume of loan modifications, and the extent to which borrowers with modified loans continue to make timely payments.

We provide additional information on our credit-related expenses in "Consolidated Results of Operations—Credit-Related Expenses" and on the credit performance of mortgage loans in our single-family book of business and our loan workouts in "Risk Management—Credit Risk Management—Single-Family Mortgage Credit Risk Management."

Liquidity

During 2011, we issued a variety of non-callable and callable debt securities in a wide range of maturities to achieve cost-efficient funding and to extend our debt maturity profile. We believe that our ready access to debt funding since the beginning of 2009 has been primarily due to the actions taken by the federal government to support us and the financial markets. Accordingly, we believe that continued federal government support of our business and the financial markets, as well as our status as a GSE, are essential to maintaining our access to debt funding. Changes or perceived changes in the government's support could materially and adversely affect our ability to refinance our debt as it becomes due, which could have a material adverse impact on our liquidity, financial condition, results of operations and ability to continue as a going concern. Demand for our debt securities could decline in the future, as the Administration, Congress and our regulators debate our future. See "MD&A—Liquidity and Capital Management—Liquidity Management" for more information on our debt funding activities and "Risk Factors" for a discussion of the risks to our business posed by our reliance on the issuance of debt securities to fund our operations.

Outlook

Overall Market Conditions. We expect weakness in the housing and mortgage markets to continue in 2012. The high level of delinquent mortgage loans will ultimately result in high levels of foreclosures, which is likely to add to the excess housing inventory.

We expect that single-family default and severity rates, as well as the level of single-family foreclosures, will remain high in 2012. Despite signs of multifamily sector improvement at the national level, we expect multifamily charge-offs in 2012 to remain generally commensurate with 2011 levels as certain local markets and properties continue to exhibit weak fundamentals. Conditions may worsen if the unemployment rate increases on either a national or regional basis.

We expect that changes to HARP announced in October 2011, which we discuss in "Making Home Affordable Program," will result in our acquiring more refinancings in 2012 than we would have acquired in the absence of the changes. However, we expect fewer refinancings overall in 2012 than in 2011 because a high number of mortgages have already refinanced to low rates in recent years. As a result, we expect our loan acquisitions for 2012 will be lower than in 2011. Our loan acquisitions also could be negatively affected by the decrease in the maximum size of loans we may acquire in specified high-cost areas from $729,750 to $625,500 beginning in the fourth quarter of 2011. As our acquisitions decline, our future revenues will be negatively impacted.

We estimate that total originations in the U.S. single-family mortgage market in 2012 will decrease from 2011 levels by approximately 23%, from an estimated $1.4 trillion to an estimated $1.1 trillion, and that the amount of originations in the U.S. single-family mortgage market that are refinancings will decline from approximately $896 billion to approximately $568 billion. Refinancings comprised approximately 76% of our single-family business volume in 2011, compared with 78% in 2010.

Home Price Declines. We estimate that U.S. home prices have declined by 23% from their peak in the third quarter of 2006. While the rate of decline in home prices has moderated in recent quarters, we expect that home prices on a national basis will decline further before stabilizing in 2013. We currently expect a peak-to-trough home price decline on a national basis ranging from 23% to 30%, but believe that it would take the occurrence of an additional adverse economic event to reach the high end of the range. Future home price changes may be very different from our estimates as a result of significant inherent uncertainty in the current market environment, including uncertainty about the effect of actions the federal government has taken and may take with respect to tax policies, mortgage finance programs and policies and housing finance reform; the management of the Federal Reserve's MBS holdings; and the impact of those actions on home prices, unemployment and the general economic and interest rate environment. Because of these uncertainties, the actual home price decline we experience may differ significantly from these estimates. We also expect significant regional variation in home price declines and stabilization.

Our estimates of home price declines are based on our home price index, which is calculated differently from the S&P/Case-Shiller U.S. National Home Price Index and therefore results in different percentages for comparable declines. Our 23% to 30% peak-to-trough home price decline estimate corresponds to an approximate 32% to 40% peak-to-trough decline using the S&P/Case-Shiller index method. Our estimates differ from the S&P/Case-Shiller index in two principal ways: (1) our estimates weight expectations by number of properties, whereas the S&P/Case-Shiller index weights expectations based on property value, causing home price changes on higher priced homes to have a greater effect on the overall result; and (2) the S&P/Case-Shiller index includes sales of foreclosed homes while our estimates attempt to exclude foreclosed home sales, because we believe that differing maintenance practices and the forced nature of the sales make foreclosed home prices less representative of market values. We believe, however, that the impact of sales of foreclosed homes is indirectly reflected in our estimates as a result of their impact on the pricing of non- distressed sales. We estimate S&P/Case-Shiller comparison numbers by adjusting our internal home price estimates to compensate for the principal differences—weighting based on property value and including foreclosed property sales. In addition to these differences, our estimates are based on our own internally available data combined with publicly available data, and are therefore based on data collected nationwide, whereas the S&P/Case-Shiller index is based on publicly available data, which may be limited in certain geographic areas of the country. Our comparative calculations to the S&P/Case-Shiller index provided above are not adjusted to compensate for this data pool difference.

Credit-Related Expenses and Credit Losses. Our credit-related expenses, which include our provision for credit losses, reflect our recognition of losses on our loans. Through our provision for credit losses, we recognize credit-related expenses on loans in the period in which we determine that we have incurred a probable loss on the loans as of the end of the period, or in which we have granted concessions to the borrowers. Accordingly, our credit-related expenses in each period are affected by changes in actual and expected home prices, borrower payment behavior, the types and volumes of loss mitigation activities and foreclosures we complete, and estimated recoveries from our lender and mortgage insurer counterparties. Our credit losses, which include our charge-offs, net of recoveries, reflect our realization of losses on our loans. We realize losses on loans, through our charge-offs, when foreclosure sales are completed or when we accept short sales or deeds-in-lieu of foreclosure. We expect that our credit-related expenses will remain high in 2012 but that, overall, our credit-related expenses will be lower in 2012 than in 2011. We expect our credit losses in 2012 to remain high. To the extent delays in foreclosures continue in 2012, our realization of some credit losses will be delayed. We further describe our credit loss outlook in "Our Strong New Book of Business and Expected Losses on our Legacy Book of Business—Expected Losses on Our Legacy Book of Business."

Uncertainty Regarding our Long-Term Financial Sustainability and Future Status. There is significant uncertainty in the current market environment, and any changes in the trends in macroeconomic factors that we currently anticipate, such as home prices and unemployment, may cause our future credit-related expenses and credit losses to vary significantly from our current expectations. Although Treasury's funds under the senior preferred stock purchase agreement permit us to remain solvent and avoid receivership, the resulting dividend payments are substantial. We do not expect to earn profits in excess of our annual dividend obligation to Treasury for the indefinite future. In his February 2012 letter to Congress, the Acting Director of FHFA wrote, "[I]t is clear that the draws [Fannie Mae and Freddie Mac] have taken from the Treasury are so large they cannot be repaid under any foreseeable scenarios." We expect to request additional draws under the senior preferred stock purchase agreement in future periods, which will further increase the dividends we owe to Treasury on the senior preferred stock. We expect that, over time, our dividend obligation to Treasury will constitute an increasing portion of our future draws under the senior preferred stock purchase agreement. As a result of these factors, there is significant uncertainty about our long-term financial sustainability.

In addition, there is significant uncertainty regarding the future of our company, including how long the company will continue to be in its current form, the extent of our role in the market, what form we will have, and what ownership interest, if any, our current common and preferred stockholders will hold in us after the conservatorship is terminated. We expect this uncertainty to continue. In February 2011, Treasury and HUD released a report to Congress on reforming America's housing finance market. The report states that the Administration will work with FHFA to determine the best way to responsibly wind down both Fannie Mae and

Freddie Mac. The report emphasizes the importance of providing the necessary financial support to Fannie Mae and Freddie Mac during the transition period. On February 2, 2012, Treasury Secretary Geithner stated that the Administration intended to release new details around approaches to housing finance reform, including winding down Fannie Mae and Freddie Mac, in the spring of 2012 and to work with Congressional leaders to explore options for legislation, but that he does not expect housing finance reform legislation to be enacted in 2012.

We cannot predict the prospects for the enactment, timing or content of legislative proposals regarding long-term reform of the GSEs. See "Legislative and Regulatory Developments" for a discussion of recent legislative reform of the financial services industry and proposals for GSE reform that could affect our business. See "Risk Factors" for a discussion of the risks to our business relating to the uncertain future of our company.

MORTGAGE SECURITIZATIONS

We support market liquidity by securitizing mortgage loans, which means we place loans in a trust and Fannie Mae MBS backed by the mortgage loans are then issued. We guarantee to the MBS trust that we will supplement amounts received by the MBS trust as required to permit timely payment of principal and interest on the trust certificates. In return for this guaranty, we receive guaranty fees.

Below we discuss (1) two broad categories of securitization transactions: lender swaps and portfolio securitizations; (2) features of our MBS trusts; (3) circumstances under which we purchase loans from MBS trusts; and (4) single-class and multi-class Fannie Mae MBS.

Lender Swaps and Portfolio Securitizations

We currently securitize a majority of the single-family and multifamily mortgage loans we acquire. Our securitization transactions primarily fall within two broad categories: lender swap transactions and portfolio securitizations.

Our most common type of securitization transaction is our "lender swap transaction." Mortgage lenders that operate in the primary mortgage market generally deliver pools of mortgage loans to us in exchange for Fannie Mae MBS backed by these mortgage loans. A pool of mortgage loans is a group of mortgage loans with similar characteristics. After receiving the mortgage loans in a lender swap transaction, we place them in a trust that is established for the sole purpose of holding the mortgage loans separate and apart from our assets. We deliver to the lender (or its designee) Fannie Mae MBS that are backed by the pool of mortgage loans in the trust and that represent an undivided beneficial ownership interest in each of the mortgage loans. We guarantee to each MBS trust that we will supplement amounts received by the MBS trust as required to permit timely payment of principal and interest on the related Fannie Mae MBS. We retain a portion of the interest payment as the fee for providing our guaranty. Then, on behalf of the trust, we make monthly distributions to the Fannie Mae MBS certificateholders from the principal and interest payments and other collections on the underlying mortgage loans. The structured securitization transactions we describe below in "Business Segments—Capital Markets—Securitization Activities" involve a process that is very similar to the process involved in our lender swap securitizations.

In contrast to our lender swap securitizations, in which lenders deliver pools of mortgage loans to us that we immediately place in a trust for securitization, our "portfolio securitization transactions" involve creating and issuing Fannie Mae MBS using mortgage loans and mortgage-related securities that we hold in our mortgage portfolio.

Features of Our MBS Trusts

We serve as trustee for our MBS trusts, each of which is established for the sole purpose of holding mortgage loans separate and apart from our assets. Our MBS trusts hold either single-family or multifamily mortgage loans or mortgage-related securities. Each trust operates in accordance with a trust agreement or a trust indenture. Each MBS trust is also governed by an issue supplement documenting the formation of that MBS trust, the identification of its related assets and the issuance of the related Fannie Mae MBS. The trust agreement or the trust indenture, together with the issue supplement and any amendments, are considered the "trust documents" that govern an individual MBS trust.

Purchases of Loans from our MBS Trusts

Under the terms of our MBS trust documents, we have the option or, in some instances, the obligation, to purchase mortgage loans that meet specific criteria from an MBS trust. For example, we have the option under the terms of the trust documents to purchase a loan from an MBS trust if the loan is delinquent as to four or more consecutive monthly payments. We generally have the obligation to purchase a mortgage loan from an MBS trust when the mortgage loan is delinquent as to 24 consecutive monthly payments. Our acquisition cost for these loans is the unpaid principal balance of the loan plus accrued interest.

In deciding whether and when to exercise our option to purchase a loan from a single-family MBS trust, we consider a variety of factors, including: our legal ability to purchase loans under the terms of the trust documents; whether we have agreed to modify the loan, which we cannot do while it remains in the trust; our mission and public policy; our loss mitigation strategies and the exposure to credit losses we face under our guaranty; our cost of funds; the impact on our results of operations; relevant market yields; the accounting impact; the administrative costs associated with purchasing and holding the loans; counterparty exposure to lenders that have agreed to cover losses associated with delinquent loans; and general market conditions. The weight we give to these factors changes depending on market circumstances and other factors.

The cost of purchasing most delinquent loans from Fannie Mae MBS trusts and holding them in our portfolio is currently less than the cost of advancing delinquent payments to security holders. We generally purchase loans from MBS trusts as they become four or more consecutive monthly payments delinquent. During 2011, we purchased approximately $67 billion in delinquent loans from our single-family MBS trusts. We expect to continue purchasing loans from MBS trusts as they become four or more consecutive monthly payments delinquent subject to market conditions, economic benefit, servicer capacity, and other constraints, including the limit on the amount of mortgage assets that we may own pursuant to the senior preferred stock purchase agreement.

For our multifamily MBS trusts, we typically exercise our option to purchase a loan from the trust if the loan is delinquent, in whole or in part, as to four or more consecutive monthly payments.

Single-Class and Multi-Class Fannie Mae MBS

Fannie Mae MBS trusts may be single-class or multi-class. Single-class MBS are MBS in which the investors receive principal and interest payments in proportion to their percentage ownership of the MBS issuance. Multi-class MBS are MBS, including Real Estate Mortgage Investment Conduits ("REMICs"), in which the cash flows on the underlying mortgage assets are divided, creating several classes of securities, each of which represents an undivided beneficial ownership interest in the assets of the related MBS trust and entitles the related holder to a specific portion of cash flows. Terms to maturity of some multi-class Fannie Mae MBS, particularly REMIC classes, may match or be shorter than the maturity of the underlying mortgage loans and/or mortgage-related securities. After these classes expire, cash flows received on the underlying mortgage assets are allocated to the remaining classes in accordance with the terms of the securities' structures. As a result, each of the classes in a multi-class MBS may have a different coupon rate, average life, repayment sensitivity or final maturity. Structured Fannie Mae MBS are either multi-class MBS or single-class MBS that are typically resecuritizations of other single-class Fannie Mae MBS. In a resecuritization, pools of MBS are collected and securitized.

BUSINESS SEGMENTS

We have three business segments for management reporting purposes: Single-Family Credit Guaranty, Multifamily, and Capital Markets. In this report we refer to our business groups that run these segments as our "Single-Family business," our "Multifamily business" and our "Capital Markets group." These groups engage in complementary business activities in pursuing our mission of providing liquidity, stability and affordability to the

U.S. housing market. These activities are summarized in the table below and described in more detail following this table. We also summarize in the table below the key sources of revenue for each of our segments and the primary expenses.

Business Segment	Primary Business Activities	Primary Revenues	Primary Expenses
Single-Family Credit Guaranty, or Single-Family	• *Mortgage securitizations:* Works with our lender customers to securitize single-family mortgage loans delivered to us by lenders into Fannie Mae MBS in lender swap transactions • *Mortgage acquisitions:* Works with our Capital Markets group to facilitate the purchase of single-family mortgage loans • *Credit risk management:* Prices and manages the credit risk on loans in our single-family guaranty book of business • *Credit loss management:* Works to prevent foreclosures and reduce costs of defaulted loans through foreclosure alternatives, through management of foreclosures and REO, and through pursuing contractual remedies from lenders, servicers and providers of credit enhancement	• *Guaranty fees:* Compensation for assuming and managing the credit risk on our single-family guaranty book of business • *Interest income not recognized:* Consists of reimbursement costs for interest income not recognized for loans on nonaccrual status in our mortgage portfolio or in consolidated trusts, which are recorded as a reduction to our interest income • *Fee and other income:* Compensation received for providing lender services	• *Credit-related expenses:* Consists of provision for single-family loan losses, provision for single-family guaranty losses and foreclosed property expense on loans underlying our single-family guaranty book of business • *Administrative expenses:* Consists of salaries and benefits, occupancy costs, professional services, and other expenses associated with the Single-Family business operations
Multifamily	• *Mortgage securitizations:* Works with our lender customers to securitize multifamily mortgage loans delivered to us by lenders into Fannie Mae MBS in lender swap transactions • *Mortgage acquisitions:* Works with our Capital Markets group to facilitate the purchase of multifamily mortgage loans • *Credit risk management:* Prices and manages the credit risk on loans in our multifamily guaranty book of business • *Credit loss management:* Works to prevent foreclosures and reduce costs of defaulted loans through foreclosure alternatives, through management of foreclosures and REO, and through pursuing contractual remedies from lenders, servicers and providers of credit enhancement	• *Guaranty fees:* Compensation for assuming and managing the credit risk on our multifamily guaranty book of business • *Fee and other income:* Compensation received for engaging in multifamily transactions and bond credit enhancements	• *Credit-related expenses:* Consists of provision for multifamily loan losses, provision for multifamily guaranty losses and foreclosed property expense on loans underlying our multifamily guaranty book of business • *Administrative expenses:* Consists of salaries and benefits, occupancy costs, professional services, and other expenses associated with our Multifamily business operations

Business Segment	Primary Business Activities	Primary Revenues	Primary Expenses
Capital Markets	• *Mortgage and other investments:* Purchases mortgage assets and makes investments in non-mortgage interest-earning assets • *Mortgage securitizations:* Purchases loans from a large group of lenders, securitizes them, and may sell the securities to dealers and investors • *Structured mortgage securitizations and other customer services:* Issues structured Fannie Mae MBS for customers in exchange for a transaction fee and provides other fee-related services to our lender customers • *Interest rate risk management:* Manages the interest rate risk on our portfolio by issuing a variety of debt securities in a wide range of maturities and by using derivatives	• *Net interest income:* Generated from the difference between the interest income earned on our interest-earning assets and the interest expense associated with the debt funding those assets • *Fee and other income:* Compensation received for providing structured transactions and other lender services	• *Fair value gains and losses:* Primarily consists of fair value gains and losses on derivatives and trading securities • *Investment gains and losses:* Primarily consists of gains and losses on the sale or securitization of mortgage assets • *Other-than-temporary impairment:* Consists of impairment recognized on our investments • *Administrative expenses:* Consists of salaries and benefits, occupancy costs, professional services, and other expenses associated with our Capital Markets business operations

We are working on reorganizing our company by function rather than by business in order to improve our operational efficiencies and effectiveness. In future periods, we may change some of our management reporting and how we report our business segment results.

Revenues from our Business Segments

The following table displays the percentage of our total net revenues accounted for by our business segments for each of the last three years. Our prospective adoption in 2010 of revised accounting guidance on the consolidation of variable interest entities ("consolidation accounting guidance") and transfers of financial assets had a significant impact on our financial statements. Also effective in 2010, we changed the presentation of segment financial information that is currently evaluated by management. As a result, our 2010 and 2011 segment results are not comparable to prior years' segment results. We have not restated prior years' results, nor have we presented 2010 and 2011 results under the old presentation, because we determined that it was impracticable to do so. For more information about changes in our segment reporting and the financial results and performance of each of our segments, please see "MD&A—Business Segment Results" and "Note 14, Segment Reporting."

Business Segment Revenues[(1)]

	For the Year Ended December 31,		
	2011[(2)]	2010[(2)]	2009
Single-Family Credit Guaranty	28%	12%	39%
Multifamily[(3)]	5	5	3
Capital Markets	63	77	58

(1) Amounts presented represent the percentage of our total net revenues accounted for by each of our business segments.

(2) Segment results for 2011 and 2010 are not comparable with 2009 and prior years' results. In addition, under our current segment reporting structure, the sum of net revenues for our three business segments does not equal our consolidated total

net revenues because we separate the activity related to our consolidated trusts from the results generated by our three segments.

(3) These amounts do not include the net interest income we earn on our multifamily investments in our mortgage portfolio, which is reflected in the revenues of our Capital Markets segment.

Under the terms of our intracompany guaranty arrangement, Capital Markets receives reimbursements primarily from Single-Family for the contractual interest due on mortgage loans held in our portfolio when interest income on the loans is no longer recognized in accordance with our nonaccrual accounting policy. As a result, the substantial increase in the number of nonaccrual loans purchased from our consolidated MBS trusts beginning in 2010 significantly increased Capital Markets' net revenue in 2010, while reducing the net revenues of Single-Family.

Single-Family Business

Our Single-Family business works with our lender customers to provide funds to the mortgage market by securitizing single-family mortgage loans into Fannie Mae MBS. Our Single-Family business also works with our Capital Markets group to facilitate the purchase of single-family mortgage loans for our mortgage portfolio. Our Single-Family business has primary responsibility for pricing and managing the credit risk on our single-family guaranty book of business, which consists of single-family mortgage loans underlying Fannie Mae MBS and single-family loans held in our mortgage portfolio.

A single-family loan is secured by a property with four or fewer residential units. Our Single-Family business and Capital Markets group securitize and purchase primarily conventional (not federally insured or guaranteed) single-family fixed-rate or adjustable-rate, first-lien mortgage loans, or mortgage-related securities backed by these types of loans. We also securitize or purchase loans insured by FHA, loans guaranteed by the Department of Veterans Affairs ("VA"), loans guaranteed by the Rural Development Housing and Community Facilities Program of the Department of Agriculture (the "Department of Agriculture"), manufactured housing loans, subordinate-lien mortgage loans (for example, loans secured by second liens) and other mortgage-related securities.

Revenues for our Single-Family business are derived primarily from guaranty fees received as compensation for assuming the credit risk on the mortgage loans underlying single-family Fannie Mae MBS. We also allocate guaranty fee revenues to the Single-Family business for assuming and managing the credit risk on the single-family mortgage loans held in our portfolio. The aggregate amount of single-family guaranty fees we receive or that are allocated to our Single-Family business in any period depends on the amount of single-family Fannie Mae MBS outstanding and loans held in our mortgage portfolio during the period and the applicable guaranty fee rates. The amount of Fannie Mae MBS outstanding at any time is primarily determined by the rate at which we issue new Fannie Mae MBS and by the repayment rate for the loans underlying our outstanding Fannie Mae MBS. Other factors affecting the amount of Fannie Mae MBS outstanding are the extent to which (1) we purchase loans from our MBS trusts because of borrower defaults (with the amount of these purchases affected by the rate of borrower defaults on the loans and the extent of loan modification programs in which we engage) and (2) sellers and servicers repurchase loans from us upon our demand based on a breach in the selling representations and warranties provided upon delivery of the loans.

We describe the credit risk management process employed by our Single-Family business, including its key strategies in managing credit risk and key metrics used in measuring and evaluating our single-family credit risk in "MD&A—Risk Management—Credit Risk Management—Single-Family Credit Risk Management."

Single-Family Mortgage Securitizations and Acquisitions

Our Single-Family business securitizes single-family mortgage loans and issues single-class Fannie Mae MBS, which are described above in "Mortgage Securitizations—Single-Class and Multi-Class Fannie Mae MBS," for our lender customers. Unlike our Capital Markets group, which securitizes loans from our portfolio, our Single-Family business securitizes loans solely in lender swap transactions, in which lenders deliver to us pools of mortgage loans, which are placed immediately in a trust, in exchange for Fannie Mae MBS backed by these loans. We describe lender swap transactions, and how they differ from portfolio securitizations, in "Mortgage Securitizations—Lender Swaps and Portfolio Securitizations."

Loans from our lender customers are delivered to us through either our "flow" or "bulk" transaction channels. In our flow business, we enter into agreements that generally set agreed-upon guaranty fee prices for a lender's future delivery of individual loans to us over a specified time period. Our bulk business generally consists of transactions in which a set of loans is delivered to us in bulk, typically with guaranty fees and other contract terms negotiated individually for each transaction.

Single-Family Mortgage Servicing, REO Management, and Lender Repurchases

Servicing

Generally, the servicing of the mortgage loans held in our mortgage portfolio or that back our Fannie Mae MBS is performed by mortgage servicers on our behalf. Typically, lenders who sell single-family mortgage loans to us service these loans for us. For loans we own or guarantee, the lender or servicer must obtain our approval before selling servicing rights to another servicer.

Our mortgage servicers typically collect and deliver principal and interest payments, administer escrow accounts, monitor and report delinquencies, perform default prevention activities, evaluate transfers of ownership interests, respond to requests for partial releases of security, and handle proceeds from casualty and condemnation losses. Our mortgage servicers are the primary point of contact for borrowers and perform a key role in the effective implementation of our homeownership assistance initiatives, negotiation of workouts of troubled loans, and loss mitigation activities. If necessary, mortgage servicers inspect and preserve properties and process foreclosures and bankruptcies. Because we generally delegate the servicing of our mortgage loans to mortgage servicers and do not have our own servicing function, our ability to actively manage troubled loans that we own or guarantee is limited. For more information on the risks of our reliance on servicers, refer to "Risk Factors" and "MD&A—Risk Management—Credit Risk Management—Institutional Counterparty Credit Risk Management."

We compensate servicers primarily by permitting them to retain a specified portion of each interest payment on a serviced mortgage loan as a servicing fee. Servicers also generally retain prepayment premiums, assumption fees, late payment charges and other similar charges, to the extent they are collected from borrowers, as additional servicing compensation. We also compensate servicers for negotiating workouts on problem loans.

We discuss steps we have taken in 2011 to improve the servicing of our delinquent loans in "MD&A—Risk Management—Credit Risk Management—Single-Family Mortgage Credit Risk Management—Single-Family Acquisition and Servicing Policies and Underwriting and Servicing Standards."

REO Management

In the event a loan defaults and we acquire a home through foreclosure or a deed-in-lieu of foreclosure, we market and sell the home through local real estate professionals. Our primary objectives are both to minimize the severity of loss to Fannie Mae by maximizing sales prices and also to stabilize neighborhoods—to prevent empty homes from depressing home values. In cases where the property does not sell, we use alternative methods of disposition, including selling homes to cities, municipalities and other public entities, and selling properties in bulk or through public auctions.

Lender Repurchase Evaluations

We conduct post-purchase quality control file reviews to ensure that loans sold to and serviced for us meet our guidelines. If we discover violations through reviews, we issue repurchase demands to the seller and seek to collect on our repurchase claims.

Multifamily Business

A core part of Fannie Mae's mission is to support the U.S. multifamily housing market to help serve the nation's rental housing needs, focusing on low- to middle-income households and communities. Multifamily mortgage loans relate to properties with five or more residential units, which may be apartment communities, cooperative properties or manufactured housing communities.

Our Multifamily business works with our lender customers to provide funds to the mortgage market by securitizing multifamily mortgage loans into Fannie Mae MBS. Through our Multifamily business, we provide liquidity and support to the U.S. multifamily housing market principally by securitizing or purchasing loans that finance multifamily rental housing properties. We also provide some limited debt financing for other construction and rehabilitation activity related to projects that complement this business. Our Multifamily business also works with our Capital Markets group to facilitate the purchase and securitization of multifamily mortgage loans and securities for Fannie Mae's portfolio, as well as to facilitate portfolio securitization and resecuritization activities. Our multifamily guaranty book of business consists of multifamily mortgage loans underlying Fannie Mae MBS and multifamily loans and securities held in our mortgage portfolio. Our Multifamily business has primary responsibility for pricing the credit risk on our multifamily guaranty book of business and for managing the credit risk on multifamily loans and Fannie Mae MBS backed by multifamily loans that are held in our mortgage portfolio.

Revenues for our Multifamily business are derived from a variety of sources, including: (1) guaranty fees received as compensation for assuming the credit risk on the mortgage loans underlying multifamily Fannie Mae MBS and on the multifamily mortgage loans held in our portfolio and on other mortgage-related securities; (2) transaction fees associated with the multifamily business and (3) other bond credit enhancement related fees. Additionally, our Capital Markets group earns revenue that is related to our multifamily mortgage loans and securities held in our portfolio.

We describe the credit risk management process employed by our Multifamily business, along with our Multifamily Enterprise Risk Management group, including its key strategies in managing credit risk and key metrics used in measuring and evaluating our multifamily credit risk, in "MD&A—Risk Management—Credit Risk Management—Multifamily Mortgage Credit Risk Management."

Key Characteristics of the Multifamily Mortgage Market and Multifamily Transactions

The multifamily mortgage market and our transactions in that market have a number of key characteristics that affect our multifamily activities and distinguish them from our activities in the single-family residential mortgage market.

- Funding sources: Unlike the single-family residential mortgage market in which the GSEs' predominance makes us a driver of market standards and rates, the multifamily market is made up of a wide variety of lending sources, including commercial banks, life insurance companies, investment banks, small community banks, FHA, state and local housing finance agencies and the GSEs.
- Number of lenders; lender relationships: In 2011, we executed multifamily transactions with 33 lenders. Of these, 25 lenders delivered loans to us under our Delegated Underwriting and Servicing, or DUS®, product line. In determining whether to do business with a multifamily lender, we consider the lender's financial strength, multifamily underwriting and servicing experience, portfolio performance and willingness and ability to share in the risk of loss associated with the multifamily loans they originate.
- Loan size: On average, loans in our multifamily guaranty book of business are several million dollars in size. A significant number of our multifamily loans are under $5 million, and some of our multifamily loans are greater than $25 million.
- Collateral: Multifamily loans are collateralized by properties that generate cash flows and effectively operate as businesses, such as garden and high-rise apartment complexes, seniors housing communities, cooperatives, dedicated student housing and manufactured housing communities.

- Borrower profile: Most multifamily borrowers are for-profit corporations, limited liability companies, partnerships, real estate investment trusts and individuals who invest in real estate for cash flow and equity returns in exchange for their original investment in the asset. Multifamily loans are generally non-recourse to the borrower. When considering a multifamily borrower, creditworthiness is evaluated through a combination of quantitative and qualitative data including liquid assets, net worth, number of units owned, experience in a market and/or property type, multifamily portfolio performance, access to additional liquidity, debt maturities, asset/property management platform, senior management experience, reputation and lender exposure.
- Borrower and lender investment: Borrowers are required to contribute cash equity into multifamily properties on which they borrow, while lenders generally share in any losses realized from the loans that we purchase.
- Underwriting process: Multifamily loans require a detailed underwriting process due to factors that may include the size of the loan, the market, or the complexity of the collateral or transaction.
- Term and lifecycle: In contrast to the standard 30-year single-family residential loan, multifamily loans typically have terms of 5, 7 or 10 years, with balloon payments due at maturity.
- Prepayment terms: Multifamily Fannie Mae loans and MBS trade in a market in which investors expect commercial investment terms, particularly limitations on prepayments of loans and the imposition of prepayment premiums.

Multifamily Mortgage Securitizations and Acquisitions

Our Multifamily business generally creates multifamily Fannie Mae MBS and acquires multifamily mortgage assets in the same manner as our Single-Family business, as described in “Single-Family Business—Mortgage Securitizations and Acquisitions.”

Delegated Underwriting and Servicing (DUS)

In an effort to promote product standardization in the multifamily marketplace, in 1988 Fannie Mae initiated the DUS product line for acquiring individual multifamily loans.

DUS is a unique business model in the commercial mortgage industry. The standard industry practice for a multifamily loan requires the purchaser or guarantor to underwrite or re-underwrite each loan prior to deciding whether to purchase or guaranty the loan. Under our model, DUS lenders are pre-approved and delegated the authority to underwrite and service loans on behalf of Fannie Mae. In exchange for this authority, DUS lenders are required to share with us the risk of loss over the life of the loan, generally retaining one-third of the underlying credit risk on each loan sold to Fannie Mae. Since DUS lenders share in the credit risk, the servicing fee to the lenders includes compensation for credit risk. Delegation permits lenders to respond to customers more rapidly, as the lender generally has the authority to approve a loan within prescribed parameters, which provides an important competitive advantage.

We believe our DUS model aligns the interests of the borrower, lender and Fannie Mae. Our current 25-member DUS lender network, which is comprised of large financial institutions and independent mortgage lenders, continues to be our principal source of multifamily loan deliveries.

Fannie Mae MBS secured by DUS loans are typically backed by a single mortgage loan, which is often a fixed-rate loan. Structuring MBS to be backed by a single multifamily loan facilitates securitizations by our smaller lenders.

Multifamily Mortgage Servicing

As with the servicing of single-family mortgages, multifamily mortgage servicing is typically performed by the lenders who sell the mortgages to us. Many of our multifamily mortgage servicers have agreed, as part of the

DUS relationship, to accept loss sharing, which we believe increases the alignment of interests between us and our multifamily loan servicers. Because of our loss-sharing arrangements with our multifamily lenders, transfers of multifamily servicing rights are infrequent, and we carefully monitor all our servicing relationships and enforce our right to approve all servicing transfers. As a seller-servicer, the lender is responsible for evaluating the financial condition of properties and property owners, administering various types of agreements (including agreements regarding replacement reserves, completion or repair, and operations and maintenance), as well as conducting routine property inspections.

The Multifamily Markets in which We Operate

In the multifamily mortgage market, we aim to address the rental housing needs of a wide range of the population, from those at the lower end of the income range up through middle-income households. Our mission requires us to serve the market steadily, rather than moving in and out depending on market conditions. Through the secondary mortgage market, we support rental housing for the workforce, for senior citizens and students, and for families with the greatest economic need. Our Multifamily business is organized and operated as an integrated commercial real estate finance business, with dedicated teams that address the spectrum of multifamily housing finance needs, including the teams described below.

- To meet the growing need for smaller multifamily property financing, we have a team that focuses on the purchase and guarantee of multifamily loans up to $3 million ($5 million in high income areas). We purchase these loans from DUS lenders as well as small community banks and nonprofits or similar entities. Over the years, we have been an active purchaser of these loans from both DUS and non-DUS lenders and, as of December 31, 2011, they represented 69% of our multifamily guaranty book of business by loan count and 16% based on unpaid principal balance.
- To serve low- and very low-income households, we also have a team that focuses exclusively on relationships with lenders financing privately-owned multifamily properties that receive public subsidies in exchange for maintaining long-term affordable rents. We enable borrowers to leverage housing programs and subsidies provided by local, state and federal agencies. These public subsidy programs are largely targeted to providing housing to families earning less than 60% of area median income (as defined by HUD) and are structured to ensure that the low and very low-income households who benefit from the subsidies pay no more than 30% of their gross monthly income for rent and utilities. As of December 31, 2011, this type of financing represented approximately 14% of our multifamily guaranty book of business, based on unpaid principal balance, including $16.1 billion in bond credit enhancements.

Capital Markets

Our Capital Markets group manages our investment activity in mortgage-related assets and other interest-earning non-mortgage investments. We fund our investments primarily through proceeds we receive from the issuance of debt securities in the domestic and international capital markets. Our Capital Markets group has primary responsibility for managing the interest rate risk associated with our investments in mortgage assets.

The business model for our Capital Markets group has evolved in recent years. Our business activity is now focused on making short-term use of our balance sheet rather than long-term investments. As a result, our Capital Markets group works with lender customers to provide funds to the mortgage market through short-term financing and investing activities. Activities we are undertaking to provide liquidity to the mortgage market include the following:

- *Whole Loan Conduit.* Whole loan conduit activities involve our purchase of both single-family and multifamily loans principally for the purpose of securitizing them. We purchase loans from a large group of lenders and then securitize them as Fannie Mae MBS, which may then be sold to dealers and investors.
- *Early Funding.* Lenders who deliver whole loans or pools of whole loans to us in exchange for MBS typically must wait between 30 and 45 days from the closing and settlement of the loans or pools and the issuance of the MBS. This delay may limit lenders' ability to originate new loans. Under our early lender funding programs, we purchase whole loans or pools of loans on an accelerated basis, allowing lenders to

receive quicker payment for the whole loans and pools, which replenishes their funds and allows them to originate more mortgage loans.

- *REMICs and Other Structured Securitizations.* We issue structured Fannie Mae MBS (including REMICs), typically for our lender customers or securities dealer customers, in exchange for a transaction fee.
- *MBS Trading.* We regularly enter into purchase and sale transactions with other market participants involving mortgage-backed securities issued by Fannie Mae, Freddie Mac, and Ginnie Mae, which we refer to as "agency MBS". These transactions can provide for the future delivery of mortgage-backed securities with underlying loans that share certain general characteristics (often referred to as the "TBA market"). These purchase and sale transactions also can provide for the future delivery of specifically identified mortgage-backed securities with underlying loans that have other characteristics considered desirable by some investors (often referred to as the "Specified Pools market"). Through our trading activity in the TBA and Specified Pools markets, we provide significant liquidity to the agency MBS markets.

Securitization Activities

Our Capital Markets group is engaged in issuing both single-class and multi-class Fannie Mae MBS through both portfolio securitizations and structured securitizations involving third party assets.

- *Portfolio securitizations.* Our Capital Markets group creates single-class and multi-class Fannie Mae MBS from mortgage-related assets held in our mortgage portfolio. Our Capital Markets group may sell these Fannie Mae MBS into the secondary market or may retain the Fannie Mae MBS in our investment portfolio.
- *Structured securitizations:* Our Capital Markets group creates single-class and multi-class structured Fannie Mae MBS, typically for our lender customers or securities dealer customers, in exchange for a transaction fee. In these transactions, the customer "swaps" a mortgage-related asset that it owns (typically a mortgage security) in exchange for a structured Fannie Mae MBS we issue. Our Capital Markets group earns transaction fees for creating structured Fannie Mae MBS for third parties. The process for issuing Fannie Mae MBS in a structured securitization is similar to the process involved in our lender swap securitizations. For more information about that process and how it differs from portfolio securitizations, please see "Mortgage Securitizations—Lender Swaps and Portfolio Securitizations."

For a description of single-class Fannie Mae MBS, please see "Mortgage Securitizations—Single-Class and Multi-Class Fannie Mae MBS."

Other Customer Services

Our Capital Markets group provides our lender customers with services that include offering to purchase a wide variety of mortgage assets, including non-standard mortgage loan products; segregating customer portfolios to obtain optimal pricing for their mortgage loans; and assisting customers with hedging their mortgage business. These activities provide a significant flow of assets for our mortgage portfolio, help to create a broader market for our customers and enhance liquidity in the secondary mortgage market.

Mortgage Asset Portfolio

Although our Capital Markets group's business activities are focused on short-term financing and investing, revenue from our Capital Markets group is derived primarily from the difference, or spread, between the interest we earn on our mortgage and non-mortgage investments and the interest we incur on the debt we issue to fund these assets. Our Capital Markets revenues are primarily derived from our mortgage asset portfolio. Over time, we expect these revenues to decrease as the maximum allowable amount of mortgage assets we may own decreases each year to 90% of the amount we were permitted to own the previous year under our senior preferred stock purchase agreement with Treasury. See "Conservatorship and Treasury Agreements—Treasury Agreements—Covenants under Treasury Agreements" for more information on the decreasing limits on the amount of mortgage assets we are permitted to hold.

We describe the interest rate risk management process employed by our Capital Markets group, including its key strategies in managing interest rate risk and key metrics used in measuring and evaluating our interest rate risk, in "MD&A—Risk Management—Market Risk Management, Including Interest Rate Risk."

Investment and Financing Activities

Our Capital Markets group seeks to increase the liquidity of the mortgage market by maintaining a presence as an active investor in mortgage loans and mortgage-related securities and, in particular, supports the liquidity and value of Fannie Mae MBS in a variety of market conditions.

Our Capital Markets group funds its investments primarily through the issuance of a variety of debt securities in a wide range of maturities in the domestic and international capital markets. The most active investors in our debt securities include commercial bank portfolios and trust departments, investment fund managers, insurance companies, pension funds, state and local governments, and central banks. The approved dealers for underwriting various types of Fannie Mae debt securities may differ by funding program. See "MD&A—Liquidity and Capital Management—Liquidity Management" for information on the composition of our outstanding debt and a discussion of our liquidity and debt activity.

Our Capital Markets group's investment and financing activities are affected by market conditions and the target rates of return that we expect to earn on the equity capital underlying our investments. Our investment activities also are subject to contractual limitations, including the provisions of the senior preferred stock agreement with Treasury, capital requirements (although our regulator has announced that these are not binding on us during conservatorship) and other regulatory constraints, to the extent described below under "Conservatorship and Treasury Agreements" and "Our Charter and Regulation of Our Activities."

CONSERVATORSHIP AND TREASURY AGREEMENTS

Conservatorship

On September 6, 2008, the Director of FHFA appointed FHFA as our conservator, pursuant to its authority under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended by the Federal Housing Finance Regulatory Reform Act of 2008, or 2008 Reform Act (together, the "GSE Act"). The conservatorship is a statutory process designed to preserve and conserve our assets and property and put the company in a sound and solvent condition.

The conservatorship has no specified termination date and there continues to be uncertainty regarding the future of our company, including how long the company will continue to exist in its current form, the extent of our role in the market, what form we will have, and what ownership interest, if any, our current common and preferred stockholders will hold in us after the conservatorship is terminated. For more information on the risks to our business relating to the conservatorship and uncertainties regarding the future of our company and business, as well as the adverse effects of the conservatorship on the rights of holders of our common stock, please see "Risk Factors."

Management of the Company during Conservatorship

Upon its appointment, the conservator immediately succeeded to (1) all rights, titles, powers and privileges of Fannie Mae, and of any shareholder, officer or director of Fannie Mae with respect to Fannie Mae and its assets, and (2) title to the books, records and assets of any other legal custodian of Fannie Mae. The conservator has since delegated specified authorities to our Board of Directors and has delegated to management the authority to conduct our day-to-day operations. The conservator retains the authority to withdraw its delegations at any time.

Our directors serve on behalf of the conservator and exercise their authority as directed by and with the approval, where required, of the conservator. Our directors do not have any duties to any person or entity except to the conservator. Accordingly, our directors are not obligated to consider the interests of the company, the holders of our equity or debt securities or the holders of Fannie Mae MBS unless specifically directed to do so by the conservator. In addition, the conservator directed the Board to consult with and obtain the approval of the conservator before taking action in specified areas, as described in "Directors, Executive Officers and Corporate Governance—Corporate Governance—Conservatorship and Delegation of Authority to Board of Directors."

Because we are in conservatorship, our common shareholders currently do not have the ability to elect directors or to vote on other matters. The conservator eliminated common and preferred stock dividends (other than dividends on the senior preferred stock issued to Treasury) during the conservatorship, and we are no longer managed with a strategy to maximize shareholder returns. In a letter to Congress dated February 2, 2010, the Acting Director of FHFA stated that we will be limited to continuing our existing core business activities and taking actions necessary to advance the goals of the conservatorship. The Acting Director also stated that FHFA does not expect that we will be a substantial buyer or seller of mortgages for our retained portfolio, except for purchases of delinquent mortgages out of our guaranteed MBS pools. For additional information about our business strategy and the goals of the conservatorship, please see "Executive Summary—Our Business Objectives and Strategy."

Powers of the Conservator under the GSE Act

FHFA has broad powers when acting as our conservator. As conservator, FHFA can direct us to enter into contracts or enter into contracts on our behalf. Further, FHFA may transfer or sell any of our assets or liabilities (subject to limitations and post-transfer notice provisions for transfers of certain types of financial contracts), without any approval, assignment of rights or consent of any party. The GSE Act provides, however, that mortgage loans and mortgage-related assets that have been transferred to a Fannie Mae MBS trust must be held by the conservator for the beneficial owners of the Fannie Mae MBS and cannot be used to satisfy the general creditors of the company. As of February 29, 2012, FHFA has not exercised its power to transfer or sell our assets or liabilities. For more information on FHFA's powers as conservator and the rules governing conservatorship and receivership operations for the GSEs, please see "Our Charter and Regulation of Our Activities—Regulation and Oversight of Our Activities—Receivership."

Neither the conservatorship nor the terms of our agreements with Treasury change our obligation to make required payments on our debt securities or perform under our mortgage guaranty obligations.

Under the GSE Act, FHFA must place us into receivership if the Director of FHFA makes a written determination that our assets are less than our obligations (that is, we have a net worth deficit) or if we have not been paying our debts, in either case, for a period of 60 days. In addition, the Director of FHFA may place us in receivership at his discretion at any time for other reasons, including conditions that FHFA has already asserted existed at the time the Director of FHFA placed us into conservatorship. Placement into receivership would have a material adverse effect on holders of our common stock, preferred stock, debt securities and Fannie Mae MBS. Should we be placed into receivership, different assumptions would be required to determine the carrying value of our assets, which could lead to substantially different financial results. For more information on the risks to our business relating to conservatorship and uncertainties regarding the future of our business, see "Risk Factors."

Treasury Agreements

On September 7, 2008, we, through FHFA, in its capacity as conservator, and Treasury entered into a senior preferred stock purchase agreement, which was subsequently amended on September 26, 2008, May 6, 2009 and December 24, 2009. Unless the context indicates otherwise, references in this report to the senior preferred stock purchase agreement refer to the agreement as amended through December 24, 2009. The terms of the senior preferred stock purchase agreement, senior preferred stock and the warrant discussed below will continue to apply to us even if we are released from the conservatorship. Please see "Risk Factors" for a description of the risks to our business relating to the Treasury agreements, as well as the adverse effects of the senior preferred stock and the warrant on the rights of holders of our common stock and other series of preferred stock.

Senior Preferred Stock Purchase Agreement and Related Issuance of Senior Preferred Stock and Common Stock Warrant

Senior Preferred Stock Purchase Agreement

Under the senior preferred stock purchase agreement, we issued to Treasury (a) one million shares of Variable Liquidation Preference Senior Preferred Stock, Series 2008-2, which we refer to as the "senior preferred stock," and (b) a warrant to purchase, for a nominal price, shares of common stock equal to 79.9% of the total number of shares of our common stock outstanding on a fully diluted basis at the time the warrant is exercised, which we refer to as the "warrant."

The senior preferred stock and warrant were issued to Treasury as an initial commitment fee in consideration of the commitment from Treasury to provide funds to us under the terms and conditions set forth in the senior preferred stock purchase agreement. The senior preferred stock purchase agreement provides that, on a quarterly basis, we generally may draw funds up to the amount, if any, by which our total liabilities exceed our total assets, as reflected in our consolidated balance sheet, prepared in accordance with GAAP, for the applicable fiscal quarter (referred to as the "deficiency amount").

On December 24, 2009, the maximum amount of Treasury's funding commitment to us under the senior preferred stock purchase agreement was increased pursuant to an amendment to the agreement. The amendment provides that the $200 billion maximum amount of the commitment from Treasury will increase as necessary to accommodate any net worth deficiencies attributable to periods during 2010, 2011 and 2012. If we do not have a positive net worth as of December 31, 2012, then the amount of funding available under the senior preferred stock purchase agreement after 2012 will be $124.8 billion ($200 billion less $75.2 billion in cumulative draws for net worth deficiencies through December 31, 2009). In the event we have a positive net worth as of December 31, 2012, then the amount of funding available after 2012 under the senior preferred stock purchase agreement will depend on the size of that positive net worth relative to the cumulative draws for net worth deficiencies attributable to periods during 2010, 2011 and 2012, as follows:

- If our positive net worth as of December 31, 2012 is less than the cumulative draws for net worth deficiencies attributable to periods during 2010, 2011 and 2012, then the amount of available funding will be $124.8 billion less our positive net worth as of December 31, 2012.
- If our positive net worth as of December 31, 2012 is greater than the cumulative draws for net worth deficiencies attributable to periods during 2010, 2011 and 2012, then the amount of available funding will be $124.8 billion less the cumulative draws attributable to periods during 2010, 2011 and 2012.

In announcing the December 24, 2009 amendments to the senior preferred stock purchase agreement and to Treasury's preferred stock purchase agreement with Freddie Mac, Treasury noted that the amendments "should leave no uncertainty about the Treasury's commitment to support [Fannie Mae and Freddie Mac] as they continue to play a vital role in the housing market during this current crisis." The senior preferred stock purchase agreement provides that the deficiency amount will be calculated differently if we become subject to receivership or other liquidation process. We discuss our net worth deficits and FHFA's requests on our behalf for funds from Treasury in "Executive Summary—Summary of our Financial Performance for 2011."

We were scheduled to begin paying a quarterly commitment fee to Treasury under the senior preferred stock purchase agreement on March 31, 2011; however, Treasury waived the quarterly commitment fee for each quarter of 2011 and the first quarter of 2012 due to the continued fragility of the mortgage market and Treasury's belief that the imposition of the quarterly commitment fee would not generate increased compensation for taxpayers. In its notification to FHFA that it had waived the quarterly commitment fee for the first quarter of 2012, Treasury indicated that it will reevaluate the situation during the next calendar quarter to determine whether the quarterly commitment fee should then be set. The agreement provides that Treasury may waive the periodic commitment fee for up to one year at a time, in its sole discretion, based on adverse conditions in the U.S. mortgage market.

The senior preferred stock purchase agreement provides that the amount of the quarterly commitment fee is to be set not later than December 31, 2010 with respect to the ensuing five-year period, is to be reset for every five years thereafter, and is to be determined with reference to the market value of Treasury's funding commitment to Fannie Mae as then in effect. The agreement also provides that the amount of the quarterly commitment fee is to be mutually agreed by Treasury and Fannie Mae, subject to their reasonable discretion and in consultation with the Chairman of the Federal Reserve. As of February 29, 2012, the quarterly commitment fee for the initial five-year period had not yet been established.

The senior preferred stock purchase agreement provides that the Treasury's funding commitment will terminate under any of the following circumstances: (1) the completion of our liquidation and fulfillment of Treasury's obligations under its funding commitment at that time, (2) the payment in full of, or reasonable provision for, all of our liabilities (whether or not contingent, including mortgage guaranty obligations), or (3) the funding by Treasury of the maximum amount that may be funded under the agreement. In addition, Treasury may terminate its funding commitment and declare the senior preferred stock purchase agreement null and void if a court vacates, modifies, amends, conditions, enjoins, stays or otherwise affects the appointment of the conservator or otherwise curtails the conservator's powers. Treasury may not terminate its funding commitment under the agreement solely by reason of our being in conservatorship, receivership or other insolvency proceeding, or due to our financial condition or any adverse change in our financial condition.

The senior preferred stock purchase agreement provides that most provisions of the agreement may be waived or amended by mutual written agreement of the parties; however, no waiver or amendment of the agreement is permitted that would decrease Treasury's aggregate funding commitment or add conditions to Treasury's funding commitment if the waiver or amendment would adversely affect in any material respect the holders of our debt securities or guaranteed Fannie Mae MBS.

In the event of our default on payments with respect to our debt securities or guaranteed Fannie Mae MBS, if Treasury fails to perform its obligations under its funding commitment and if we and/or the conservator are not diligently pursuing remedies in respect of that failure, the holders of our debt securities or Fannie Mae MBS may file a claim in the United States Court of Federal Claims for relief requiring Treasury to fund to us the lesser of (1) the amount necessary to cure the payment defaults on our debt and Fannie Mae MBS and (2) the lesser of (a) the deficiency amount and (b) the maximum amount that may be funded under the agreement less the aggregate amount of funding previously provided under the commitment. Any payment that Treasury makes under those circumstances will be treated for all purposes as a draw under the senior preferred stock purchase agreement that will increase the liquidation preference of the senior preferred stock.

Senior Preferred Stock

Pursuant to the senior preferred stock purchase agreement, we issued one million shares of senior preferred stock to Treasury on September 8, 2008 with an aggregate initial liquidation preference of $1.0 billion. The stock's liquidation preference is subject to adjustment. Dividends that are not paid in cash for any dividend period will accrue and be added to the liquidation preference. In addition, any amounts Treasury pays to us pursuant to its funding commitment under the senior preferred stock purchase agreement and any quarterly commitment fees that are either not paid in cash to Treasury or not waived by Treasury will be added to the liquidation preference. Accordingly, the aggregate liquidation preference of the senior preferred stock was $112.6 billion as of December 31, 2011 and will increase to $117.1 billion as a result of FHFA's request on our behalf for funds to eliminate our net worth deficit as of December 31, 2011.

Treasury, as holder of the senior preferred stock, is entitled to receive, when, as and if declared by our Board of Directors, out of legally available funds, cumulative quarterly cash dividends at the annual rate of 10% per year on the then-current liquidation preference of the senior preferred stock. If at any time we fail to pay cash dividends in a timely manner, then immediately following such failure and for all dividend periods thereafter until the dividend period following the date on which we have paid in cash full cumulative dividends (including any unpaid dividends added to the liquidation preference), the dividend rate will be 12% per year.

The senior preferred stock ranks ahead of our common stock and all other outstanding series of our preferred stock, as well as any capital stock we issue in the future, as to both dividends and rights upon liquidation. The senior preferred stock provides that we 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 (1) full cumulative dividends on the outstanding senior preferred stock (including any unpaid dividends added to the liquidation preference) have been declared and paid in cash, and (2) all amounts required to be paid with the net proceeds of any issuance of capital stock for cash (as described in the following paragraph) have been paid in cash. Shares of the senior preferred stock are not convertible. Shares of the senior preferred stock have no general or special voting rights, other than those set forth in the certificate of designation for the senior preferred stock or otherwise required by law. The consent of holders of at least two-thirds of all outstanding shares of senior preferred stock is generally required to amend the terms of the senior preferred stock or to create any class or series of stock that ranks prior to or on parity with the senior preferred stock.

We are not permitted to redeem the senior preferred stock prior to the termination of Treasury's funding commitment under the senior preferred stock purchase agreement. Moreover, we are not permitted to pay down the liquidation preference of the outstanding shares of senior preferred stock except to the extent of (1) accrued and unpaid dividends previously added to the liquidation preference and not previously paid down; and (2) quarterly commitment fees previously added to the liquidation preference and not previously paid down. In addition, if we issue any shares of capital stock for cash while the senior preferred stock is outstanding, the net proceeds of the issuance must be used to pay down the liquidation preference of the senior preferred stock; however, the liquidation preference of each share of senior preferred stock may not be paid down below $1,000 per share prior to the termination of Treasury's funding commitment. Following the termination of Treasury's funding commitment, we may pay down the liquidation preference of all outstanding shares of senior preferred stock at any time, in whole or in part.

Common Stock Warrant

Pursuant to the senior preferred stock purchase agreement, on September 7, 2008, we, through FHFA, in its capacity as conservator, issued a warrant to purchase common stock to Treasury. The warrant gives Treasury the right to purchase shares of our common stock equal to 79.9% of the total number of shares of our common stock outstanding on a fully diluted basis on the date of exercise, for an exercise price of $0.00001 per share. The warrant may be exercised in whole or in part at any time on or before September 7, 2028.

Covenants under Treasury Agreements

The senior preferred stock purchase agreement and warrant contain covenants that significantly restrict our business activities and require the prior written consent of Treasury before we can take certain actions. These covenants prohibit us from:

- paying dividends or other distributions on or repurchasing our equity securities (other than the senior preferred stock or warrant);
- issuing additional equity securities (except in limited instances);
- selling, transferring, leasing or otherwise disposing of any assets, other than dispositions for fair market value, except in limited circumstances including if the transaction is in the ordinary course of business and consistent with past practice;
- issuing subordinated debt; and
- entering into any new compensation arrangements or increasing amounts or benefits payable under existing compensation arrangements for any of our executive officers (as defined by SEC rules) without the consent of the Director of FHFA, in consultation with the Secretary of the Treasury.

We also are subject to limits, which are described below, on the amount of mortgage assets that we may own and the total amount of our indebtedness. As a result, we can no longer obtain additional equity financing (other than pursuant to the senior preferred stock purchase agreement) and we are limited in the amount and type of debt financing we may obtain.

- *Mortgage Asset Limit.* We are restricted in the amount of mortgage assets that we may own. The maximum allowable amount was reduced by $81 billion to $729 billion on December 31, 2011. On each December 31 thereafter, we are required to reduce our mortgage assets to 90% of the maximum allowable amount that we were permitted to own as of December 31 of the immediately preceding calendar year, until the amount of our mortgage assets reaches $250 billion. Accordingly, the maximum allowable amount of mortgage assets we may own on December 31, 2012 is $656.1 billion. The definition of mortgage asset is based on the unpaid principal balance of such assets and does not reflect market valuation adjustments, allowance for loan losses, impairments, unamortized premiums and discounts and the impact of our consolidation of variable interest entities. Under this definition, our mortgage assets on December 31, 2011 were $708.4 billion. We disclose the amount of our mortgage assets on a monthly basis under the caption "Gross Mortgage Portfolio" in our Monthly Summaries, which are available on our Web site and announced in a press release.
- *Debt Limit.* We are subject to a limit on the amount of our indebtedness. Our debt limit in 2011 was $972 billion and in 2012 is $874.8 billion. For every year thereafter, our debt cap will equal 120% of the amount of mortgage assets we are allowed to own on December 31 of the immediately preceding calendar year. The definition of indebtedness for purposes of our debt cap is based on the par value of each applicable loan and does not reflect the impact of consolidation of variable interest entities. Under this definition, our indebtedness as of December 31, 2011 was $742.3 billion. We disclose the amount of our indebtedness on a monthly basis under the caption "Total Debt Outstanding" in our Monthly Summaries, which are available on our Web site and announced in a press release.

LEGISLATIVE AND REGULATORY DEVELOPMENTS

GSE Reform

Policymakers and others have focused significant attention in recent years on how to reform the nation's housing finance system, including what role, if any, the GSEs should play. The Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), which was signed into law in July 2010, calls for enactment of meaningful structural reforms of Fannie Mae and Freddie Mac. The Dodd-Frank Act also required the Treasury Secretary to submit a report to Congress with recommendations for ending the conservatorships of Fannie Mae and Freddie Mac.

In February 2011, Treasury and HUD released their report to Congress on reforming America's housing finance market. The report provides that the Administration will work with FHFA to determine the best way to responsibly reduce Fannie Mae's and Freddie Mac's role in the market and ultimately wind down both institutions.

The report identifies a number of policy steps that could be used to wind down Fannie Mae and Freddie Mac, reduce the government's role in housing finance and help bring private capital back to the mortgage market. These steps include (1) increasing guaranty fees, (2) gradually increasing the level of required down payments so that any mortgages insured by Fannie Mae or Freddie Mac eventually have at least a 10% down payment, (3) reducing conforming loan limits to those established in the 2008 Reform Act, (4) encouraging Fannie Mae and Freddie Mac to pursue additional credit loss protection and (5) reducing Fannie Mae's and Freddie Mac's portfolios, consistent with Treasury's senior preferred stock purchase agreements with the companies.

In addition, the report outlines three potential options for a new long-term structure for the housing finance system following the wind-down of Fannie Mae and Freddie Mac. The first option would privatize housing finance almost entirely. The second option would add a government guaranty mechanism that could scale up during times of crisis. The third option would involve the government offering catastrophic reinsurance behind private mortgage guarantors. Each of these options assumes the continued presence of programs operated by FHA, the Department of Agriculture and the VA to assist targeted groups of borrowers. The report does not state whether or how the existing infrastructure or human capital of Fannie Mae may be used in the establishment of such a reformed system. The report emphasizes the importance of proceeding with a careful transition plan and providing the necessary financial support to Fannie Mae and Freddie Mac during the transition period. A copy of the report can be found on the Housing Finance Reform section of Treasury's Web site, www.Treasury.gov. We are providing Treasury's Web site address solely for your information, and information appearing on Treasury's Web site is not incorporated into this annual report on Form 10-K.

On February 2, 2012, Treasury Secretary Geithner stated that the Administration intended to release new details around approaches to housing finance reform, including winding down Fannie Mae and Freddie Mac, in the spring of 2012 and to work with Congressional leaders to explore options for legislation, but that he does not expect housing finance reform legislation to be enacted in 2012.

During 2011, Congress held hearings on the future status of Fannie Mae and Freddie Mac, and members of Congress offered legislative proposals relating to the future status of the GSEs. We expect hearings on GSE reform to continue in 2012 and additional legislation to be considered and proposals to be discussed, including proposals that would result in a substantial change to our business structure or that involve Fannie Mae's liquidation or dissolution. Several bills have been introduced that would place the GSEs into receivership after a period of time and either grant federal charters to new entities to engage in activities similar to those currently engaged in by the GSEs or leave secondary mortgage market activities to entities in the private sector. For example, legislation has been introduced in both the House of Representatives and the Senate that would require FHFA to make a determination within two years of enactment regarding whether the GSEs were financially viable and, if the GSEs were determined not to be financially viable, to place them into receivership. As drafted, these bills may upon enactment impair our ability to issue securities in the capital markets and therefore our ability to conduct our business, absent the federal government providing an explicit guarantee of our existing and future liabilities.

In addition to bills that seek to resolve the status of the GSEs, numerous bills have been introduced and considered that could constrain the current operations of the GSEs or alter the existing authority that FHFA or Treasury has over the enterprises. For example, the Subcommittee on Capital Markets and Government Sponsored Enterprises of the House Financial Services Committee has approved bills that would:

- suspend current compensation packages and apply a government pay scale for GSE employees;
- require the GSEs to increase guaranty fees;
- subject GSE loans to the risk retention standards in the Dodd-Frank Act;
- require a quicker reduction of GSE portfolios than required under the senior preferred stock purchase agreement;
- require Treasury to pre-approve all GSE debt issuances;
- repeal the GSEs' affordable housing goals;
- provide additional authority to FHFA's Inspector General;
- prohibit FHFA from approving any new GSE products during conservatorship or receivership, with certain exceptions;
- prevent Treasury from amending the senior preferred stock purchase agreement to reduce the current dividend rate on our senior preferred stock;
- abolish the Affordable Housing Trust Fund that the GSEs are required to fund except when such contributions have been temporarily suspended by FHFA;

- require FHFA to identify mission critical assets of the GSEs and require the GSEs to dispose of non-mission critical assets;
- cap the maximum aggregate amount of funds Treasury or any other agency or entity of the federal government can provide to the GSEs subject to certain qualifications;
- grant FHFA the authority to revoke the enterprises' charters following receivership under certain circumstances; and
- subject the GSEs to the Freedom of Information Act.

Of these bills that passed at a subcommittee level, the only one that has passed the full committee is the bill that would put GSE employees on a government pay scale. We expect additional legislation relating to the GSEs to be introduced and considered by Congress in 2012. We cannot predict the prospects for the enactment, timing or content of legislative proposals concerning the future status of the GSEs, their regulation or operations.

In sum, there continues to be uncertainty regarding the future of our company, including how long the company will continue to exist in its current form, the extent of our role in the market, what form we will have, and what ownership interest, if any, our current common and preferred stockholders will hold in us after the conservatorship is terminated. See "Risk Factors" for a discussion of the risks to our business relating to the uncertain future of our company. Also see "Risk Factors" for a discussion of how the uncertain future of our company may adversely affect our ability to retain and recruit well-qualified employees, including senior management.

Compensation

Legislation has been proposed in Congress that would alter the compensation programs for GSE employees. As discussed in "GSE Reform," in 2011 the House Financial Services Committee passed a bill that would place all GSE employees on a pay scale similar to that provided for federal government employees. In addition, in 2012 the House and Senate passed separate versions of the STOCK Act to ban insider trading by members of Congress and other government officials, which included a provision prohibiting senior executives at the GSEs from receiving bonuses while the GSEs are in conservatorship. The two versions of the bill must now be reconciled and passed by each chamber before they are sent to the President for signature.

If legislation is adopted that results in a significant reduction in compensation to GSE employees, it could cause a substantial number of our most skilled and experienced employees to leave and further impair our ability to retain and attract employees in a competitive marketplace, as we discuss in "Risk Factors—Our business and results of operations may be materially adversely affected if we are unable to retain and hire qualified employees." Additional legislative proposals related to compensation for GSE employees may be considered by Congress in 2012.

Financial Regulatory Reform Legislation: The Dodd-Frank Act

The Dodd-Frank Act is significantly changing the regulation of the financial services industry, including by its creation of new standards related to regulatory oversight of systemically important financial companies, derivatives transactions, asset-backed securitization, mortgage underwriting and consumer financial protection. The Dodd-Frank Act will directly affect our business because new and additional regulatory oversight and standards will apply to us. We may also be affected by provisions of the Dodd-Frank Act and implementing regulations that impact the activities of our customers and counterparties in the financial services industry. Extensive regulatory guidance is still needed to implement and clarify many of the provisions of the Dodd-Frank Act and regulators have not completed the required administrative processes. It is therefore difficult to assess fully the impact of this legislation on our business and industry at this time. We discuss the potential risks to our business resulting from the Dodd-Frank Act in "Risk Factors." Below we summarize some key provisions of the legislation, as well as some rules that have been proposed by various government agencies to implement provisions of the Dodd-Frank Act. We are currently evaluating these proposed rules and how they may impact our business and the housing finance industry.

Enhanced supervision and prudential standards. The Dodd-Frank Act established the Financial Stability Oversight Council (the "FSOC"), chaired by the Secretary of the Treasury, to ensure that all financial companies whose failure could pose a threat to the financial stability of the United States—not just banks—will be subject to strong oversight. Under the Dodd-Frank Act, the FSOC is responsible for designating systemically important nonbank financial companies, while the Federal Reserve is to establish stricter prudential standards that will apply to certain bank holding companies and to systemically important nonbank financial companies. The Federal Reserve must establish standards related to risk-based capital, leverage limits, liquidity, credit concentrations, resolution plans, reporting credit exposures and other risk management measures. On December 20, 2011, the Board of Governors of the Federal Reserve System issued proposed rules addressing a number of these enhanced prudential standards. The Federal Reserve may also impose other standards related to contingent capital, enhanced public disclosure, short-term debt limits and other requirements as appropriate.

The FSOC has issued two notices of proposed rulemaking, most recently on October 11, 2011, describing the framework, process and criteria that will inform the FSOC's designation of systemically important nonbank financial companies. Under the proposed rule, the FSOC will make such a designation if it determines that material financial distress at the nonbank financial company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the company, could pose a threat to the financial stability of the United States. FSOC action on the final designation criteria and process is expected this year. If we are designated as a systemically important nonbank financial company, we may become subject to certain enhanced prudential standards established by the Federal Reserve.

Depending on the scope and final form of these enhanced standards, and the extent to which they apply to our customers and other counterparties, their adoption and application could increase our costs and may adversely affect demand for our debt and Fannie Mae MBS.

Minimum Capital and Margin Requirements; Swap Transactions. The Dodd-Frank Act requires certain institutions meeting the definition of "swap dealer" or "major swap participant" to register with the Commodity Futures Trading Commission (the "CFTC"). The CFTC and SEC have issued a joint proposed rule that would, among other things, establish the definition of "major swap participant." If we are determined to be a major swap participant, minimum capital and margin requirements would apply to our swap transactions, including transactions that are not subject to clearing. On April 28, 2011, the CFTC proposed rules governing minimum capital and margin requirements for swap dealers and major swap participants engaging in derivative trades that are not submitted for clearing to a derivatives clearing organization ("uncleared trades"). On April 12, 2011, the Federal Reserve Board, the Federal Deposit Insurance Corporation ("FDIC"), FHFA, the Farm Credit Administration and the Office of the Comptroller of the Currency proposed rules under the Dodd-Frank Act governing margin and capital requirements applicable to entities that are subject to their oversight. These proposed rules would require that, for all uncleared trades, we collect from our counterparties and provide to our counterparties collateral in excess of the amounts we have historically collected or provided, regardless of whether we are deemed to be a major swap participant. In addition, even if we are not deemed to be a major swap participant, the Dodd-Frank Act includes provisions that may require us to submit new swap transactions for clearing to a derivatives clearing organization.

Ability to Repay. The Dodd-Frank Act requires creditors to determine that borrowers have a "reasonable ability to repay" mortgage loans prior to making such loans. On April 19, 2011, the Federal Reserve Board issued a proposed rule pursuant to the Dodd-Frank Act that, among others things, requires creditors to determine a borrower's "ability to repay" a mortgage loan under Regulation Z, which implements the Truth in Lending Act. If a creditor fails to comply, a borrower may be able to offset amounts owed as part of a foreclosure or recoup monetary damages. The proposed rule offers several options for complying with the ability to repay requirement, including making loans that meet certain terms and characteristics (so-called "qualified mortgages"), which may provide creditors with special protection from liability. As proposed, a loan is generally a qualified mortgage if, among other things, the borrower's income and assets are verified, the loan term does not exceed 30 years, the loan is fully amortizing with no negative amortization, interest-only or balloon features, and the loan is underwritten at the maximum interest rate applicable in the first five years of the loan, taking into account all mortgage-related obligations.

Risk Retention. The Dodd-Frank Act requires financial regulators to jointly prescribe regulations requiring securitizers and/or originators to maintain a portion of the credit risk in assets transferred, sold or conveyed through the issuance of asset-backed securities, with certain exceptions. On March 29, 2011, the Office of the Comptroller of the Currency, the Federal Reserve System, the Federal Deposit Insurance Corporation, the U.S. Securities and Exchange Commission, FHFA and HUD issued a joint proposed rule implementing these risk retention requirements. Under the proposed rule, securitizers would be required to retain at least 5% of the credit risk with respect to the assets they securitize. The proposed rule offers several options for compliance by parties with assets to securitize, one of which is to have either Fannie Mae or Freddie Mac securitize the assets. As long as Fannie Mae or Freddie Mac (1) fully guarantees the assets, thereby taking on 100% of their credit risk, and (2) is in conservatorship or receivership at the time the assets are securitized, no further retention of credit risk is required. Certain mortgage loans meeting the definition of a "Qualified Residential Mortgage" are exempt from the requirements of the rule. Only mortgage loans that are first-lien mortgages on primary residences with loan-to-value ratios not exceeding 80% (75% for refinancings and 70% for cash-out refinancings) and that meet certain other underwriting requirements, would meet the definition of "Qualified Residential Mortgage" under the proposal.

Changes to Our Single-Family Guaranty Fee Pricing and Revenue

In December 2011, Congress enacted the Temporary Payroll Tax Cut Continuation Act of 2011 which, among other provisions, requires that we increase our single-family guaranty fees by at least 10 basis points and remit this increase to Treasury, rather than retaining the incremental revenue. FHFA has announced that, effective April 1, 2012, the guaranty fee on all single-family residential mortgages delivered to Fannie Mae and Freddie Mac on or after that date for securitization will increase by 10 basis points. FHFA is analyzing whether additional guaranty fee increases may be necessary to comply with the law.

Consistent with the recommendation in the Administration's report on ending the conservatorships of Fannie Mae and Freddie Mac and the February 21, 2012 letter from the Acting Director of FHFA to Congress, we expect that our single-family guaranty fees will increase in the future. We expect our future guaranty fees will incorporate private sector pricing considerations such as geographic pricing that contemplates differences in foreclosure laws across the states, pricing indicative of higher required minimum capital levels, and more significant pricing differentiation between higher-risk and lower-risk loans. These changes would be in addition to increases required in the recently enacted law, although we do not know the timing, form or extent of all of these changes.

Discontinuation of Our Retained Attorney Network

In October 2011, FHFA directed us to phase out the practice of requiring mortgage servicers to use our network of retained attorneys to perform default- and foreclosure-related legal services for our loans. FHFA also directed us to work with Freddie Mac, through FHFA's Servicing Alignment Initiative, to develop and implement consistent requirements, policies and processes for default- and foreclosure-related legal services. As set forth in FHFA's directive, we will conduct these activities over a transitional period and will seek to minimize disruption to pending matters. During the transitional period, servicers will continue to be directly responsible for managing the foreclosure process and monitoring network firm performance, in accordance with our current requirements and contractual arrangements. Phasing out the use of our retained attorney network may make it more difficult for us to oversee the performance of default- and foreclosure-related legal services for our loans, which may adversely impact our efforts to reduce our credit losses.

For information on additional regulatory matters affecting us, refer to "Our Charter and Regulation of Our Activities."

OUR CHARTER AND REGULATION OF OUR ACTIVITIES

Charter Act

We are a shareholder-owned corporation, originally established in 1938, organized and existing under the Federal National Mortgage Association Charter Act, as amended, which we refer to as the Charter Act or our charter. The Charter Act sets forth the activities that we are permitted to conduct, authorizes us to issue debt and equity securities, and describes our general corporate powers. The Charter Act states that our purposes are to:

- provide stability in the secondary market for residential mortgages;
- respond appropriately to the private capital market;
- provide ongoing assistance to the secondary market for residential mortgages (including activities relating to mortgages on housing for low- and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing; and
- promote access to mortgage credit throughout the nation (including central cities, rural areas and underserved areas) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing.

It is from these sections of the Charter Act that we derive our mission of providing liquidity, increasing stability and promoting affordability in the residential mortgage market. In addition to the alignment of our overall strategy with these purposes, all of our business activities must be permissible under the Charter Act. Our charter authorizes us to: purchase, service, sell, lend on the security of, and otherwise deal in certain mortgage loans; issue debt obligations and mortgage-related securities; and "do all things as are necessary or incidental to the proper management of [our] affairs and the proper conduct of [our] business."

Loan Standards

Mortgage loans we purchase or securitize must meet the following standards required by the Charter Act.

- *Principal Balance Limitations.* Our charter permits us to purchase and securitize mortgage loans secured by either a single-family or multifamily property. Single-family conventional mortgage loans are subject to maximum original principal balance limits, known as "conforming loan limits." The conforming loan limits are established each year based on the average prices of one-family residences.

  The national conforming loan limit for mortgages that finance one-family residences is $417,000 in 2012, as it was in 2011 and 2010, with higher limits for mortgages secured by two- to four-family residences and in four statutorily-designated states and territories (Alaska, Hawaii, Guam and the U.S. Virgin Islands). Higher loan limits also apply in high-cost areas (counties or county-equivalent areas) that are designated by FHFA annually. Our charter sets permanent loan limits for high-cost areas up to 150% of the national loan limit ($625,500 for a one-family residence; higher for two- to four-family residences and in the four statutorily-designated states and territories). A series of legislative acts temporarily increased our loan limits beginning in early 2008 in high-cost areas to up to 175% of the national loan limit ($729,750 for a one-family residence; higher for two- to four-family residences and in the four statutorily-designated states and territories). This temporary increase, which is no longer in effect, applied to loans originated through September 30, 2011.

  No statutory limits apply to the maximum original principal balance of multifamily mortgage loans that we purchase or securitize. In addition, the Charter Act imposes no maximum original principal balance limits on loans we purchase or securitize that are insured by FHA or guaranteed by the VA.

- *Loan-to-Value and Credit Enhancement Requirements.* The Charter Act generally requires credit enhancement on any single-family conventional mortgage loan that we purchase or securitize if it has a loan-to-value ratio over 80% at the time of purchase. We also do not purchase or securitize second lien single-family mortgage loans when the combined loan-to-value ratio exceeds 80%, unless the second lien mortgage loan has credit enhancement in accordance with the requirements of the Charter Act. The credit enhancement required by our charter may take the form of one or more of the following: (1) insurance or a guaranty by a qualified insurer of the over-80% portion of the unpaid principal balance of the mortgage; (2) a seller's agreement to repurchase or replace the mortgage in the event of default (for such period and under such circumstances as we may require); or (3) retention by the seller of at least a 10% participation interest in the mortgage. Regardless of loan-to-value ratio, the Charter Act does not require us to obtain credit enhancement to purchase or securitize loans insured by FHA or guaranteed by the VA.

Authority of U.S. Treasury to Purchase GSE Securities

Pursuant to our charter, at the discretion of the Secretary of the Treasury, Treasury may purchase our obligations up to a maximum of $2.25 billion outstanding at any one time. Treasury temporarily received expanded authority, which expired on December 31, 2009, to purchase our obligations and other securities in unlimited amounts (up to the national debt limit) under the 2008 Reform Act. We describe Treasury's investment in our senior preferred stock and a common stock warrant pursuant to this expanded temporary authority under "Conservatorship and Treasury Agreements—Treasury Agreements."

Other Charter Act Provisions

The Charter Act has the following additional provisions.

- *Issuances of Our Securities.* We are authorized, upon the approval of the Secretary of the Treasury, to issue debt obligations and mortgage-related securities. Neither the U.S. government nor any of its agencies guarantees, directly or indirectly, our debt or mortgage-related securities.
- *Exemptions for Our Securities.* The Charter Act generally provides that our securities are exempt under the federal securities laws administered by the SEC. As a result, we are not required to file registration statements with the SEC under the Securities Act of 1933 with respect to offerings of any of our securities. Our non-equity securities are also exempt securities under the Securities Exchange Act of 1934 (the "Exchange Act"). However, our equity securities are not treated as exempted securities for purposes of Sections 12, 13, 14 or 16 of the Exchange Act. Consequently, we are required to file periodic and current reports with the SEC, including annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K.
- *Exemption from Specified Taxes.* We are exempt from taxation by states, territories, counties, municipalities and local taxing authorities, except for taxation by those authorities on our real property. We are not exempt from the payment of federal corporate income taxes.
- *Other Limitations and Requirements.* We may not originate mortgage loans or advance funds to a mortgage seller on an interim basis, using mortgage loans as collateral, pending the sale of the mortgages in the secondary market. In addition, we may only purchase or securitize mortgages on properties located in the United States and its territories.

Regulation and Oversight of Our Activities

As a federally chartered corporation, we are subject to government regulation and oversight. FHFA is an independent agency of the federal government with general supervisory and regulatory authority over Fannie Mae, Freddie Mac and the 12 Federal Home Loan Banks ("FHLBs"). FHFA was established in July 2008, assuming the duties of our former safety and soundness regulator, the Office of Federal Housing Enterprise Oversight ("OFHEO"), and our former mission regulator, HUD. HUD remains our regulator with respect to fair lending matters. Our regulators also include the SEC and Treasury.

The GSE Act provides FHFA with safety and soundness authority that is comparable to and in some respects broader than that of the federal banking agencies. Even if we were not in conservatorship, the GSE Act gives FHFA the authority to raise capital levels above statutory minimum levels, regulate the size and content of our portfolio and approve new mortgage products, among other things.

FHFA is responsible for implementing the various provisions of the GSE Act. In general, we remain subject to existing regulations, orders and determinations until new ones are issued or made.

Capital. The GSE Act provides FHFA with broad authority to increase the level of our required minimum capital and to establish capital or reserve requirements for specific products and activities. FHFA also has broad authority to establish risk-based capital requirements, to ensure that we operate in a safe and sound manner and maintain sufficient capital and reserves. During the conservatorship, FHFA has suspended our capital classifications. We continue to submit capital reports to FHFA during the conservatorship, and FHFA continues to monitor our capital levels. We describe our capital requirements below under "Capital Adequacy Requirements."

Portfolio. The GSE Act requires FHFA to establish standards governing our portfolio holdings, to ensure that they are backed by sufficient capital and consistent with our mission and safe and sound operations. FHFA is also required to monitor our portfolio and, in some circumstances, may require us to dispose of or acquire assets. In 2010, FHFA published a final rule adopting, as the standard for our portfolio holdings, the portfolio limits specified in the senior preferred stock purchase agreement described under "Treasury Agreements—Covenants under Treasury Agreements," as it may be amended from time to time. The rule is effective for as long as we remain subject to the terms and obligations of the senior preferred stock purchase agreement.

New Products. The GSE Act requires us to obtain FHFA's approval before initially offering any product, subject to certain exceptions. The GSE Act also requires us to provide FHFA with written notice before commencing any new activity. In July 2009, FHFA published an interim final rule implementing these provisions of the GSE Act. Subsequently, the Acting Director of FHFA concluded that permitting us to offer new products at this time is inconsistent with the goals of the conservatorship. He therefore instructed us not to submit requests for approval of new products under the interim final rule. We cannot predict when or if FHFA will permit us to submit new product requests under the rule.

Receivership. Under the GSE Act, FHFA must place us into receivership if it determines that our assets are less than our obligations for 60 days, or we have not been paying our debts as they become due for 60 days. FHFA has notified us that the measurement period for any mandatory receivership determination with respect to our assets and liabilities would commence no earlier than the SEC public filing deadline for our quarterly or annual financial statements and would continue for 60 calendar days thereafter. FHFA has advised us that if, during that 60-day period, we receive funds from Treasury in an amount at least equal to the deficiency amount under the senior preferred stock purchase agreement, the Director of FHFA will not make a mandatory receivership determination.

In addition, we could be put into receivership at the discretion of the Director of FHFA at any time for other reasons, including conditions that FHFA has already asserted existed at the time the then-Director of FHFA placed us into conservatorship. The statutory grounds for discretionary appointment of a receiver include: a substantial dissipation of assets or earnings due to unsafe or unsound practices; the existence of an unsafe or unsound condition to transact business; an inability to meet our obligations in the ordinary course of business; a weakening of our condition due to unsafe or unsound practices or conditions; critical undercapitalization; the likelihood of losses that will deplete substantially all of our capital; or by consent.

In June 2011, FHFA issued a final rule establishing a framework for conservatorship and receivership operations for the GSEs. The rule is part of FHFA's implementation of the powers provided by the 2008 Reform Act, and does not seek to anticipate or predict future conservatorships or receiverships. The final rule, which became effective on July 20, 2011, establishes procedures for conservatorship and receivership, and priorities of claims for contract parties and other claimants. For example, the final rule clarifies that:

- the powers of the conservator or receiver include continuing our mission and ensuring that our operations foster liquid, efficient, competitive and resilient national housing finance markets;
- the conservator or receiver may disaffirm or repudiate any contract or lease to which we are a party for up to 18 months following the appointment of a conservator or receiver;

- we are prohibited from making capital distributions while in conservatorship unless authorized by the Director of FHFA; and
- claims by current or former shareholders (including securities litigation claims) would receive the lowest priority in a receivership, behind: (1) administrative expenses of the receiver (or an immediately preceding conservator), (2) our other general or senior liabilities, and (3) obligations subordinated to those of general creditors.

The rule also provides that FHFA, as conservator, will not pay securities litigation claims against us during conservatorship, unless the Director of FHFA determines it is in the interest of the conservatorship. An action, which was brought by the Ohio Public Employees Retirement System and the State Teachers Retirement System of Ohio, is currently pending in the U.S. District Court for the District of Columbia against FHFA and Acting Director DeMarco challenging the rule's provisions regarding nonpayment of securities litigation claims.

Prudential Management and Operational Standards. As required by the GSE Act, in June 2011, FHFA issued a proposed rule establishing prudential standards relating to the management and operations of Fannie Mae, Freddie Mac and the FHLBs in the following ten areas: (1) internal controls and information systems; (2) independence and adequacy of internal audit systems; (3) management of market risk exposure; (4) management of market risk—measurement systems, risk limits, stress testing, and monitoring and reporting; (5) adequacy and maintenance of liquidity and reserves; (6) management of asset and investment portfolio growth; (7) investments and acquisitions of assets; (8) overall risk management processes; (9) management of credit and counterparty risk; and (10) maintenance of adequate records. These standards are proposed to be adopted as guidelines, which the Director of FHFA may modify, revoke or add to at any time by order. The proposed rule provides that FHFA may take specified remedial actions if a regulated entity fails to meet one or more of the standards, such as requiring the entity to submit a corrective plan or increasing its capital requirements.

Affordable Housing Goals and Duty to Serve. We discuss our affordable housing goals and our duty to serve underserved markets below under "Housing Goals and Duty to Serve Underserved Markets."

Affordable Housing Allocations. The GSE Act requires us to set aside in each fiscal year an amount equal to 4.2 basis points for each dollar of the unpaid principal balance of our total new business acquisitions, and to allocate such amount to certain government funds. The GSE Act also allows FHFA to suspend allocations on a temporary basis. In November 2008, FHFA advised us that it was suspending our allocations until further notice.

Executive Compensation. The Charter Act requires that compensation of our executives be reasonable and comparable with the compensation of executives performing similar duties in similar businesses, except that a significant portion of potential compensation must be based on our performance. Further, the GSE Act directs FHFA to prohibit us from providing unreasonable or non-comparable compensation to our executive officers. FHFA may at any time review the reasonableness and comparability of an executive officer's compensation and may require us to withhold any payment to the officer during such review. FHFA is also authorized to prohibit or limit certain golden parachute and indemnification payments to directors, officers and certain other parties. FHFA has issued rules relating to golden parachute payments, setting forth factors to be considered by the Director of FHFA in acting upon his authority to limit such payments.

Fair Lending. The GSE Act requires the Secretary of HUD to assure that the GSEs meet their fair lending obligations. Among other things, HUD is required to periodically review and comment on the underwriting and appraisal guidelines of each company to ensure consistency with the Fair Housing Act. HUD is currently conducting such a review.

Capital Adequacy Requirements

The GSE Act establishes capital adequacy requirements. The statutory capital framework incorporates two different quantitative assessments of capital—a minimum capital requirement and a risk-based capital requirement. The minimum capital requirement is ratio-based, while the risk-based capital requirement is based on simulated stress test performance. The GSE Act requires us to maintain sufficient capital to meet both of these requirements in order to be classified as "adequately capitalized." However, during the conservatorship, FHFA has suspended capital classification of us and announced that our existing statutory and FHFA-directed regulatory capital requirements will not be binding. FHFA has advised us that, because we are under conservatorship, we will not be subject to corrective action requirements that would ordinarily result from our receiving a capital classification of "undercapitalized."

Minimum Capital Requirement. Under the GSE Act, we must maintain an amount of core capital that equals or exceeds our minimum capital requirement. The GSE Act defines core capital as the sum of the stated value of outstanding common stock (common stock less treasury stock), the stated value of outstanding non-cumulative perpetual preferred stock, paid-in capital, and retained earnings, as determined in accordance with GAAP. Our minimum capital requirement is generally equal to the sum of 2.50% of on-balance sheet assets and 0.45% of off-balance sheet obligations. For purposes of minimum capital, FHFA has directed us to continue reporting loans backing Fannie Mae MBS held by third parties based on 0.45% of the unpaid principal balance regardless of whether these loans have been consolidated pursuant to accounting rules. FHFA retains authority under the GSE Act to raise the minimum capital requirement for any of our assets or activities.

Risk-Based Capital Requirement. The GSE Act requires FHFA to establish risk-based capital requirements for Fannie Mae and Freddie Mac, to ensure that we operate in a safe and sound manner. Existing risk-based capital regulation ties our capital requirements to the risk in our book of business, as measured by a stress test model. The stress test simulates our financial performance over a ten-year period of severe economic conditions characterized by both extreme interest rate movements and high mortgage default rates. FHFA has stated that it does not intend to publish our risk-based capital level during the conservatorship and has discontinued stress test simulations under the existing rule. We continue to submit detailed profiles of our books of business to FHFA to support FHFA's monitoring of our business activity and their research into future risk-based capital rules.

Critical Capital Requirement. The GSE Act also establishes a critical capital requirement, which is the amount of core capital below which we would be classified as "critically undercapitalized." Under the GSE Act, such classification is a discretionary ground for appointing a conservator or receiver. Our critical capital requirement is generally equal to the sum of 1.25% of on-balance sheet assets and 0.25% of off-balance sheet obligations. FHFA has directed us, for purposes of critical capital, to continue reporting loans backing Fannie Mae MBS held by third parties based on 0.25% of the unpaid principal balance, notwithstanding our consolidation of substantially all of the loans backing these securities. FHFA has stated that it does not intend to publish our critical capital level during the conservatorship.

Bank Capital and Other Supervisory Standards. In the wake of the financial crisis and as a result of the Dodd-Frank Act and of actions by international bank regulators, the capital regime for the banking industry is undergoing major changes. The Basel Committee on Banking Supervision finalized a set of revisions (known as Basel III) to the international capital requirements in December 2010. Basel III generally narrowed the definition of capital that can be used to meet risk-based standards and raises the amount of capital that must be held. On December 20, 2011, the Federal Reserve stated that it is working with the other U.S. banking regulators to implement the Basel III capital reforms in the United States.

The Dodd-Frank Act requires stronger regulation of major bank holding companies and nonbank financial companies designated for Federal Reserve supervision by the FSOC. The prudential standards for covered companies must include enhanced risk-based capital and leverage requirements, enhanced liquidity requirements, enhanced risk management and risk committee requirements, a requirement to submit a resolution plan, single-counterparty credit limits, stress tests, and a debt-to-equity limit for covered companies that the FSOC has determined pose a grave threat to financial stability.

Although the GSEs are not currently subject to bank capital requirements, any revised framework for GSE capital standards may be based on bank requirements, particularly if the GSEs are deemed to be systemically important financial companies subject to Federal Reserve oversight.

Housing Goals and Duty to Serve Underserved Markets

Since 1993, we have been subject to housing goals. The structure of our housing goals changed in 2010 as a result of the 2008 Reform Act. The 2008 Reform Act also created a new duty for us to serve three underserved markets, which we discuss below.

Housing Goals

FHFA established the following single-family home purchase and refinance housing goal benchmarks for 2011 and 2010. A home purchase mortgage may be counted toward more than one home purchase benchmark.

- *Low-Income Families Home Purchase Benchmark:* At least 27% of our acquisitions of single-family owner-occupied mortgage loans financing home purchases must be affordable to low-income families (defined as families with income no higher than 80% of area median income).
- *Very Low-Income Families Home Purchase Benchmark:* At least 8% of our acquisitions of single-family owner-occupied mortgage loans financing home purchases must be affordable to very low-income families (defined as families with income no higher than 50% of area median income).
- *Low-Income Areas Home Purchase Benchmarks:* At least 24% of our acquisitions of single-family owner-occupied mortgage loans financing home purchases must be for families in low-income census tracts, for moderate-income families (defined as families with income no higher than 100% of area median income) in designated disaster areas or for moderate-income families in minority census tracts. In addition, at least 13% of our acquisitions of single-family owner-occupied purchase money mortgage loans must be for families in low-income census tracts or for moderate-income families in minority census tracts.
- *Low-Income Families Refinancing Benchmark:* At least 21% of our acquisitions of single-family owner-occupied refinance mortgage loans must be affordable to low-income families, which may include qualifying permanent modifications of mortgages under HAMP completed during the year.

If we do not meet these benchmarks, we may still meet our goals. Our single-family housing goals performance will be measured against these benchmarks and against goals-qualifying originations in the primary mortgage market. We will be in compliance with the housing goals if we meet either the benchmarks or market share measures.

FHFA also established a multifamily goal and subgoal. For each of 2011 and 2010, our multifamily mortgage acquisitions must finance at least 177,750 units affordable to low-income families, and at least 42,750 units affordable to very low-income families. There is no market-based alternative measurement for the multifamily goals.

Under FHFA's rule establishing our housing goals, which was finalized in September 2010, FHFA made significant changes to prior housing goals regulations regarding the types of products that count towards the housing goals. Private-label mortgage-related securities, second liens and single-family government loans do not count towards the housing goals. In addition, only permanent modifications of mortgages under HAMP completed during the year count towards the housing goals; trial modifications will not be counted. Moreover, these modifications count only towards the single-family low-income families refinance goal, not any of the home purchase goals.

In adopting the rule establishing our housing goals, FHFA indicated "FHFA does not intend for [Fannie Mae] to undertake uneconomic or high-risk activities in support of the [housing] goals. However, the fact that [Fannie Mae is] in conservatorship should not be a justification for withdrawing support from these market segments." If our efforts to meet our goals prove to be insufficient, FHFA determines whether the goals were feasible. If FHFA finds that our goals were feasible, we may become subject to a housing plan that could require us to take additional steps that could have an adverse effect on our results of operations and financial condition. The housing plan must describe the actions we would take to meet the goal in the next calendar year and be approved by FHFA. The potential penalties for failure to comply with housing plan requirements include a cease-and-desist order and civil money penalties. See "Risk Factors" for a description of how we may be unable to meet our housing goals and how actions we may take to meet these goals and other regulatory requirements could adversely affect our business, results of operations and financial condition.

The following table presents our performance against our single-family housing benchmarks and multifamily housing goals for 2011 and 2010, as well as our performance against market share measures for 2010. Our 2011 performance results have not yet been validated by FHFA.

Housing Goals Performance

	2011		2010		
	Result(1)	Bench-mark(2)	Result	Bench-mark	Single-Family Market Level
Single-family housing goals:(3)					
Low-income families home purchases	25.77%	27%	25.13%	27%	27.2%
Very low-income families home purchases	7.56	8	7.24	8	8.1
Low-income areas home purchases	22.32	24	24.05	24	24.0
Low-income and high-minority areas home purchases	11.60	13	12.37	13	12.1
Low-income families refinancing	23.05	21	20.90	21	20.2

	Result(1)	Goal	Result	Goal
	(in units)			
Multifamily housing goals:				
Affordable to families with incomes no higher than 80% of area median income	301,224	177,750	214,997	177,750
Affordable to families with incomes no higher than 50% of area median income	84,244	42,750	53,908	42,750

(1) Our 2011 results have not been validated by FHFA, and after validation they may differ from the results reported above.

(2) Even if our results do not meet the 2011 benchmarks, we may still meet our goals. Our single-family housing goals performance is measured not only against these benchmarks, but also against the share of goals-qualifying originations in the primary mortgage market. We will be in compliance with the housing goals if we meet either the benchmarks or market share measures. The amount of goals-qualifying originations in the market during 2011 will not be available until the release of data reported by primary market originators under the Home Mortgage Disclosure Act in the fall of 2012.

(3) Our single-family results and benchmarks are expressed as a percentage of the total number of eligible mortgages acquired during the period.

We believe we met our single-family low-income refinance benchmark for 2011, as well as our 2011 multifamily goals. As discussed above, we can meet our single-family goals either by meeting an established benchmark or by meeting a market share measure of goals-qualifying originations in the primary mortgage market. In consultation with FHFA, we are currently analyzing our performance against our goals. We will file our assessment of our 2011 housing goals performance with FHFA in mid-March.

To determine whether we ultimately met our 2011 single-family housing goals where our performance falls below benchmark levels, we and FHFA will have to compare our performance with that of goals-qualifying originations in the primary mortgage market after the release of data reported under the Home Mortgage Disclosure Act ("HMDA"). This release will be made in the fall of 2012. At that time it will be determined whether we met any additional goals based on the HMDA market data.

For 2010, FHFA has determined that we met our single-family low-income areas home purchase goals and our single-family refinance goal, as well as our 2010 multifamily goals. FHFA determined that we did not meet our single-family low-income home purchase goal or our single-family very low-income home purchase goal. Although FHFA determined that we did not meet these two goals and that their achievement was feasible, FHFA is not requiring us to submit a housing plan. FHFA stated that a housing plan is not required because of the significant changes to the housing goals structure for 2010 and Fannie Mae's continued operation under conservatorship.

Duty to Serve

The 2008 Reform Act created the duty to serve underserved markets in order for us and Freddie Mac to "provide leadership to the market in developing loan products and flexible underwriting guidelines to facilitate a secondary market for very low-, low-, and moderate-income families" with respect to three underserved markets: manufactured housing, affordable housing preservation, and rural areas.

The duty to serve is a new oversight responsibility for FHFA. The Director of FHFA is required to establish by regulation a method for evaluating and rating the performance by us and Freddie Mac of the duty to serve underserved markets. In June 2010, FHFA published its proposed rule to implement this duty. A final rule has not been issued.

Under the proposed rule, we would be required to submit an underserved markets plan at least 90 days before the plan's effective date of January 1st of a particular year establishing benchmarks and objectives against which FHFA would evaluate and rate our performance. The plan term is two years. We will likely need to submit a plan as soon as practicable after the publication of the final rule that will be effective for the first plan period.

The 2008 Reform Act requires FHFA to separately evaluate the following four assessment factors:

- The loan product assessment factor requires evaluation of our "development of loan products, more flexible underwriting guidelines, and other innovative approaches to providing financing to each" underserved market.
- The outreach assessment factor requires evaluation of "the extent of outreach to qualified loan sellers and other market participants." We are expected to engage market participants and pursue relationships with qualified sellers that serve each underserved market.
- The loan purchase assessment factor requires FHFA to consider the volume of loans acquired in each underserved market relative to the market opportunities available to us. The 2008 Reform Act prohibits the establishment of specific quantitative targets by FHFA. However, in its evaluation FHFA could consider the volume of loans acquired in past years.
- The investment and grants assessment factor requires evaluation of the amount of investment and grants in projects that assist in meeting the needs of underserved markets.

Under the proposed rule, FHFA would give the loan purchase and outreach assessment factors significant weight. Because we are in conservatorship, the investment and grants assessment factor would receive little or no weight. In addition, FHFA would consider the loan product assessment factor, even though we are currently prohibited from entering into new lines of business and developing new products. The proposed rule states that acquisitions and activities pursuant to the duty to serve should be profitable, even if less profitable than other activities.

FHFA would evaluate our performance on each assessment factor annually, and assign a rating of "satisfactory" or "unsatisfactory" to each factor in each underserved market. The evaluation would be based on whether we have substantially met our benchmarks and objectives as outlined in our underserved markets plan. FHFA would also consider the impact of overall market conditions and other factors outside our control that could impact our ability to meet our benchmarks and objectives. Based on the assessment factor findings, FHFA would assign a rating of "in compliance" or "noncompliance" with the duty to serve each underserved market.

With some exceptions, the counting rules and other requirements would be similar to those established for the housing goals. For the loan purchase assessment factor, FHFA proposes to measure performance in terms of units rather than mortgages or unpaid principal balance. All single-family loans we acquire must meet the standards in the Interagency Statement on Subprime Mortgage Lending and the Interagency Guidance on Nontraditional Mortgage Product Risks. We are expected to review the operations of loan sellers to ensure compliance with these standards.

If we fail to comply with, or there is a substantial probability that we will not comply with, our duty to serve a particular underserved market in a given year, FHFA would determine whether the benchmarks and objectives in our underserved markets plan are or were feasible. If we fail to meet our duty to serve, and FHFA determines that the benchmarks and objectives in our underserved markets plan are or were feasible, then, in the Director's discretion, we may be required to submit a housing plan. Under the proposed rule, the housing plan must describe the activities that we will take to comply with the duty to serve a particular underserved market for the next calendar year, or improvements and changes in operations that we will make during the remainder of the current year.

Under the proposed rule, we would be required to provide quarterly and annual reports on our performance and progress towards meeting our duty to serve.

See "Risk Factors" for a description of how changes we may make in our business strategies in order to meet our housing goals and duty to serve requirement may increase our credit losses and adversely affect our results of operations.

MAKING HOME AFFORDABLE PROGRAM

The Obama Administration's Making Home Affordable Program, which was introduced in February 2009, is intended to provide assistance to homeowners and prevent foreclosures. Working with our conservator, we have devoted significant effort and resources to help distressed homeowners through initiatives that support the Making Home Affordable Program. Below we describe key aspects of the Making Home Affordable Program and our role in the program. For additional information about our activities under the program, please see "Business—Making Home Affordable Program" in our Annual Report on Form 10-K for the year ended December 31, 2009. For information about the program's financial impact on us, please see "MD&A—Consolidated Results of Operations—Financial Impact of the Making Home Affordable Program on Fannie Mae."

The Making Home Affordable Program is comprised primarily of a Home Affordable Refinance Program ("HARP"), under which we acquire or guarantee loans that are refinancings of mortgage loans we own or guarantee, and Freddie Mac does the same, and a Home Affordable Modification Program ("HAMP"), which provides for the modification of mortgage loans owned or guaranteed by us or Freddie Mac, as well as other mortgage loans. These two programs were designed to expand the number of borrowers who can refinance or modify their mortgages to achieve a monthly payment that is more affordable now and into the future or to obtain a more stable loan product, such as a fixed-rate mortgage loan in lieu of an adjustable-rate mortgage loan. We participate in the Making Home Affordable Program, and our sellers and servicers offer HARP and HAMP to Fannie Mae borrowers. We also serve as Treasury's program administrator for HAMP and other initiatives under the Making Home Affordable Program.

Changes to the Home Affordable Refinance Program

In the fourth quarter of 2011, FHFA, Fannie Mae, and Freddie Mac announced changes to HARP aimed at making refinancing under the program easier and potentially less expensive for qualifying homeowners and encouraging lenders to participate in the program. While HARP previously limited eligibility to borrowers with mortgage loans for their primary residence that had LTV ratios greater than 80% but no greater than 125%, the new HARP guidelines remove that ceiling when a borrower refinances into a new fixed-rate mortgage. Other changes to HARP include:

- eliminating risk-based fees for borrowers who refinance into loans with terms up to 20 years and lowering fees for other borrowers to no more than 75 basis points;
- eliminating the need for a new property appraisal in many cases;
- extending the ending date for HARP from June 2012 to December 2013; and
- reducing the extent to which lenders will be liable for violations of representations and warranties in connection with refinancings under HARP.

At this time, we do not know how many eligible borrowers are likely to refinance under the program and, therefore, how many HARP loans we will acquire.

Our Role as Program Administrator

Treasury has engaged us to serve as program administrator for HAMP and other initiatives under the Making Home Affordable Program. Our principal activities as program administrator include the following:

- Implementing the guidelines and policies of the Treasury program;
- Preparing the requisite forms, tools and training to facilitate efficient loan modifications by servicers;
- Creating, making available and managing the process for servicers to report modification activity and program performance;
- Calculating incentive compensation consistent with program guidelines;
- Acting as record-keeper for executed loan modifications and program administration;
- Coordinating with Treasury and other parties toward achievement of the program's goals, including assisting with development and implementation of updates to the program and initiatives expanding the program's reach; and
- Performing other tasks as directed by Treasury from time to time.

In our capacity as program administrator for the program, we support over 100 servicers that have signed up to participate with respect to non-agency loans under the program. To help servicers implement the program, we have provided information and resources through a Web site dedicated to servicers under the program. We have also communicated information about the program to servicers and helped servicers implement and integrate the program with new systems and processes. As program administrator, we have taken the following steps to help servicers implement the program:

- dedicated Fannie Mae personnel to work closely with participating servicers;
- established a servicer support call center;
- conducted ongoing conference calls with the leadership of participating servicers;
- provided training through live Web seminars and recorded tutorials; and
- made checklists and job aids available on the program Web site.

On January 27, 2012, the Administration announced an extension of HAMP for an additional year through December 31, 2013. The Acting Director of FHFA has directed us to continue modifying loans under HAMP through that date, and our role as program administrator will be extended accordingly.

OUR CUSTOMERS

Our principal customers are lenders that operate within the primary mortgage market where mortgage loans are originated and funds are loaned to borrowers. Our customers include mortgage banking companies, savings and loan associations, savings banks, commercial banks, credit unions, community banks, insurance companies, and state and local housing finance agencies. Lenders originating mortgages in the primary mortgage market often sell them in the secondary mortgage market in the form of whole loans or in the form of mortgage-related securities.

During 2011, approximately 1,000 lenders delivered single-family mortgage loans to us, either for securitization or for purchase. We acquire a significant portion of our single-family mortgage loans from several large mortgage lenders. During 2011, our top five lender customers, in the aggregate, accounted for approximately 60% of our single-family business volume, while our top five lender customers accounted for approximately 62% of our single-family business volume in 2010. Three lender customers, Wells Fargo Bank, N.A., JPMorgan Chase Bank, NA and Bank of America, N.A., including their respective affiliates, in the aggregate accounted for more than 48% of our single-family business volume for 2011. In this report, we may refer to Bank of America, N.A. and its affiliates, collectively and individually, as "Bank of America."

Bank of America, which accounted for approximately 12% of our single-family business volume in 2011, is the seller/servicer with whom we have the most repurchase requests outstanding. In the fourth quarter of 2011, Bank of America slowed the pace of its repurchases. As a result, the already high volume of our outstanding repurchase requests with Bank of America increased substantially. At this time, we do not know what impact these issues will ultimately have on our future business with Bank of America. We discuss these developments in "MD&A—Risk Management—Institutional Counterparty Credit Risk Management—Mortgage Seller/ Servicers."

Due to ongoing consolidation within the mortgage industry, as well as the number of mortgage lenders that have gone out of business since 2006, we, as well as our competitors, will obtain business from a decreasing number of large mortgage lenders. We will seek to provide liquidity to a broader, more diverse set of mortgage lenders. However, to the extent we become more reliant on a smaller number of lender customers, our negotiating leverage with these customers could decrease. In addition, many of our lender customers are experiencing financial and liquidity problems, which may affect the volume of business they are able to generate and their ability to honor our repurchase requests. Several of our large lender customers have exited from correspondent or broker lending, focusing instead on lending through their retail channels, which may also affect the volume of business they are able to generate. We discuss the risks that customer concentration poses to our business in "Risk Factors."

COMPETITION

Historically, our competitors have included Freddie Mac, FHA, Ginnie Mae (which primarily guarantees securities backed by FHA-insured loans), the twelve FHLBs, financial institutions, securities dealers, insurance companies, pension funds, investment funds and other investors. During 2008, almost all of our competitors, other than Freddie Mac, FHA, Ginnie Mae and the FHLBs, dramatically reduced or ceased their activities in the residential mortgage finance business. We remained the largest single issuer of mortgage-related securities in the secondary market in 2011. During 2011, our primary competitors for the issuance of mortgage-related securities were Ginnie Mae and Freddie Mac. We currently estimate that our single-family market share was 41% in 2011, compared with 36% in 2010. These amounts represent our single-family mortgage acquisitions for each year, excluding delinquent loans we purchased from our MBS trusts, as a percentage of the single-family first-lien mortgages we currently estimate were originated in the United States that year. Because our estimate of mortgage originations in prior periods is subject to change as additional data become available, these market share estimates may change in the future, perhaps materially.

We compete to acquire mortgage assets in the secondary market both for securitization into Fannie Mae MBS and, to a significantly lesser extent, for our investment portfolio. We also compete for the issuance of mortgage-related securities to investors. Competition in these areas is affected by many factors, including the amount of residential mortgage loans offered for sale in the secondary market by loan originators and other market participants, the nature of the residential mortgage loans offered for sale (for example, whether the loans represent refinancings), the current demand for mortgage assets from mortgage investors, the interest rate risk investors are willing to assume and the yields they will require as a result, and the credit risk and prices associated with available mortgage investments.

Competition to acquire mortgage assets is significantly affected by pricing and eligibility standards. We compete with Freddie Mac and, especially for loans with higher LTV ratios, with FHA. FHA is also able to acquire loans with higher original principal balances than we are permitted to acquire, as a result of the September 30, 2011 expiration of a temporary increase in our loan limits. We expect our guaranty fees may increase in coming years, which would likely affect our competitive environment. See "Our Charter and Regulation of Our Activities–Loan Standards" for more information about our loan limits, and "Legislative and Regulatory Developments—Changes to Our Single-Family Guaranty Fee Pricing and Revenue," for a discussion of anticipated pricing increases.

We also compete for low-cost debt funding with institutions that hold mortgage portfolios, including Freddie Mac and the FHLBs.

Although we do not know the structure that long-term GSE reform will ultimately take, we expect that, if our company continues, we will face more competition in the future. Please see "Legislative and Regulatory Developments—GSE Reform" for discussions of GSE reform, recent legislative reform of the financial services industry that is likely to affect our business and the role of private capital in the mortgage markets.

EMPLOYEES

As of January 31, 2012, we employed approximately 7,000 personnel, including full-time and part-time employees, term employees and employees on leave.

WHERE YOU CAN FIND ADDITIONAL INFORMATION

We make available free of charge through our Web site our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and all other SEC reports and amendments to those reports as soon as reasonably practicable after we electronically file the material with, or furnish it to, the SEC. Our Web site address is www.fanniemae.com. Materials that we file with the SEC are also available from the SEC's Web site, www.sec.gov. You may also request copies of any filing from us, at no cost, by calling the Fannie Mae Fixed-Income Securities Helpline at (800) 237-8627 or (202) 752-7115 or by writing to Fannie Mae, Attention: Fixed-Income Securities, 3900 Wisconsin Avenue, NW, Area 2H-3S, Washington, DC 20016.

All references in this report to our Web site addresses or the Web site address of the SEC are provided solely for your information. Information appearing on our Web site or on the SEC's Web site is not incorporated into this annual report on Form 10-K.

FORWARD-LOOKING STATEMENTS

This report includes statements that constitute forward-looking statements within the meaning of Section 21E of the Exchange Act. In addition, our senior management may from time to time make forward-looking statements orally to analysts, investors, the news media and others. Forward-looking statements often include words such as "expect," "anticipate," "intend," "plan," "believe," "seek," "estimate," "forecast," "project," "would," "should," "could," "may," "prospects," or similar words.

Among the forward-looking statements in this report are statements relating to:

- Our expectation that housing will start to recover if the employment market continues to improve;
- Our anticipation of an approximately 1.1% decline in single-family mortgage debt outstanding in 2012;
- Our expectation that the unemployment rate will remain relatively flat in 2012;
- Our expectation that, while the strength of improving vacancy levels and rental rates will vary by metropolitan area, on a national basis the multifamily sector should continue to see steady demand in 2012;
- Our expectation that rental demand for multifamily housing will continue to outstrip supply, thereby maintaining stable vacancy levels and healthy rent growth, given job growth slowly improving, and, more importantly, the lack of new apartment supply becoming available over the next 12 to 18 months;
- Our expectation that, as a result, the outlook remains steady for the multifamily sector at the national level over the coming year;
- Our expectation that we will increasingly focus on building a new infrastructure for the secondary mortgage market and on actions that will gradually decrease our presence in the marketplace while simplifying and shrinking our operations;
- Our expectation that we will experience high levels of period-to-period volatility in our results because our derivatives are recorded at fair value in our financial statements while some of the instruments they hedge are not recorded at fair value in our financial statements;

- Our expectation, based on their performance so far, that loans in our new single-family book of business will perform well over their lifetime;
- Our expectation that the serious delinquency rates for single-family loans acquired in recent years will be higher after the loans have aged, but not as high as the December 31, 2011 serious delinquency rates of loans in our legacy book of business;
- Our expectations regarding whether loans we acquired in specific years, individually or aggregated by ranges of years, will be profitable over their lifetime, by which we mean that we expect our fee income on these loans to exceed our credit losses and administrative costs for them;
- Our belief that credit losses on loans we have acquired since 2009 would exceed guaranty fee revenue if home prices declined nationally by approximately 10% from their December 2011 levels over the next five years, based on our home price index;
- Our expectations regarding the credit profile of loans we acquire in the future, and the factors that will influence their credit profile;
- Our estimate that, while single-family loans that we acquired from 2005 through 2008 will give rise to additional credit losses that we will realize when the loans are charged off (upon foreclosure or our acceptance of a short sale or deed-in-lieu of foreclosure), we have reserved for the substantial majority of the remaining losses on these loans;
- Our expectation that our loss reserves will remain significantly elevated relative to historical levels for an extended period because (1) we expect future defaults on loans in our legacy book of business and the resulting charge-offs will occur over a period of years and (2) a significant portion of our reserves represents concessions granted to borrowers upon modification of their loans and will remain in our reserves until the loans are fully paid or default;
- Our expectation that it will take years before our REO inventory approaches pre-2008 levels;
- Our estimate that we will realize as credit losses over two-thirds of the fair value losses on loans purchased out of unconsolidated MBS trusts that are reflected in our consolidated balance sheets, and eventually recover the remaining nearly one-third, either through net interest income for loans that cure or through foreclosed property income for loans where the sale of the collateral exceeds our recorded investment in the loan;
- Our belief that successful modifications will ultimately reduce our credit losses over the long term from what they otherwise would have been if we had taken the loans to foreclosure;
- Our belief that foreclosure delays resulting from changes in the foreclosure environment will continue to negatively impact our foreclosure timelines, credit-related expenses and single-family serious delinquency rates, and will delay the recovery of the housing market;
- Our expectation that serious delinquency rates will continue to be affected in the future by home price changes, changes in other macroeconomic conditions, the length of the foreclosure process, the volume of loan modifications and the extent to which borrowers with modified loans continue to make timely payments;
- Our belief that continued federal government support of our business and the financial markets, as well as our status as a GSE, are essential to maintaining our access to debt funding;
- Our expectation that changes or perceived changes in the government's support could materially and adversely affect our ability to refinance our debt as it becomes due, which could have a material adverse impact on our liquidity, financial condition, results of operations and ability to continue as a going concern;
- Our expectation that weakness in the housing and mortgage markets will continue in 2012;
- Our expectation that the high level of delinquent mortgage loans will ultimately result in high levels of foreclosures, which is likely to add to the excess housing inventory;

- Our expectation that home sales are unlikely to rise until the unemployment rate improves further;
- Our expectation that single-family default and severity rates, as well as the level of single-family foreclosures, will remain high in 2012;
- Our expectation that, despite signs of multifamily sector improvement at the national level, our multifamily charge-offs in 2012 will remain generally commensurate with 2011 levels as certain local markets and properties continue to exhibit weak fundamentals;
- Our expectations that changes to HARP announced in October 2011 will result in our acquiring more refinancings in 2012 than we would have acquired in the absence of the changes, but that we will acquire fewer refinancings overall in 2012 than in 2011 because a high number of mortgages have already refinanced to low rates in recent years;
- Our expectation that our loan acquisitions overall for 2012 will be lower than in 2011;
- Our belief that our loan acquisitions could be negatively affected by the decrease in the fourth quarter of 2011in the maximum size loan we may acquire in specified high-cost areas;
- Our expectation that our future revenues will be negatively impacted to the extent our acquisitions decline;
- Our estimation that total originations in the U.S. single-family mortgage market in 2012 will decrease from 2011 levels by approximately 23%, from an estimated $1.4 trillion to an estimated $1.1 trillion, and that the amount of originations in the U.S. single-family mortgage market that are refinancings will decline from approximately $896 billion to approximately $568 billion;
- Our expectation that home prices on a national basis will decline further before stabilizing in 2013;
- Our expectation of a peak-to-trough home price decline on a national basis ranging from 23% to 30%, with the occurrence of an additional adverse economic event needed to reach the high end of the range;
- Our expectations regarding regional variations in home price declines and stabilization;
- Our expectation that our credit-related expenses will continue to be high in 2012 but that, overall, our credit-related expenses will be lower in 2012 than in 2011;
- Our expectation that our credit losses in 2012 will remain high;
- Our expectation that we will not earn profits in excess of our annual dividend obligation to Treasury for the indefinite future;
- Our expectation that the Acting Director of FHFA will submit a request to Treasury on our behalf to eliminate our net worth deficit as of December 31, 2011;
- Our expectation that we will request additional draws under the senior preferred stock purchase agreement in future periods, which will further increase the dividends we owe to Treasury on the senior preferred stock;
- Our expectation that over time our dividend obligation to Treasury will constitute an increasing portion of our future draws under the senior preferred stock purchase agreement;
- Our expectation that uncertainty regarding the future of our company will continue;
- Our expectation that we will continue to purchase loans from MBS trusts as they become four or more consecutive monthly payments delinquent subject to market conditions, economic benefit, servicer capacity, and other factors, including the limit on mortgage assets that we may own pursuant to the senior preferred stock purchase agreement;
- Our expectations that revenues derived from our mortgage asset portfolio will decrease over time as the maximum allowable amount of mortgage assets we may own decreases each year to 90% of the amount we were permitted to own the previous year under our senior preferred stock purchase agreement with Treasury;

- Our expectation that Congressional hearings on GSE reform will continue in 2012 and additional legislation will be considered and proposals will be discussed, including proposals that would result in a substantial change to our business structure or that involve Fannie Mae's liquidation or dissolution;
- Our belief that, as drafted, bills introduced in Congress that would require FHFA to make a determination within two years of enactment regarding whether the GSEs were financially viable and, if the GSEs were determined to be not financially viable, to place them into receivership may upon enactment impair our ability to issue securities in the capital markets and therefore our ability to conduct our business, absent the federal government providing an explicit guarantee of our existing and future liabilities;
- Our expectation that the Dodd-Frank Act will directly affect our business because new and additional regulatory oversight and standards will apply to us, and that we may also be affected by provisions of the Dodd-Frank Act and implementing regulations that impact the activities of our customers and counterparties in the financial services industry;
- Our expectation that, if we are designated as a systemically important nonbank financial company, we may become subject to certain enhanced prudential standards established by the Federal Reserve;
- Our expectation that the adoption and application or enhanced supervision and prudential standards under the Dodd-Frank Act could increase our costs and may adversely affect demand for our debt and MBS;
- Our expectation that our single-family guaranty fees may change in the future in addition to increases required in the Temporary Payroll Tax Cut Continuation Act of 2011;
- Our expectation that our future guaranty fees will incorporate private sector pricing considerations such as geographic pricing that contemplates differences in foreclosure laws across the states, pricing indicative of higher required minimum capital levels, and more significant pricing differentiation between higher-risk and lower-risk loans;
- Our expectations that increases in our single-family guaranty fees will affect our competitive environment;
- Our expectations regarding the impact of FHFA's directive that we phase out the practice of requiring mortgage servicers to use our network of retained attorneys to perform default- and foreclosure-related legal services for our loans;
- Our expectations regarding a transitional period as we discontinue our retained attorney network;
- Our expectation that we will seek to provide liquidity to a broader, more diversified set of mortgage lenders;
- Our expectation that, although we do not know the structure that long-term GSE reform will ultimately take, if our company continues we will face more competition in the future;
- Our expectation that we will continue to need funding from Treasury, and that FHFA will request additional funds from Treasury on our behalf, to avoid triggering FHFA's obligation to place us into receivership;
- Our expectations regarding compensation we will pay our executives in the future;
- Our expectation that deterioration in the credit performance of mortgage loans that we own or that back Fannie Mae MBS will continue and result in additional credit-related expenses;
- Our expectation that we will experience additional other-than-temporary impairment write-downs of our investments in private-label mortgage-related securities;
- Our expectation that our acquisitions of Alt-A mortgage loans (which are limited to refinancings of existing Fannie Mae loans) will continue to be minimal in future periods and the percentage of the book of business attributable to Alt-A will continue to decrease over time;
- Our expectation that Refi Plus loans will perform better than the loans they replace because Refi Plus loans reduce the borrowers' monthly payments or otherwise should provide more sustainability than the borrowers' old loans (for example, by having a fixed rate instead of an adjustable rate);

- Our expectation that our mortgage portfolio will continue to decrease due to the restrictions on the amount of mortgage assets we may own under the terms of our senior preferred stock purchase agreement with Treasury;
- Our expectation that the current market premium portion of our current estimate of the fair value of our book of business will not impact future Treasury draws, which is based on our intention generally not to have other parties assume the credit risk inherent in our book of business;
- Our expectation that, although our funding needs may vary from quarter to quarter depending on market conditions, our debt funding needs will decline in future periods as we reduce the size of our mortgage portfolio in compliance with the requirement of the senior preferred stock purchase agreement;
- Our intention to repay our short-term and long-term debt obligations as they become due primarily through proceeds from the issuance of additional debt securities;
- Our intention to use funds we receive from Treasury under the senior preferred stock purchase agreement to pay our debt obligations and to pay dividends on the senior preferred stock;
- Our expectations regarding our credit ratings and their impact on us as set forth in "MD&A—Liquidity and Capital Management—Liquidity Management—Credit Ratings";
- Our expectation that the volume of our workouts and foreclosure alternatives will remain high throughout 2012;
- Our belief that the performance of our workouts will be highly dependent on economic factors, such as unemployment rates, household wealth and income, and home prices;
- Our expectation that the amount of our outstanding repurchase requests to seller/servicers will remain high, and that we may be unable to recover on all outstanding loan repurchase obligations resulting from seller/servicers' breaches of contractual obligations;
- Our expectation that the change in our agreement with Bank of America will not be material to our business or results of operations;
- Our expectations regarding recoveries from our lenders under risk sharing arrangements, and the possibility that we may require a lender to pledge collateral to secure its recourse obligations;
- Our beliefs regarding whether our financial guarantor counterparties will be able to fully meet their obligations to us in the future;
- Our expectation that we will be required to submit certain interest rate swaps for clearing to a derivatives clearing organization in the future and that our institutional credit risk exposure to the Chicago Mercantile Exchange or other comparable exchanges or trading facilities and their members is likely to increase in the future; and
- Our expectations regarding amounts we expect to receive from Treasury for our work as program administrator, as well as amounts we expect to receive to be passed through to third-party vendors engaged by us in connection with HAMP and other initiatives under the Making Home Affordable Program.

Forward-looking statements reflect our management's expectations or predictions of future conditions, events or results based on various assumptions and management's estimates of trends and economic factors in the markets in which we are active, as well as our business plans. They are not guarantees of future performance. By their nature, forward-looking statements are subject to risks and uncertainties. Our actual results and financial condition may differ, possibly materially, from the anticipated results and financial condition indicated in these forward-looking statements. There are a number of factors that could cause actual conditions, events or results to differ materially from those described in the forward-looking statements contained in this report, including, but not limited to, the following: the uncertainty of our future; legislative and regulatory changes affecting us; challenges we face in retaining and hiring qualified employees; the deteriorated credit performance of many loans in our guaranty book of business; the conservatorship and its effect on our business; the investment by Treasury and its effect on our business; adverse effects from activities we undertake to support the mortgage market and help borrowers; limitations on our ability to access the debt capital markets; further disruptions in the housing and credit markets; defaults by one or more institutional counterparties; our reliance on mortgage servicers; deficiencies in servicer and law firm foreclosure processes and the consequences of those deficiencies; guidance by the Financial Accounting Standards Board ("FASB"); operational control weaknesses; our reliance on models; the level and volatility of interest rates and credit spreads; changes in the structure and regulation of the financial services industry; and those factors described in this report, including those factors described in "Risk Factors."

Readers are cautioned to place forward-looking statements in this report or that we make from time to time into proper context by carefully considering the factors discussed in "Risk Factors." These forward-looking statements are representative only as of the date they are made, and we undertake no obligation to update any forward-looking statement as a result of new information, future events or otherwise, except as required under the federal securities laws.

Item 1A. Risk Factors

This section identifies specific risks that should be considered carefully in evaluating our business. The risks described in "Risks Relating to Our Business" are specific to us and our business, while those described in "Risks Relating to Our Industry" relate to the industry in which we operate. Refer to "MD&A—Risk Management" for a more detailed description of the primary risks to our business and how we seek to manage those risks.

The risks we face could materially adversely affect our business, results of operations, financial condition, liquidity and net worth, and could cause our actual results to differ materially from our past results or the results contemplated by forward-looking statements contained in this report. In addition to the risks we discuss below, we face risks and uncertainties not currently known to us or that we currently believe to be immaterial.

RISKS RELATING TO OUR BUSINESS

The future of our company is uncertain.

There is significant uncertainty regarding the future of our company, including how long the company will continue to exist in its current form, the extent of our role in the market, what form we will have, and what ownership interest, if any, our current common and preferred stockholders will hold in us after the conservatorship is terminated.

In February 2011, Treasury and HUD released a report to Congress on ending the conservatorships of the GSEs and reforming America's housing finance market. The report provides that the Administration will work with FHFA to determine the best way to responsibly reduce Fannie Mae's and Freddie Mac's role in the market and ultimately wind down both institutions. The report also addresses three options for a reformed housing finance system. The report does not state whether or how the existing infrastructure or human capital of Fannie Mae may be used in the establishment of such a reformed system. The report emphasizes the importance of proceeding with a careful transition plan and providing the necessary financial support to Fannie Mae and Freddie Mac during the transition period. On February 2, 2012, Treasury Secretary Geithner stated that the Administration intended to release new details around approaches to housing finance reform, including winding down Fannie Mae and Freddie Mac, in the spring of 2012 and to work with Congressional leaders to explore options for legislation, but that he does not expect housing finance reform legislation to be enacted in 2012. In his February 2012 letter to Congress, the Acting Director of FHFA wrote that, with "no near-term resolution [of Fannie Mae and Freddie Mac's conservatorships] in sight, it is time to update and extend the goals and directions of the conservatorships." He provided a strategic plan for the next phase of Fannie Mae and Freddie Mac's conservatorships that included, among its three strategic goals for the next phase of the conservatorships, gradually contracting Fannie Mae and Freddie Mac's dominant presence in the marketplace while simplifying and shrinking their operations.

The Subcommittee on Capital Markets and Government Sponsored Enterprises of the House Financial Services Committee has approved numerous bills that could constrain the current operations of the GSEs or alter the existing authority that FHFA or Treasury has over the enterprises. In addition, several bills have been introduced in the Senate and House of Representatives that would place the GSEs into receivership after a period of time and either grant federal charters to new entities to engage in activities similar to those currently engaged in by the GSEs or leave secondary mortgage market activities to entities in the private sector. We expect that Congress will continue to hold hearings and consider legislation in 2012 on the future status of Fannie Mae and Freddie Mac, including proposals that would result in a substantial change to our business structure, our operations, or that involve Fannie Mae's liquidation or dissolution. We cannot predict the prospects for the enactment, timing or content of legislative proposals regarding the future status of the GSEs. See "MD&A—Legislative and Regulatory Developments—GSE Reform" for more information about the Treasury report and Congressional proposals regarding reform of the GSEs.

We expect FHFA to request additional funds from Treasury on our behalf to ensure we maintain a positive net worth and avoid mandatory receivership. The dividends we must pay or that accrue on Treasury's investments are substantial and are expected to increase, and we likely will not be able to fund them through net income.

When Treasury provides the additional $4.6 billion FHFA is requesting on our behalf to cure our net worth deficit as of December 31, 2011, the aggregate liquidation preference on the senior preferred stock will be $117.1 billion, and will require an annualized dividend of $11.7 billion. The prospective $11.7 billion annual dividend obligation exceeds our reported annual net income for every year since our inception. Our ability to maintain a positive net worth has been and continues to be adversely affected by market conditions. To the extent we have a negative net worth as of the end of future fiscal quarters, we expect that FHFA will request on our behalf additional funds from Treasury under the senior preferred stock purchase agreement. Further funds from Treasury under the senior preferred stock purchase agreement will increase the liquidation preference of and the dividends we owe on our senior preferred stock and, therefore, we will need additional funds from Treasury in order to meet our dividend obligation to Treasury.

In addition, we were scheduled to begin paying a quarterly commitment fee to Treasury under the senior preferred stock purchase agreement beginning on March 31, 2011. Although Treasury has waived the quarterly commitment fee for each quarter of 2011 and the first quarter of 2012 due to the continued fragility of the mortgage market and Treasury's belief that the imposition of the quarterly commitment fee would not generate increased compensation for taxpayers, Treasury indicated that it will reevaluate the situation during the next calendar quarter to determine whether the quarterly commitment fee should then be set. The aggregate liquidation preference and dividend obligations relating to the preferred stock also will increase by the amount of any required dividend on the senior preferred stock that we fail to pay in cash and by the amount of any required quarterly commitment fee on the senior preferred stock that we fail to pay. The substantial dividend obligations and potentially substantial quarterly commitment fees on the senior preferred stock, coupled with our effective inability to pay down draws under the senior preferred stock purchase agreement, will continue to strain our financial resources and have an adverse impact on our results of operations, financial condition, liquidity and net worth, both in the short and long term.

Our regulator is authorized or required to place us into receivership under specified conditions, which would result in the liquidation of our assets. Amounts recovered from the liquidation will likely be insufficient to repay the liquidation preference of any series of our preferred stock or to provide any proceeds to common shareholders.

FHFA has an obligation to place us into receivership if the Director of FHFA makes a written determination that our assets are less than our obligations for a period of 60 days after the filing deadline for our Form 10-K or Form 10-Q with the SEC. Because of the credit-related expenses we expect to incur on our legacy book of business and our dividend obligation to Treasury, we will continue to need funding from Treasury to avoid triggering FHFA's obligation. Although Treasury committed to providing us funds in accordance with the terms of the senior preferred stock purchase agreement, Treasury may not provide these funds to us within the required 60 days if it has exhausted its borrowing authority or if there is a government shutdown. In addition, we could be put into receivership at the discretion of the Director of FHFA at any time for other reasons, including conditions that FHFA has already asserted existed at the time the former Director of FHFA placed us into conservatorship.

A receivership would terminate the conservatorship. In addition to the powers FHFA has as our conservator, the appointment of FHFA as our receiver would terminate all rights and claims that our shareholders and creditors may have against our assets or under our charter arising from their status as shareholders or creditors, except for their right to payment, resolution or other satisfaction of their claims as permitted under the GSE Act. Unlike a conservatorship, the purpose of which is to conserve our assets and return us to a sound and solvent condition, the purpose of a receivership is to liquidate our assets and resolve claims against us.

To the extent we are placed into receivership and do not or cannot fulfill our guaranty to the holders of our Fannie Mae MBS, the MBS holders could become unsecured creditors of ours with respect to claims made under our guaranty.

In the event of a liquidation of our assets, only after payment of the administrative expenses of the receiver and the immediately preceding conservator, the secured and unsecured claims against the company (including repaying all outstanding debt obligations), and the liquidation preference of the senior preferred stock, would any liquidation proceeds be available to repay the liquidation preference on any other series of preferred stock. Finally, only after the liquidation preference on all series of preferred stock is repaid would any liquidation proceeds be available for distribution to the holders of our common stock. It is unlikely that there would be sufficient proceeds to repay the liquidation preference of any series of our preferred stock or to make any distribution to the holders of our common stock.

Our business and results of operations may be materially adversely affected if we are unable to retain and hire qualified employees.

Our business processes are highly dependent on the talents and efforts of our employees. The uncertainty of our future, limitations on employee compensation, our inability to offer equity compensation, the heightened scrutiny of our actions by Congress and regulators and the working environment created thereby, and our conservatorship have had and are likely to continue to have an adverse effect on our ability to retain and recruit well-qualified employees. We have already had significant departures by various members of executive management since shortly before we entered into conservatorship in September 2008, including two Chief Executive Officers and three Chief Financial Officers. In addition, in January 2012, our current Chief Executive Officer announced that he will step down from his position when our Board of Directors names a successor. Further turnover in key management positions and challenges in integrating new management could harm our ability to manage our business effectively and ultimately adversely affect our financial performance.

A particular threat to employee retention and hiring is the possibility of new legislation limiting executive or employee compensation. The Financial Services Committee of the House of Representatives approved a bill that would put our employees on a federal government pay scale, and both the House and the Senate approved legislation that would prohibit senior executives from receiving bonuses during conservatorship. If this or similar legislation were to become law, our employees could experience a sudden and sharp decrease in compensation. The Acting Director of FHFA stated on November 15, 2011 that this “would certainly risk a substantial exodus of talent, the best leaving first in many instances. [Fannie Mae and Freddie Mac] likely would suffer a rapidly growing vacancy list and replacements with lesser skills and no experience in their specific jobs. A significant increase in safety and soundness risks and in costly operational failures would, in my opinion, be highly likely.” The Acting Director observed, “Should the risks I fear materialize, FHFA might well be forced to limit [Fannie Mae and Freddie Mac’s] business activities. Some of the business [Fannie Mae and Freddie Mac] would be unable to undertake might simply not occur, with potential disruption in housing markets and the economy.” We face competition from within the financial services industry and from businesses outside of the financial services industry for qualified employees. Additionally, an improving economy is likely to put additional pressures on turnover, as attractive opportunities become available to our employees. Our competitors for talent are able to provide market-based compensation and to link employees’ pay to performance. The constraints on our compensation could adversely affect our ability to attract qualified candidates. While we engage in succession planning for our senior management and other critical positions and have been able to fill a number of important positions internally, our inability to offer market-based compensation would jeopardize our ability to fill vacant positions internally.

If we are unable to retain, promote and attract employees with the necessary skills and talent, we would face increased risks for operational failures. Our ability to conduct our business and our results of operations would likely be materially adversely affected.

Since 2008, we have experienced substantial deterioration in the credit performance of mortgage loans that we own or that back our guaranteed Fannie Mae MBS, and we expect this deterioration to continue and result in additional credit-related expenses.

Deterioration in the credit performance of mortgage loans we own or that back our guaranteed Fannie Mae MBS has increased our risk of incurring credit losses and credit-related expenses as a result of borrowers failing to make required payments of principal and interest on their mortgage loans.

Conditions in the housing market continue to contribute to deterioration in the credit performance of our legacy book of business, resulting in elevated serious delinquency rates and negatively impacting default rates and average loan loss severity on the mortgage loans we hold or that back our guaranteed Fannie Mae MBS. Increases in delinquencies, default rates and loss severity cause us to experience higher credit-related expenses. The credit performance of our single-family book of business has also been negatively affected by the extent and duration of the decline in home prices and high unemployment. Home price declines, adverse market conditions and continuing high levels of unemployment also have affected and may continue to affect the credit performance of and future results for our broader book of business. Further, home price declines have resulted in a large number of borrowers with "negative equity" in their properties (that is, they owe more on their mortgage loans than their houses are worth), which increases the likelihood that either these borrowers will strategically default on their mortgage loans even if they have the ability to continue to pay the loans or that distressed homeowners will sell their homes in a "short sale" for significantly less than the unpaid amount of the loans. We present detailed information about the risk characteristics of our single-family conventional guaranty book of business in "MD&A—Risk Management—Credit Risk Management—Mortgage Credit Risk Management," and we present detailed information on our 2011 credit-related expenses, credit losses and results of operations in "MD&A—Consolidated Results of Operations."

Adverse credit performance trends may increase, particularly if we experience further national and regional declines in home prices, weak economic conditions and high unemployment.

We expect further losses and write-downs relating to our investment securities.

We have experienced significant fair value losses and other-than-temporary impairment write-downs relating to our investment securities and recorded significant other-than-temporary impairment write-downs of some of our available-for-sale securities. A substantial portion of these fair value losses and write-downs related to our investments in private-label mortgage-related securities backed by Alt-A and subprime mortgage loans and, in the case of fair value losses, our investments in commercial mortgage-backed securities ("CMBS") due to the decline in home prices and the weak economy. We expect to experience additional other-than-temporary impairment write-downs of our investments in private-label mortgage-related securities. See "MD&A—Consolidated Balance Sheet Analysis— Investments in Mortgage-Related Securities—Investments in Private-Label Mortgage-Related Securities" for detailed information on our investments in private-label mortgage-related securities backed by Alt-A and subprime mortgage loans.

If the market for securities we hold in our investment portfolio is not liquid, we must use a greater amount of management judgment to value these securities. Later valuations and any price we ultimately would realize if we were to sell these securities could be materially lower than the estimated fair value at which we carry them on our balance sheet.

Any of the above factors could require us to record additional write-downs in the value of our investment portfolio, which could have a material adverse effect on our business, results of operations, financial condition, liquidity and net worth.

Our business activities are significantly affected by the conservatorship and the senior preferred stock purchase agreement.

We are currently under the control of our conservator, FHFA, and we do not know when or how the conservatorship will be terminated. As conservator, FHFA can direct us to enter into contracts or enter into contracts on our behalf, and generally has the power to transfer or sell any of our assets or liabilities. In addition, our directors do not have any duties to any person or entity except to the conservator. Accordingly, our directors are not obligated to consider the interests of the company, the holders of our equity or debt securities or the holders of Fannie Mae MBS in making or approving a decision unless specifically directed to do so by the conservator.

The conservator has determined that while we are in conservatorship, we will be limited to continuing our existing core business activities and taking actions necessary to advance the goals of the conservatorship. In view of the conservatorship and the reasons stated for its establishment, it is likely that our business model and strategic objectives will continue to change, possibly significantly, including in pursuit of our public mission and other non-financial objectives. Our conservator recently announced that one of the strategic goals for the next phase of our and Freddie Mac's conservatorships is to gradually contract our dominant presence in the marketplace while simplifying and shrinking our operations. Among other things, we are likely to experience significant changes in the size, growth and characteristics of our guarantor and investment activities, and we could further change our operational objectives, including our pricing strategy in our core mortgage guaranty business. Accordingly, our strategic and operational focus going forward may not be consistent with the investment objectives of our investors. In addition, we may be directed to engage in activities that are operationally difficult, costly to implement or unprofitable.

The senior preferred stock purchase agreement with Treasury includes a number of covenants that significantly restrict our business activities. We cannot, without the prior written consent of Treasury: pay dividends (except on the senior preferred stock); sell, issue, purchase or redeem Fannie Mae equity securities; sell, transfer, lease or otherwise dispose of assets in specified situations; engage in transactions with affiliates other than on arm's-length terms or in the ordinary course of business; issue subordinated debt; or incur indebtedness that would result in our aggregate indebtedness exceeding 120% of the amount of mortgage assets we are allowed to own. In deciding whether to consent to any request for approval it receives from us under the agreement, Treasury has the right to withhold its consent for any reason and is not required by the agreement to consider any particular factors, including whether or not management believes that the transaction would benefit the company. For example, in November 2009, Treasury withheld its consent under these covenants to our proposed transfer of interests in low-income housing tax credit ("LIHTC") investments, eliminating our ability to transfer the assets for value and resulting in our recognizing a $5 billion loss in that quarter. Pursuant to the senior preferred stock purchase agreement, the maximum allowable amount of mortgage assets we were permitted to own on December 31, 2011 was $729 billion. (Our mortgage assets were approximately $708.4 billion as of that date.) On December 31, 2012, and each December 31 thereafter, our mortgage assets may not exceed 90% of the maximum allowable amount that we were permitted to own as of December 31 of the immediately preceding calendar year. The maximum allowable amount is reduced annually until it reaches $250 billion. This limit on the amount of mortgage assets we are permitted to hold could constrain the amount of delinquent loans we purchase from single-family MBS trusts, which could increase our costs.

We discuss the powers of the conservator, the terms of the senior preferred stock purchase agreement, and their impact on us and shareholders in "Business—Conservatorship and Treasury Agreements." These factors may adversely affect our business, results of operations, financial condition, liquidity and net worth.

The conservatorship and investment by Treasury have had, and will continue to have, a material adverse effect on our common and preferred shareholders.

We do not know when or how the conservatorship will be terminated. Moreover, even if the conservatorship is terminated, we remain subject to the terms of the senior preferred stock purchase agreement, senior preferred stock and warrant, which can only be cancelled or modified by mutual consent of Treasury and the conservator.

The conservatorship and investment by Treasury have had, and will continue to have, material adverse effects on our common and preferred shareholders, including the following:

No voting rights during conservatorship. The rights and powers of our shareholders are suspended during the conservatorship. The conservatorship has no specified termination date. During the conservatorship, our common shareholders do not have the ability to elect directors or to vote on other matters unless the conservator delegates this authority to them.

Dividends to common and preferred shareholders, other than to Treasury, have been eliminated. Under the terms of the senior preferred stock purchase agreement, dividends may not be paid to common or preferred shareholders (other than on the senior preferred stock) without the consent of Treasury, regardless of whether we are in conservatorship.

Liquidation preference of senior preferred stock will increase, likely substantially. The senior preferred stock ranks prior to our common stock and all other series of our preferred stock, as well as any capital stock we issue in the future, as to both dividends and distributions upon liquidation. Accordingly, if we are liquidated, the senior preferred stock is entitled to its then-current liquidation preference, plus any accrued but unpaid dividends, before any distribution is made to the holders of our common stock or other preferred stock. The liquidation preference on the senior preferred stock will increase to $117.1 billion when Treasury provides the additional $4.6 billion FHFA is requesting on our behalf. The liquidation preference could increase substantially as we draw on Treasury's funding commitment, if we do not pay dividends owed on the senior preferred stock or if we do not pay the quarterly commitment fee under the senior preferred stock purchase agreement. If we are liquidated, it is unlikely that there would be sufficient funds remaining after payment of amounts to our creditors and to Treasury as holder of the senior preferred stock to make any distribution to holders of our common stock and other preferred stock.

Exercise of the Treasury warrant would substantially dilute investment of current shareholders. If Treasury exercises its warrant to purchase shares of our common stock equal to 79.9% of the total number of shares of our common stock outstanding on a fully diluted basis, the ownership interest in the company of our then existing common shareholders will be substantially diluted, and we would thereafter have a controlling shareholder.

No longer managed for the benefit of shareholders. Because we are in conservatorship, we are no longer managed with a strategy to maximize shareholder returns.

For additional description of the restrictions on us and the risks to our shareholders, see "Business—Conservatorship and Treasury Agreements."

We may undertake efforts that adversely affect our business, results of operations, financial condition, liquidity and net worth.

In conservatorship our business is no longer managed with a strategy to maximize shareholder returns while fulfilling our mission. Our conservator has directed us to focus primarily on minimizing our credit losses from delinquent mortgages and providing assistance to struggling homeowners to help them remain in their homes. More recently, our conservator has announced two additional strategic goals for the next phase of our conservatorship—building a new infrastructure for the secondary mortgage market and gradually contracting our dominant presence in the marketplace while simplifying and shrinking our operations. In pursuit of these or other goals prescribed by our conservator, we may take a variety of actions that could adversely affect our economic returns, possibly significantly, such as encouraging increased competition in our markets; reducing the risk-based fees we charge for certain types of loans; modifying loans to defer principal, lower the interest rate or extend the maturity; or engaging in principal reduction. We are already taking some of these actions. These activities may have short- and long-term adverse effects on our business, results of operations, financial condition, liquidity and net worth.

Other agencies of the U.S. government or Congress also may ask us to undertake significant efforts to support the housing and mortgage markets, as well as struggling homeowners. They may also ask us to take actions in support of other goals. For example, as we discuss in "Business—Legislative and Regulatory Developments—Changes to Our Single-Family Guaranty Fee Pricing" in December 2011, Congress enacted the Temporary Payroll Tax Cut Continuation Act of 2011 which, among other provisions, requires that we increase our single-family guaranty fees by at least 10 basis points and remit this increase to Treasury to fund extensions of employment tax reductions and unemployment benefits, rather than retaining this incremental revenue. We anticipate that implementing this fee increase and remitting the increase to Treasury will involve operational burden and could increase our operational risk.

We may be unable to meet our housing goals and duty to serve requirements, and actions we take to meet those requirements may adversely affect our business, results of operations, financial condition, liquidity and net worth.

To meet our housing goals obligations, a portion of the mortgage loans we acquire must be for low- and very-low income families, families in low-income census tracts and moderate-income families in minority census tracts or designated disaster areas. In addition, when a final duty-to-serve rule is issued, we will have a duty to serve three underserved markets: manufactured housing, affordable housing preservation and rural areas. We may take actions to meet these obligations that could increase our credit losses and credit-related expenses. If we fail to meet our housing goals in a given year and FHFA finds that they were feasible, or if we fail to comply with our duty to serve requirements, we may become subject to a housing plan that could require us to take additional steps that could have an adverse effect on our financial condition. The housing plan must describe the actions we would take to meet the goals and/or duty to serve in the next calendar year and be approved by FHFA. With respect to our housing goals, the potential penalties for failure to comply with housing plan requirements are a cease-and-desist order and civil money penalties.

Mortgage market conditions during 2011 negatively affected our ability to meet our single-family goals. These conditions included reduced levels of single-family borrowing by low-income purchasers, an increase in the share of mortgages made to moderate-income borrowers due to low interest rates, continuing high unemployment, strengthened underwriting and eligibility standards, increased standards of private mortgage insurers and the increased role of FHA in acquiring goals-qualifying mortgage loans. Some or all of these conditions, which may continue in 2012, likely contributed to our failure to meet two of our single-family home purchase goals for 2010. We cannot predict the impact that market conditions during 2012 will have on our ability to meet our 2012 housing goals and duty to serve requirements.

For more information about our housing goals and duty to serve requirements, as well as our 2011 and 2010 housing goals performance, please see "Business—Our Charter and Regulation of Our Activities—Housing Goals and Duty to Serve Underserved Markets."

Limitations on our ability to access the debt capital markets could have a material adverse effect on our ability to fund our operations and generate net interest income.

Our ability to fund our business depends primarily on our ongoing access to the debt capital markets. Our level of net interest income depends on how much lower our cost of funds is compared to what we earn on our mortgage assets. Market concerns about matters such as the extent of government support for our business, the future of our business (including future profitability, future structure, regulatory actions and GSE status) and the creditworthiness of the U.S. government could cause a severe negative effect on our access to the unsecured debt markets, particularly for long-term debt. We believe that our ability in 2010 and 2011 to issue debt of varying maturities at attractive pricing resulted from federal government support of us and the financial markets. As a result, we believe that our status as a GSE and continued federal government support is essential to maintaining our access to debt funding. Changes or perceived changes in the government's support of us or the markets could have a material adverse effect on our ability to fund our operations. As recently as September 2011, the Federal Reserve announced that, to help support conditions in mortgage markets, it will reinvest principal payments from its holdings of agency debt and agency mortgage-backed securities in agency mortgage-backed securities. However, there can be no assurance that the government will continue to support us or the markets, or that our current level of access to debt funding will continue. In addition, due to our reliance on the U.S. government's support, our access to debt funding also could be materially adversely affected by a change or perceived change in the creditworthiness of the U.S. government.

Future changes or disruptions in the financial markets could significantly change the amount, mix and cost of funds we obtain, as well as our liquidity position. If we are unable to issue both short- and long-term debt securities at attractive rates and in amounts sufficient to operate our business and meet our obligations, it likely would interfere with the operation of our business and have a material adverse effect on our liquidity, results of operations, financial condition and net worth.

Our liquidity contingency plans may be difficult or impossible to execute during a liquidity crisis.

We believe that our liquidity contingency plans may be difficult or impossible to execute during a liquidity crisis. If we cannot access the unsecured debt markets, our ability to repay maturing indebtedness and fund our operations could be eliminated or significantly impaired. In this event, our alternative sources of liquidity—consisting of our cash and other investments portfolio and the unencumbered mortgage assets in our mortgage portfolio—may not be sufficient to meet our liquidity needs.

We believe that the amount of mortgage-related assets that we could successfully sell or borrow against in the event of a liquidity crisis or significant market disruption is substantially lower than the amount of mortgage-related assets we hold. Due to the large size of our portfolio of mortgage assets, current market conditions and the significant amount of distressed assets in our mortgage portfolio, there would likely be insufficient market demand for large amounts of these assets over a prolonged period of time, which would limit our ability to borrow against or sell these assets.

To the extent that we are able to obtain funding by pledging or selling mortgage-related securities as collateral, we anticipate that a discount would be applied that would reduce the value assigned to those securities. Depending on market conditions at the time, this discount could result in proceeds significantly lower than the current market value of these securities and could thereby reduce the amount of financing we obtain. In addition, our primary source of collateral is Fannie Mae MBS that we own. In the event of a liquidity crisis in which the future of our company is uncertain, counterparties may be unwilling to accept Fannie Mae MBS as collateral. As a result, we may not be able to sell or borrow against these securities in sufficient amounts to meet our liquidity needs.

A decrease in the credit ratings on our senior unsecured debt could have an adverse effect on our ability to issue debt on reasonable terms and trigger additional collateral requirements, and would likely do so if such a decrease were not based on a similar action on the credit ratings of the U.S. government.

Credit ratings on our senior unsecured debt, as well as the credit ratings of the U.S. government, are primary factors that could affect our borrowing costs and our access to the debt capital markets. Credit ratings on our debt are subject to revision or withdrawal at any time by the rating agencies. Actions by governmental entities impacting the support we receive from Treasury could adversely affect the credit ratings on our senior unsecured debt.

On August 5, 2011, Standard & Poor's Ratings Services ("S&P") lowered the long-term sovereign credit rating on the U.S. to "AA+." As a result of this action, and because we directly rely on the U.S. government for capital support, on August 8, 2011, S&P lowered our long-term senior debt rating to "AA+" with a negative outlook. Previously, our long-term senior debt had been rated by S&P as "AAA" and had been on CreditWatch Negative. S&P affirmed our short-term senior debt rating of "A-1+" and removed it from CreditWatch Negative. In assigning a negative outlook on the U.S. government's long-term debt rating, S&P noted that it may lower the U.S. government's long-term debt rating to "AA" within the next two years if it sees less reduction in spending than agreed to or higher interest rates, or if new fiscal pressures during the period result in a higher general government debt trajectory than S&P currently assumes. If S&P further lowers the U.S. government's long-term debt rating, we expect that S&P would lower our long-term debt rating correspondingly.

After the U.S. government's statutory debt limit was raised on August 2, 2011, Moody's Investors Service ("Moody's") confirmed the U.S. government's rating and our long-term debt ratings. Moody's also removed the designation that these ratings were under review for possible downgrade. Moody's revised the outlook for both the U.S. government's rating and our long-term debt ratings to negative. In assigning the negative outlook to the U.S. government's rating, Moody's indicated there would be a risk of a downgrade if (1) there is a weakening in fiscal discipline in the coming year; (2) further fiscal consolidation measures are not adopted in 2013; (3) the economic outlook deteriorates significantly; or (4) there is an appreciable rise in the U.S. government's funding costs over and above what is currently expected. On November 28, 2011, Fitch Ratings Limited ("Fitch") affirmed the long-term issuer default rating and senior unsecured debt rating of Fannie Mae at "AAA," but revised its ratings outlook on Fannie Mae's long-term issuer default rating to Negative from Stable. This action followed a similar action by Fitch on the United States sovereign rating. As of February 23, 2012 our long-term debt continued to be rated "Aaa" by Moody's and "AAA" by Fitch.

S&P, Moody's and Fitch have all indicated that they would likely lower their ratings on the debt of Fannie Mae and certain other government-related entities if they were to lower their ratings on the U.S. government.

We currently cannot predict whether one or more of these rating agencies will downgrade our debt ratings in the future, nor can we predict the potential impact. Although S&P's downgrade of our credit rating has not increased our borrowing costs or limited our access to the debt capital markets to date, an additional reduction in our credit ratings could have a material adverse impact on our access to debt funding or on the cost of our debt funding, and would likely do so if it were not based on a similar action on the credit ratings of the U.S. government. An additional reduction in our credit ratings may also trigger additional collateral requirements under our derivatives contracts and other borrowing arrangements and materially adversely affect our liquidity, our ability to conduct our normal business operations, our financial condition and our results of operations. Our credit ratings and ratings outlook are included in "MD&A—Liquidity and Capital Management—Liquidity Management—Credit Ratings."

Deterioration in the credit quality of, or defaults by, one or more of our institutional counterparties could result in financial losses, business disruption and decreased ability to manage risk.

We face the risk that one or more of our institutional counterparties may fail to fulfill their contractual obligations to us. Unfavorable market conditions since 2008 have adversely affected the liquidity and financial condition of our institutional counterparties. Our primary exposures to institutional counterparty risk are with mortgage seller/servicers that service the loans we hold in our mortgage portfolio or that back our Fannie Mae MBS; seller/servicers that are obligated to repurchase loans from us or reimburse us for losses in certain circumstances; third-party providers of credit enhancement on the mortgage assets that we hold in our mortgage portfolio or that back our Fannie Mae MBS, including mortgage insurers, lenders with risk sharing arrangements and financial guarantors; issuers of securities held in our cash and other investments portfolio; and derivatives counterparties.

We may have multiple exposures to one counterparty as many of our counterparties provide several types of services to us. For example, our lender customers or their affiliates also act as derivatives counterparties, mortgage servicers, custodial depository institutions or document custodians. Accordingly, if one of these counterparties were to become insolvent or otherwise default on its obligations to us, it could harm our business and financial results in a variety of ways.

An institutional counterparty may default in its obligations to us for a number of reasons, such as changes in financial condition that affect its credit rating, a reduction in liquidity, operational failures or insolvency. A number of our institutional counterparties are currently experiencing financial difficulties that may negatively affect the ability of these counterparties to meet their obligations to us and the amount or quality of the products or services they provide to us. Counterparty defaults or limitations on their ability to do business with us could result in significant financial losses or hamper our ability to do business, which would adversely affect our business, results of operations, financial condition, liquidity and net worth. For example, failure by a significant seller/servicer counterparty, or a number of seller/servicers, to fulfill repurchase obligations to us could result in a significant increase in our credit losses and have a material adverse effect on our results of operations and financial condition.

We routinely execute a high volume of transactions with counterparties in the financial services industry. Many of the transactions we engage in with these counterparties expose us to credit risk relating to the possibility of a default by our counterparties. In addition, to the extent these transactions are secured, our credit risk may be exacerbated to the extent that the collateral we hold cannot be realized or can be liquidated only at prices too low to recover the full amount of the loan or derivative exposure. We have exposure to these financial institutions in the form of unsecured debt instruments and derivatives transactions. As a result, we could incur losses relating to defaults under these instruments or relating to impairments to the carrying value of our assets represented by these instruments. These losses could materially and adversely affect our business, results of operations, financial condition, liquidity and net worth.

We depend on our ability to enter into derivatives transactions in order to manage the duration and prepayment risk of our mortgage portfolio. If we lose access to our derivatives counterparties, it could adversely affect our ability to manage these risks, which could have a material adverse effect on our business, results of operations, financial condition, liquidity and net worth.

Given the deteriorated credit quality of many of our mortgage insurer counterparties, we may incur losses as a result of claims under our mortgage insurance policies not being paid in full or at all, and we may face business disruptions and increased concentration risk.

We rely heavily on mortgage insurers to provide insurance against borrower defaults on single-family conventional mortgage loans with LTV ratios over 80% at the time of acquisition. The already weak financial condition of many of our mortgage insurer counterparties deteriorated at an accelerated pace during the second half of 2011, which increased the significant risk that these counterparties will fail to fulfill their obligations to pay our claims under insurance policies.

As of February 29, 2012, three of our mortgage insurance counterparties—Triad Guaranty Insurance Corporation ("Triad"), Republic Mortgage Insurance Company ("RMIC"), and PMI Mortgage Insurance Co. ("PMI")—have publicly disclosed that they are in run-off. A mortgage insurer that is in run-off continues to collect premiums on its existing insurance business, but no longer writes new insurance. This increases the risk that the mortgage insurer will fail to pay our claims under insurance policies, and could also cause the quality and speed of its claims processing to deteriorate. In 2008, Triad ceased issuing commitments for new mortgage insurance and, under an order received from its regulator, is now paying 60% of claims under its mortgage guaranty insurance policies and deferring the remaining 40% by the creation of deferred payment obligations, which may be paid in the future. In October 2011, PMI began partially deferring claims payments, and in January 2012, RMIC began partially deferring claims payments. Both PMI and RMIC are paying 50% of claims, with the remaining 50% deferred as policyholder claims. It is uncertain when, and if, regulators for Triad, RMIC or PMI will allow deferred policyholder claims to be paid or increase the amount paid on claims.

In addition to our three mortgage insurers in run-off, one mortgage insurer, Genworth Mortgage Insurance Corporation, disclosed that, absent a waiver, it estimated that it would not meet state regulatory capital requirements for its main insurance writing entity as of December 31, 2011. An additional two of our mortgage insurance counterparties (Mortgage Guaranty Insurance Corporation and Radian Guaranty Inc.) have disclosed that, in the absence of additional capital contributions to their insurance writing entity, their capital might fall below state regulatory capital requirements in the future. These three mortgage insurers, together with our three mortgage insurers in run-off, provided a combined $74.1 billion, or 81%, of our risk in force mortgage insurance coverage of our single-family guaranty book of business as of December 31, 2011. We do not know how long certain of our mortgage insurer counterparties will remain below their state-imposed risk-to-capital limits. If mortgage insurers are not able to raise capital and they exceed their risk-to-capital limits, they will likely be forced into run-off or receivership unless they can secure and maintain waivers from their state regulators.

Some mortgage insurers have explored corporate restructurings, which are intended to provide relief from risk-to-capital limits in certain states. A restructuring plan that would involve contributing capital to a subsidiary would result in less liquidity available to its parent company to pay claims on its existing book of business and an increased risk that its parent company will not pay its claims in full in the future.

Our loss reserves take into account our assessment of our mortgage insurer counterparties' ability to fulfill their obligations to us. If our assessment of their claims-paying abilities worsens significantly, it could result in a significant increase in our loss reserves and our credit losses.

Many mortgage insurers stopped insuring new mortgages with higher loan-to-value ratios or with lower borrower credit scores or on select property types, which contributed to the reduction in our business volumes for high loan-to-value ratio loans. As our charter generally requires us to obtain credit enhancement on single-family conventional mortgage loans with loan-to-value ratios over 80% at the time of purchase, an inability to find suitable credit enhancement may inhibit our ability to pursue new business opportunities, meet our housing goals and otherwise support the housing and mortgage markets. For example, where mortgage insurance or other credit enhancement is not available, we may be hindered in our ability to refinance loans into more affordable loans. In addition, access to fewer mortgage insurer counterparties will increase our concentration risk with the remaining mortgage insurers in the industry.

The loss of business volume from a key lender customer could adversely affect our business and result in a decrease in our revenues.

Our ability to generate revenue from the purchase and securitization of mortgage loans depends on our ability to acquire a steady flow of mortgage loans from the originators of those loans. We acquire most of our mortgage loans through mortgage purchase volume commitments that are negotiated annually or semiannually with lender customers and that establish a minimum level of mortgage volume that these customers will deliver to us. We acquire a significant portion of our mortgage loans from several large mortgage lenders. During 2011, our top five lender customers, in the aggregate, accounted for approximately 60% of our single-family business volume, with three of our customers accounting for greater than 48% of our single-family business volume. Accordingly, maintaining our current business relationships and business volumes with our top lender customers is important to our business.

The mortgage industry has been consolidating and a decreasing number of large lenders originate most single-family mortgages. The loss of business from any one of our major lender customers could adversely affect our revenues and the liquidity of Fannie Mae MBS, which in turn could have an adverse effect on their market value. In addition, as we become more reliant on a smaller number of lender customers, our negotiating leverage with these customers could decrease, which could diminish our ability to price our products optimally. Decreased liquidity in the housing finance market in general increases the risk that a shock to the availability of mortgage credit could occur, which could materially, adversely affect our business and results of operations.

In addition, the volume of business generated by our customers has been or may be affected by a number of factors, including (1) financial and liquidity problems that many of our lender customers are experiencing or may experience in the future, (2) our lender customers' strengthening of their lending criteria, and (3) departures by several large lender customers from correspondent or broker lending. To the extent our key lender customers significantly reduce the volume or quality of mortgage loans that the lender delivers to us or that we are willing to buy from them, we could lose significant business volume that we might be unable to replace, which could adversely affect our business and result in a decrease in our revenues. Our demands that our lender customers repurchase or compensate us for losses on loans that do not meet our underwriting and eligibility standards may strain our relationships with our lender customers and may also result in our customers reducing the volume of loans they provide us. A significant reduction in the volume of mortgage loans that we securitize could reduce the liquidity of Fannie Mae MBS, which in turn could have an adverse effect on their market value.

Our reliance on third parties to service our mortgage loans may impede our efforts to keep people in their homes and adversely affect the re-performance rate of loans we modify.

Mortgage servicers, or their agents and contractors, typically are the primary point of contact for borrowers as we delegate servicing responsibilities to them. We rely on these mortgage servicers to identify and contact troubled borrowers as early as possible, to assess the situation and offer appropriate options for resolving the problem and to successfully implement a solution. The demands placed on experienced mortgage loan servicers to service delinquent loans, including loans eligible for the Making Home Affordable Program, have increased significantly across the industry, straining servicer capacity. To the extent that mortgage servicers are hampered by limited resources or other factors, they may not be successful in conducting their servicing activities in a manner that fully accomplishes our objectives within the timeframe we desire. Further, our servicers have advised us that they have not been able to reach many of the borrowers who may need help with their mortgage loans even when repeated efforts have been made to contact the borrower.

For these reasons, our ability to actively manage the troubled loans that we own or guarantee, and to implement our homeownership assistance and foreclosure prevention efforts quickly and effectively, may be limited by our reliance on our mortgage servicers. Our inability to effectively manage these loans and implement these efforts could have a material adverse effect on our business, results of operations and financial condition.

Changes in the foreclosure environment and our reliance on servicers and their counsel and other service providers to complete foreclosures could continue to have a material adverse effect on our business, results of operations, financial condition and net worth.

Circumstances in the foreclosure environment over the last few years have resulted in foreclosures proceeding at a slow pace. As a result of the housing market downturn that began in 2006 and significantly worsened in 2008, servicers and states faced significant increases in the volume of foreclosures in 2009 and the first nine months of 2010. In October 2010, a number of single-family mortgage servicers temporarily halted some or all of the foreclosures they were processing after discovering deficiencies in their own and their service providers' foreclosure processes. The servicer foreclosure process deficiencies have generated significant concern and have been reviewed by various government agencies and the various state attorneys general. On February 9, 2012, a settlement was announced between five of the nation's largest mortgage servicers (Bank of America Corporation, JPMorgan Chase & Co., Wells Fargo & Company, Citigroup Inc., and Ally Financial Inc. (formerly GMAC)) and the federal government and 49 state attorneys general. The announced settlement, among other things, will require implementation by those mortgage servicers of certain new servicing and foreclosure practices. Although servicers have generally ended their outright foreclosure halts, the processing of foreclosures continues to be slow in many states due to continuing issues in the servicer foreclosure process, including efforts by servicers to comply with regulatory consent orders and requirements, recent changes in state foreclosure laws, court rules and proceedings, and the pipeline of foreclosures resulting from these delays and the elevated level of foreclosures caused by the housing market downturn. In addition, court budget cuts in Florida and other states could further delay the processing of foreclosures.

These changes in the foreclosure environment have negatively affected our foreclosure timelines, credit-related expenses and single-family serious delinquency rates, and we expect they will continue to do so. We believe these changes will also delay the recovery of the housing market. These changes could also negatively affect the value of the private-label securities we hold and result in additional impairments on these securities. In addition, the failure of our servicers or their service providers to apply prudent and effective process controls and to comply with legal and other requirements in the foreclosure process poses operational, reputational and legal risks for us.

In addition, FHFA directed us in October 2011 to phase out the practice of requiring mortgage servicers to use our network of retained attorneys to perform default- and foreclosure-related legal services for our loans. Phasing out the requirement that servicers use our retained attorney network may negatively impact the performance of default- and foreclosure-related legal services for our loans, which may adversely impact our efforts to reduce our credit losses.

Challenges to the MERS® company, system and processes could pose operational, reputational and legal risks for us.

MERSCORP, Inc. ("MERSCORP") is a privately held company that maintains an electronic registry (the "MERS System") that tracks servicing rights and ownership of loans in the United States. Mortgage Electronic Registration Systems, Inc. ("MERS"), a wholly owned subsidiary of MERSCORP, Inc., can serve as a nominee for the owner of a mortgage loan and, in that role, become the mortgagee of record for the loan in local land records. Fannie Mae seller/servicers may choose to use MERS as a nominee; however, we have prohibited servicers from initiating foreclosures on Fannie Mae loans in MERS's name. Approximately half of the loans we own or guarantee are registered in MERS's name and the related servicing rights are tracked in the MERS System. The MERS System is widely used by participants in the mortgage finance industry. Along with a number of other organizations in the mortgage finance industry, we are a shareholder of MERSCORP.

Several legal challenges have been made disputing MERS's ability to initiate foreclosures, act as nominee in local land records, and/or assign mortgages or take other action on behalf of the loan owner. These challenges seek judicial relief ranging from money damages to injunctive/declaratory relief seeking the prevention of mortgage assignments by MERS and/or the voiding of completed foreclosures in which MERS appeared in the chain of title. These challenges have focused public attention on MERS and on how loans are recorded in local land records. As a result, these challenges could negatively affect MERS's ability to serve as the mortgagee of record in some jurisdictions, which could cause additional costs and time in the recordation process. These challenges also could result in court decisions that substantially delay new or pending foreclosures, or void completed foreclosures in certain jurisdictions, which would require that we re-foreclose on the affected properties, thereby increasing our costs and lengthening the time it takes for us to foreclose on and dispose of the properties.

In addition, where MERS is the mortgagee of record, it must execute assignments of mortgages, affidavits and other legal documents in connection with foreclosure proceedings. As a result, investigations by governmental authorities and others into the servicer foreclosure process deficiencies discussed above may impact MERS. In April 2011, federal banking regulators and FHFA announced that they were taking enforcement action against MERS and MERSCORP to address significant weaknesses in, among other things, oversight, management supervision and corporate governance at MERS and MERSCORP that were uncovered as part of the regulators' review of mortgage servicers' foreclosure processing. Failures by MERS or MERSCORP to apply prudent and effective process controls and to comply with legal and other requirements could pose counterparty, operational, reputational and legal risks for us. If investigations or new regulation or legislation restricts servicers' use of MERS, our counterparties may be required to record all mortgage transfers in land records, incurring additional costs and time in the recordation process. At this time, we cannot predict the ultimate outcome of these legal challenges to, or the enforcement action against, MERS and MERSCORP or the impact on our business, results of operations and financial condition.

Changes in accounting standards can be difficult to predict and can materially impact how we record and report our financial results.

Our accounting policies and methods are fundamental to how we record and report our financial condition and results of operations. From time to time, FASB changes the financial accounting and reporting standards that govern the preparation of our financial statements. In addition, those who set or interpret accounting guidance may amend or even reverse their previous interpretations or positions on how this guidance should be applied. These changes can be difficult to predict and expensive to implement, can divert management's attention from other matters, and can materially impact how we record and report our financial condition and results of operations.

Material weaknesses in our internal control over financial reporting could result in errors in our reported results or disclosures that are not complete or accurate.

Management has determined that, as of the date of this filing, we have ineffective disclosure controls and procedures and a material weakness in our internal control over financial reporting. In addition, our independent registered public accounting firm, Deloitte & Touche LLP, has expressed an adverse opinion on our internal control over financial reporting because of the material weakness. Our ineffective disclosure controls and procedures and material weakness could result in errors in our reported results or disclosures that are not complete or accurate, which could have a material adverse effect on our business and operations.

Our material weakness relates specifically to the impact of the conservatorship on our disclosure controls and procedures. Because we are under the control of FHFA, some of the information that we may need to meet our disclosure obligations may be solely within the knowledge of FHFA. As our conservator, FHFA has the power to take actions without our knowledge that could be material to our shareholders and other stakeholders, and could significantly affect our financial performance or our continued existence as an ongoing business. Because FHFA currently functions as both our regulator and our conservator, there are inherent structural limitations on our ability to design, implement, test or operate effective disclosure controls and procedures relating to information within FHFA's knowledge. As a result, we have not been able to update our disclosure controls and procedures in a manner that adequately ensures the accumulation and communication to management of information known to FHFA that is needed to meet our disclosure obligations under the federal securities laws, including disclosures affecting our financial statements. Given the structural nature of this material weakness, it is likely that we will not remediate this weakness while we are under conservatorship. See "Controls and Procedures" for further discussion of management's conclusions on our disclosure controls and procedures and internal control over financial reporting.

A failure in our operational systems or infrastructure, or those of third parties, could materially adversely affect our business, impair our liquidity, cause financial losses and harm our reputation.

Shortcomings or failures in our internal processes, people or systems could have a material adverse effect on our risk management, liquidity, financial statement reliability, financial condition and results of operations; disrupt our business; and result in legislative or regulatory intervention, liability to customers, financial losses and damage to our reputation. For example, our business is highly dependent on our ability to manage and process, on a daily basis, an extremely large number of transactions, many of which are highly complex, across numerous and diverse markets and in an environment in which we must make frequent changes to our core processes in response to changing external conditions. These transactions are subject to various legal, accounting and regulatory standards. Our financial, accounting, data processing or other operating systems and facilities may fail to operate properly or become disabled, adversely affecting our ability to process these transactions. In addition, we rely on information provided by third parties in processing many of our transactions, and that information may be incorrect or we may fail to properly manage or analyze it.

We rely upon business processes that are highly dependent on people, legacy technology and the use of numerous complex systems and models to manage our business and produce books and records upon which our financial statements are prepared. This reliance increases the risk that we may be exposed to financial, reputational or other losses as a result of inadequately designed internal processes or systems, or failed execution of our systems. While we continue to enhance our technology, operational controls and organizational structure in order to reduce our operational risk, these actions may not be effective to manage these risks and may create additional operational risk as we execute these enhancements. In addition, our increased use of third-party service providers for some of our business functions increases the risk that an operational failure by a third party will adversely affect us.

We also face the risk of operational failure, termination or capacity constraints of any of the clearing agents, exchanges, clearinghouses or other financial intermediaries we use to facilitate our securities and derivatives transactions. Any such failure, termination or constraint could adversely affect our ability to effect transactions or manage our exposure to risk, and could have a significant adverse impact on our business, liquidity, financial condition, net worth and results of operations.

Our operations rely on the secure processing, storage and transmission of confidential and other information in our computer systems and networks. Our computer systems, software and networks may be vulnerable to breaches, unauthorized access, misuse, computer viruses or other malicious code and other events that could have a security impact. If one or more such events occurs, this could jeopardize our or our customers' or counterparties' confidential and other information processed and stored in, and transmitted through, our computer systems and networks, or otherwise cause interruptions or malfunctions in our, our customers', our counterparties' or third parties' operations, which could result in significant losses, reputational damage, litigation, regulatory fines or penalties, or adversely affect our business, financial condition or results of operations. In addition, we may be required to expend significant additional resources to modify our protective measures or to investigate and remediate vulnerabilities or other exposures arising from operational and security risks.

Since the conservatorship began, we have experienced, and we expect we may continue to experience, substantial changes in our management, employees and business structure and practices. These changes could increase our operational risk and result in business interruptions and financial losses. In addition, due to events that are wholly or partially beyond our control, our systems could fail to operate properly, which could lead to financial losses, business disruptions, legal and regulatory sanctions and reputational damage.

In many cases, our accounting policies and methods, which are fundamental to how we report our financial condition and results of operations, require management to make judgments and estimates about matters that are inherently uncertain. Management also relies on models in making these estimates.

Our accounting policies and methods are fundamental to how we record and report our financial condition and results of operations. Our management must exercise judgment in applying many of these accounting policies and methods so that these policies and methods comply with GAAP and reflect management's judgment of the most appropriate manner to report our financial condition and results of operations. In some cases, management must select the appropriate accounting policy or method from two or more alternatives, any of which might be reasonable under the circumstances but might affect the amounts of assets, liabilities, revenues and expenses that we report. See "Note 1, Summary of Significant Accounting Policies" for a description of our significant accounting policies.

We have identified three accounting policies as critical to the presentation of our financial condition and results of operations. These accounting policies are described in "MD&A—Critical Accounting Policies and Estimates." We believe these policies are critical because they require management to make particularly subjective or complex judgments about matters that are inherently uncertain and because of the likelihood that materially different amounts would be reported under different conditions or using different assumptions.

Because our financial statements involve estimates for amounts that are very large, even a small change in the estimate can have a significant impact for the reporting period. For example, because our total loss reserves are so large, even a change that has a small impact relative to the size of our loss reserves can have a meaningful impact on our results for the quarter in which we make the change.

Due to the complexity of the critical accounting policies we have identified, our accounting methods relating to these policies involve substantial use of models. Models are inherently imperfect predictors of actual results because they are based on assumptions, including assumptions about future events. Our models may not include assumptions that reflect very positive or very negative market conditions and, accordingly, our actual results could differ significantly from those generated by our models. As a result of the above factors, the estimates that we use to prepare our financial statements, as well as our estimates of our future results of operations, may be inaccurate, perhaps significantly.

Failure of our models to produce reliable results may adversely affect our ability to manage risk and make effective business decisions.

We make significant use of quantitative models to measure and monitor our risk exposures and to manage our business. For example, we use models to measure and monitor our exposures to interest rate, credit and market risks, and to forecast credit losses. The information provided by these models is used in making business decisions relating to strategies, initiatives, transactions, pricing and products.

Models are inherently imperfect predictors of actual results because they are based on historical data and assumptions regarding factors such as future loan demand, borrower behavior, creditworthiness and home price trends. Other potential sources of inaccurate or inappropriate model results include errors in computer code, bad data, misuse of data, or use of a model for a purpose outside the scope of the model's design. Modeling often assumes that historical data or experience can be relied upon as a basis for forecasting future events, an assumption that may be especially tenuous in the face of unprecedented events.

Given the challenges of predicting future behavior, management judgment is used at every stage of the modeling process, from model design decisions regarding core underlying assumptions, to interpreting and applying final model output. To control for these inherent imperfections, our primary models are vetted by an independent model risk oversight team within our Enterprise Risk Division.

When market conditions change quickly and in unforeseen ways, there is an increased risk that the model assumptions and data inputs for our models are not representative of the most recent market conditions. Under such circumstances, we must rely on management judgment to make adjustments or overrides to our models. A formal model update is typically an extensive process that involves basic research, testing, independent validation and production implementation. In a rapidly changing environment, it may not be possible to update existing models quickly enough to properly account for the most recently available data and events. Management adjustments to modeled results are applied within the confines of the governance structure provided by a combination of our model risk oversight team and our business, finance, and risk committees.

If our models fail to produce reliable results on an ongoing basis, we may not make appropriate risk management decisions, including decisions affecting loan purchases, management of credit losses, guaranty fee pricing, asset and liability management and the management of our net worth. Any of these decisions could adversely affect our businesses, results of operations, liquidity, net worth and financial condition. Furthermore, strategies we employ to manage and govern the risks associated with our use of models may not be effective or fully reliable.

Changes in interest rates or our loss of the ability to manage interest rate risk successfully could adversely affect our net interest income and increase interest rate risk.

We fund our operations primarily through the issuance of debt and invest our funds primarily in mortgage-related assets that permit mortgage borrowers to prepay their mortgages at any time. These business activities expose us to market risk, which is the risk of adverse changes in the fair value of financial instruments resulting from changes in market conditions. Our most significant market risks are interest rate risk and prepayment risk. We describe these risks in more detail in "MD&A—Risk Management—Market Risk Management, Including Interest Rate Risk Management." Changes in interest rates affect both the value of our mortgage assets and prepayment rates on our mortgage loans.

Changes in interest rates could have a material adverse effect on our business, results of operations, financial condition, liquidity and net worth. Our ability to manage interest rate risk depends on our ability to issue debt instruments with a range of maturities and other features, including call provisions, at attractive rates and to engage in derivatives transactions. We must exercise judgment in selecting the amount, type and mix of debt and derivatives instruments that will most effectively manage our interest rate risk. The amount, type and mix of financial instruments that are available to us may not offset possible future changes in the spread between our borrowing costs and the interest we earn on our mortgage assets.

Our business is subject to laws and regulations that restrict our activities and operations, which may prohibit us from undertaking activities that management believes would benefit our business and limit our ability to diversify our business.

As a federally chartered corporation, we are subject to the limitations imposed by the Charter Act, extensive regulation, supervision and examination by FHFA and regulation by other federal agencies, including Treasury, HUD and the SEC. As a company under conservatorship, our primary regulator has management authority over us in its role as our conservator. We are also subject to other laws and regulations that affect our business, including those regarding taxation and privacy.

The Charter Act defines our permissible business activities. For example, we may not originate mortgage loans or purchase single-family loans in excess of the conforming loan limits, and our business is limited to the U.S. housing finance sector. In addition, our conservator has determined that, while in conservatorship, we will not be permitted to engage in new products and will be limited to continuing our existing business activities and taking actions necessary to advance the goals of the conservatorship. As a result of these limitations on our ability to diversify our operations, our financial condition and results of operations depend almost entirely on conditions in a single sector of the U.S. economy, specifically, the U.S. housing market. The weak and unstable condition of the U.S. housing market in recent years has therefore had a significant adverse effect on our results of operations, financial condition and net worth, which is likely to continue.

We could be required to pay substantial judgments, settlements or other penalties as a result of civil litigation.

We are a party to a number of lawsuits. We are unable at this time to estimate our potential liability in these matters, but may be required to pay substantial judgments, settlements or other penalties and incur significant expenses in connection with these lawsuits, which could have a material adverse effect on our business, results of operations, financial condition, liquidity and net worth. In addition, responding to these lawsuits may divert significant internal resources away from managing our business. More information regarding these lawsuits is included in "Legal Proceedings" and "Note 19, Commitments and Contingencies."

An active trading market in our equity securities may cease to exist, which would adversely affect the market price and liquidity of our common and preferred stock.

Our common stock and preferred stock are now traded exclusively in the over-the-counter market. We cannot predict the actions of market makers, investors or other market participants, and can offer no assurances that the market for our securities will be stable. If there is no active trading market in our equity securities, the market price and liquidity of the securities will be adversely affected.

Mortgage fraud could result in significant financial losses and harm to our reputation.

We use a process of delegated underwriting in which lenders make specific representations and warranties about the characteristics of the mortgage loans we purchase and securitize. As a result, we do not independently verify most borrower information that is provided to us. This exposes us to the risk that one or more of the parties involved in a transaction (the borrower, seller, broker, appraiser, title agent, lender or servicer) will engage in fraud by misrepresenting facts about a mortgage loan. Similarly, we rely on delegated servicing of loans and use of a variety of external resources to manage our REO. We have experienced financial losses resulting from mortgage fraud, including institutional fraud perpetrated by counterparties. In the future, we may experience additional financial losses or reputational damage as a result of mortgage fraud.

RISKS RELATING TO OUR INDUSTRY

A further decline in U.S. home prices or activity in the U.S. housing market would likely cause higher credit losses and credit-related expenses, and lower business volumes.

We expect weakness in the real estate financial markets to continue in 2012. The deterioration in the credit condition of outstanding mortgages will result in the foreclosure of some troubled loans, which is likely to add to excess inventory of unsold homes. We also expect heightened default and severity rates to continue during this period, and home prices, particularly in some geographic areas, may decline further. Any resulting increase in delinquencies or defaults, or in loss severity, will likely result in a higher level of credit losses and credit-related expenses, which in turn will adversely affect our results of operations, net worth and financial condition.

Our business volume is affected by the rate of growth in total U.S. residential mortgage debt outstanding and the size of the U.S. residential mortgage market. The rate of growth in total U.S. residential mortgage debt outstanding has declined substantially in response to the reduced activity in the housing market and declines in home prices, and we expect single-family mortgage debt outstanding to decrease by approximately 1.1% in 2012. A decline in the rate of growth in mortgage debt outstanding reduces the unpaid principal balance of mortgage loans available for us to purchase or securitize, which in turn could reduce our net interest income and guaranty fee income. Even if we are able to increase our share of the secondary mortgage market, it may not be sufficient to make up for the decline in the rate of growth in mortgage originations, which could adversely affect our results of operations and financial condition.

The Dodd-Frank Act and regulatory changes in the financial services industry may negatively impact our business.

The Dodd-Frank Act is significantly changing the regulation of the financial services industry, including by the creation of new standards related to regulatory oversight of systemically important financial companies, derivatives transactions, asset-backed securitization, mortgage underwriting and consumer financial protection. This legislation will directly and indirectly affect many aspects of our business and could have a material adverse effect on our business, results of operations, financial condition, liquidity and net worth. The Dodd-Frank Act and related regulatory changes could require us to change certain business practices, cause us to incur significant additional costs, limit the products we offer, require us to increase our regulatory capital or otherwise adversely affect our business. Additionally, implementation of this legislation will result in increased supervision and more comprehensive regulation of our customers and counterparties in the financial services industry, which may have a significant impact on the business practices of our customers and counterparties, as well as on our counterparty credit risk.

Examples of aspects of the Dodd-Frank Act and related future regulatory changes that, if applicable, may significantly affect us include mandatory clearing of certain derivatives transactions, which could impose significant additional costs on us; minimum standards for residential mortgage loans, which could subject us to increased legal risk for loans we purchase or guarantee; and the development of credit risk retention regulations applicable to residential mortgage loan securitizations, which could impact the types and volume of loans sold to us. Enhanced prudential standards that become applicable to certain bank holding companies and nonbank financial companies could affect investor demand for our debt and MBS securities. We could also be designated as a systemically important nonbank financial company subject to supervision and regulation by the Federal Reserve. If this were to occur, the Federal Reserve would have the authority to examine us and could impose stricter prudential standards on us, including risk-based capital requirements, leverage limits, liquidity requirements, credit concentration limits, resolution plan and credit exposure reporting requirements, overall risk management requirements, contingent capital requirements, enhanced public disclosures and short-term debt limits. Regulators have been seeking public comment regarding the criteria for designating nonbank financial companies for heightened supervision.

Because federal agencies have not completed the extensive rulemaking processes needed to implement and clarify many of the provisions of the Dodd-Frank Act, it is difficult to assess fully the impact of this legislation on our business and industry at this time, nor can we predict what similar changes to statutes or regulations will occur in the future.

Revisions by the Basel Committee on Banking Supervision to international capital requirements, referred to as Basel III, may also have a significant impact on us or on the business practices of our customers and counterparties. Depending on how they are implemented by regulators, the Basel III rules could be the basis for a revised framework for GSE capital standards that could increase our capital requirements. The Basel III capital and liquidity rules could also affect investor demand for our debt and MBS securities, and could limit some lenders' ability to count their rights to service mortgage loans toward meeting their regulatory capital requirements, which may reduce the economic value of mortgage servicing rights. As a result, a number of our customers and counterparties may change their business practices.

In addition, the actions of Treasury, the CFTC, the SEC, the Federal Deposit Insurance Corporation, the Federal Reserve and international central banking authorities directly or indirectly impact financial institutions' cost of funds for lending, capital-raising and investment activities, which could increase our borrowing costs or make borrowing more difficult for us. Changes in monetary policy are beyond our control and difficult to anticipate.

Legislative and regulatory changes could affect us in substantial and unforeseeable ways and could have a material adverse effect on our business, results of operations, financial condition, liquidity and net worth. In particular, these changes could affect our ability to issue debt and may reduce our customer base.

Structural changes in the financial services industry may negatively impact our business.

The financial market crisis resulted in mergers of some of our most significant institutional counterparties. Consolidation within the financial services industry has increased and may continue to increase our concentration risk to counterparties in this industry, and we are and may become more reliant on a smaller number of institutional counterparties. This both increases our risk exposure to any individual counterparty and decreases our negotiating leverage with these counterparties. The structural changes in the financial services industry could affect us in substantial and unforeseeable ways and could have a material adverse effect on our business, results of operations, financial condition, liquidity and net worth.

The occurrence of a major natural or other disaster in the United States could negatively impact our credit losses and credit-related expenses or disrupt our business operations in the affected geographic area.

We conduct our business in the residential and multifamily mortgage markets and own or guarantee the performance of mortgage loans throughout the United States. The occurrence of a major natural or environmental disaster, terrorist attack, pandemic, or similar event (a "major disruptive event") in a regional geographic area of the United States could negatively impact our credit losses and credit-related expenses in the affected area.

The occurrence of a major disruptive event could negatively impact a geographic area in a number of different ways, depending on the nature of the event. A major disruptive event that either damages or destroys residential or multifamily real estate securing mortgage loans in our book of business or negatively impacts the ability of borrowers to continue to make principal and interest payments on mortgage loans in our book of business could increase our delinquency rates, default rates and average loan loss severity of our book of business in the affected region or regions, which could have a material adverse effect on our business, results of operations, financial condition, liquidity and net worth. While we attempt to create a geographically diverse mortgage credit book of business, there can be no assurance that a major disruptive event, depending on its magnitude, scope and nature, will not generate significant credit losses and credit-related expenses.

Additionally, the contingency plans and facilities that we have in place may be insufficient to prevent an adverse effect on our ability to conduct business, which could lead to financial losses. If a disruption occurs and our senior management or other employees are unable to occupy our offices, communicate with other personnel or travel to other locations, our ability to interact with each other and with our customers may suffer, and we may not be successful in implementing contingency plans that depend on communication or travel.

Item 1B. Unresolved Staff Comments

None.

Item 2. Properties

We own our principal office, which is located at 3900 Wisconsin Avenue, NW, Washington, DC, as well as additional Washington, DC facilities at 3939 Wisconsin Avenue, NW and 4250 Connecticut Avenue, NW. We also own two office facilities in Herndon, Virginia, as well as two additional facilities located in Reston, Virginia; and Urbana, Maryland. These owned facilities contain a total of approximately 1,459,000 square feet of space. We lease the land underlying the 4250 Connecticut Avenue building pursuant to a ground lease that automatically renews on July 1, 2029 for an additional 49 years unless we elect to terminate the lease by providing notice to the landlord of our decision to terminate at least one year prior to the automatic renewal date. In addition, we lease approximately 429,000 square feet of office space, including a conference center, at 4000 Wisconsin Avenue, NW, which is adjacent to our principal office. The present lease term for the office space at 4000 Wisconsin Avenue expires in April 2013 and we have one additional 5-year renewal option remaining under the original lease. The lease term for the conference center at 4000 Wisconsin Avenue expires in April 2018. We also lease an additional approximately 317,000 square feet of office space at three other locations in Washington, DC and Virginia. We maintain approximately 723,000 square feet of office space in leased premises in Pasadena, California; Irvine, California; Atlanta, Georgia; Chicago, Illinois; Philadelphia, Pennsylvania; and three facilities in Dallas, Texas.

Item 3. Legal Proceedings

This item describes our material legal proceedings. We describe additional material legal proceedings in "Note 19, Commitments and Contingencies," which is incorporated herein by reference. In addition to the matters specifically described or incorporated by reference in this item, we are involved in a number of legal and regulatory proceedings that arise in the ordinary course of business that do not have a material impact on our business. Litigation claims and proceedings of all types are subject to many factors that generally cannot be predicted accurately.

We record reserves for legal claims when losses associated with the claims become probable and the amounts can be reasonably estimated. The actual costs of resolving legal claims may be substantially higher or lower than the amounts reserved for those claims. For matters where the likelihood or extent of a loss is not probable or cannot be reasonably estimated, we do not recognize in our consolidated financial statements the potential liability that may result from these matters. We presently cannot determine the ultimate resolution of the matters described below or incorporated by reference into this discussion. We have recorded a reserve for legal claims related to those matters when we were able to determine a loss was both probable and reasonably estimable. If certain of these matters are determined against us, it could have a material adverse effect on our results of operations, liquidity and financial condition, including our net worth.

Shareholder Derivative Litigation

Three shareholder derivative cases, filed at various times between June 2007 and June 2008, naming certain of our current and former directors and officers as defendants, and Fannie Mae as a nominal defendant, are currently pending before the U.S. Court of Appeals for the District of Columbia Circuit: *Kellmer v. Raines, et al.* (filed June 29, 2007); *Middleton v. Raines, et al*. (filed July 6, 2007); and *Agnes v. Raines, et al*. (filed June 25, 2008). The cases rely on factual allegations that Fannie Mae's accounting statements were inconsistent with the GAAP requirements relating to hedge accounting and the amortization of premiums and discounts. *Agnes* relies on factual allegations that defendants wrongfully failed to disclose our exposure to the subprime mortgage crisis and that the Board improperly authorized the company to buy back $100 million in shares while the stock price was artificially inflated. Plaintiffs seek, on behalf of Fannie Mae, various forms of monetary and non-monetary relief, including unspecified money damages (including restitution, legal fees and expenses, disgorgement and punitive damages); corporate governance changes; an accounting; and attaching, impounding or imposing a constructive trust on the individual defendants' assets. Pursuant to a June 25, 2009 order, FHFA, as our conservator, substituted itself for shareholder plaintiffs in all of these actions. On July 27, 2010, the U.S. District Court for the District of Columbia dismissed *Kellmer* and *Middleton* with prejudice and *Agnes* without prejudice. FHFA filed motions to reconsider the decisions dismissing *Kellmer and Middleton* with prejudice, and those motions were denied on October 22, 2010. FHFA appealed that denial on November 22, 2010. Plaintiffs Kellmer and Agnes also appealed the substitution and the dismissal orders. On January 20, 2011, the U.S. Court of Appeals for the District of Columbia Circuit issued an order in the *Kellmer* appeal granting FHFA's motions for the voluntary dismissal of defendants Kenneth M. Duberstein, Frederic Malek and Patrick Swygert. On that same day, in the *Middleton* appeal, the Court of Appeals for the District of Columbia issued an order granting FHFA's motions for the voluntary dismissal of defendants Stephen Ashley, Kenneth Duberstein, Thomas Gerrity, Ann Korologos, Frederic Malek, Donald Marron, Anne Mulcahy, Joe Pickett, Leslie Rahl, Patrick Swygert, and John Wulff. The remaining parties have fully briefed the appeals and the D.C. Circuit heard oral argument on the appeals on February 16, 2012.

FHFA Private-Label Mortgage-Related Securities Litigation

In the third quarter of 2011, FHFA, as conservator for us and for Freddie Mac, filed 16 lawsuits on behalf of us and Freddie Mac against various financial institutions, their officers and affiliated and unaffiliated underwriters who were responsible for marketing and selling private-label mortgage-related securities to us. The lawsuits seek to recover losses we and Freddie Mac incurred on the securities. FHFA filed 13 of these lawsuits in the U.S. District Court for the Southern District of New York—against Bank of America Corp.; Barclays Bank PLC; Citigroup, Inc.; Credit Suisse Holdings (USA), Inc.; Deutsche Bank AG; First Horizon National Corporation;

Goldman, Sachs & Co.; HSBC North America Holdings Inc.; JPMorgan Chase & Co.; Merrill Lynch & Co.; Nomura Holding America Inc.; SG Americas, Inc.; and UBS Americas Inc. ("UBS") and against certain related entities and individuals. Two lawsuits—against Countrywide Financial Corporation ("Countrywide") and Morgan Stanley—were filed in the Supreme Court of the State of New York for the County of New York, and one—against The Royal Bank of Scotland Group PLC ("RBS")—was filed in the U.S. District Court for the District of Connecticut. The lawsuit against UBS was filed on July 27, 2011, and all the others were filed on September 2, 2011. The lawsuits allege that the defendants violated federal securities laws and state common law by making material misstatements and omissions in the offering documents for the securities that were sold to Fannie Mae and Freddie Mac regarding the characteristics of the loans underlying the securities. The complaints also allege state securities law violations and some allege common law fraud. The complaints seek, among other things, rescission and recovery of consideration paid for the securities at issue in the lawsuits, monetary damages and, in certain cases, punitive damages for common law fraud.

Defendants in the two cases filed in New York state court removed those cases to the U.S. District Court for the Southern District of New York and FHFA filed motions to remand the cases back to state court. On February 7, 2012, the Joint Panel on Multidistrict Litigation transferred the Countrywide case to the U.S. District Court for the Central District of California for inclusion in a multidistrict proceeding involving other actions pending against Countrywide.

On November 16, 2011, all of the cases pending in the Southern District of New York were transferred to one judge in the district, Judge Cote. Judge Cote stayed the time to answer or move to dismiss all of the cases except the UBS case. On December 2, 2011, defendants in the UBS case filed a motion to dismiss. On December 21, 2011, FHFA filed an amended complaint in the UBS case. On December 2, 2011, defendants in the RBS case pending in the District of Connecticut filed a motion to dismiss. On February 1, 2012, FHFA filed an amended complaint in the RBS case.

Investigation by the Office of Inspector General of FHFA and the U.S. Attorney for the Eastern District of Virginia

In October 2011, we received notice of an ongoing investigation by the Office of Inspector General of FHFA ("FHFA OIG") and the U.S. Attorney for the Eastern District of Virginia with regard to a multifamily agreement with The Related Companies, L.P. The financial impact of the agreement was not material to our financial statements. In connection with the investigation, we have received subpoenas for documents from the FHFA OIG. We are cooperating with this investigation.

Item 4. Mine Safety Disclosures

None.

PART II

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

Our common stock is traded in the over-the-counter market and quoted on the OTC Bulletin Board under the ticker symbol "FNMA." The transfer agent and registrar for our common stock is Computershare, P.O. Box 43078, Providence, Rhode Island 02940.

Common Stock Data

The following table displays, for the periods indicated, the high and low prices per share of our common stock as reported in the Bloomberg Financial Markets service. For periods prior to our stock's delisting from the NYSE on July 8, 2010, these are high and low sales prices reported in the consolidated transaction reporting system. For periods on or after July 8, 2010, these prices represent high and low trade prices. No dividends were declared on shares of our common stock during the periods indicated.

Quarter	High	Low
2010		
First Quarter	$1.23	$0.91
Second Quarter	1.36	0.34
Third Quarter	0.42	0.19
Fourth Quarter	0.47	0.27
2011		
First Quarter	$0.96	$0.30
Second Quarter	0.50	0.32
Third Quarter	0.39	0.23
Fourth Quarter	0.27	0.19

Dividends

Our payment of dividends is subject to the following restrictions:

Restrictions Relating to Conservatorship. Our conservator announced on September 7, 2008 that we would not pay any dividends on the common stock or on any series of preferred stock, other than the senior preferred stock.

Restrictions Under Senior Preferred Stock Purchase Agreement. The senior preferred stock purchase agreement prohibits us from declaring or paying any dividends on Fannie Mae equity securities without the prior written consent of Treasury.

Statutory Restrictions. Under the GSE Act, FHFA has authority to prohibit capital distributions, including payment of dividends, if we fail to meet our capital requirements. If FHFA classifies us as significantly undercapitalized, approval of the Director of FHFA is required for any dividend payment. Under the GSE Act, we are not permitted to make a capital distribution if, after making the distribution, we would be undercapitalized, except the Director of FHFA may permit us to repurchase shares if the repurchase is made in connection with the issuance of additional shares or obligations in at least an equivalent amount and will reduce our financial obligations or otherwise improve our financial condition.

Restrictions Relating to Subordinated Debt. During any period in which we defer payment of interest on qualifying subordinated debt, we may not declare or pay dividends on, or redeem, purchase or acquire, our common stock or preferred stock.

Restrictions Relating to Preferred Stock. Payment of dividends on our common stock is also subject to the prior payment of dividends on our preferred stock and our senior preferred stock. Payment of dividends on all outstanding preferred stock, other than the senior preferred stock, is also subject to the prior payment of dividends on the senior preferred stock.

See "MD&A—Liquidity and Capital Management" for information on dividends declared and paid to Treasury on the senior preferred stock.

Holders

As of January 31, 2012, we had approximately 15,000 registered holders of record of our common stock, including holders of our restricted stock. In addition, as of January 31, 2012, Treasury held a warrant giving it the right to purchase shares of our common stock equal to 79.9% of the total number of shares of our common stock outstanding on a fully diluted basis on the date of exercise.

Recent Sales of Unregistered Securities

Under the terms of our senior preferred stock purchase agreement with Treasury, we are prohibited from selling or issuing our equity interests, other than as required by (and pursuant to) the terms of a binding agreement in effect on September 7, 2008, without the prior written consent of Treasury.

We previously provided stock compensation to employees and members of the Board of Directors under the Fannie Mae Stock Compensation Plan of 1993 and the Fannie Mae Stock Compensation Plan of 2003 (the "Stock Compensation Plans"). During the quarter ended December 31, 2011, 1,157 restricted stock units vested, as a result of which 786 shares of common stock were issued, and 371 shares of common stock that otherwise would have been issued were withheld by us in lieu of requiring the recipients to pay us the withholding taxes due upon vesting. All of these restricted stock units were granted prior to our entering into conservatorship. Restricted stock units granted under the Plans typically vest in equal annual installments over three or four years beginning on the first anniversary of the date of grant. Each restricted stock unit represents the right to receive a share of common stock at the time of vesting. As a result, restricted stock units are generally similar to restricted stock, except that restricted stock units do not confer voting rights on their holders. All restricted stock units were granted to persons who were employees or members of the Board of Directors of Fannie Mae.

The securities we issue are "exempted securities" under laws administered by the SEC to the same extent as securities that are obligations of, or are guaranteed as to principal and interest by, the United States, except that, under the GSE Act, our equity securities are not treated as exempted securities for purposes of Section 12, 13, 14 or 16 of the Exchange Act. As a result, our securities offerings are exempt from SEC registration requirements and we do not file registration statements or prospectuses with the SEC under the Securities Act with respect to our securities offerings.

Information about Certain Securities Issuances by Fannie Mae

Pursuant to SEC regulations, public companies are required to disclose certain information when they incur a material direct financial obligation or become directly or contingently liable for a material obligation under an off-balance sheet arrangement. The disclosure must be made in a current report on Form 8-K under Item 2.03 or, if the obligation is incurred in connection with certain types of securities offerings, in prospectuses for that offering that are filed with the SEC.

Because the securities we issue are exempted securities, we do not file registration statements or prospectuses with the SEC with respect to our securities offerings. To comply with the disclosure requirements of Form 8-K relating to the incurrence of material financial obligations, we report our incurrence of these types of obligations either in offering circulars or prospectuses (or supplements thereto) that we post on our Web site or in a current report on Form 8-K that we file with the SEC, in accordance with a "no-action" letter we received from the SEC staff in 2004. In cases where the information is disclosed in a prospectus or offering circular posted on our Web site, the document will be posted on our Web site within the same time period that a prospectus for a non-exempt securities offering would be required to be filed with the SEC.

The Web site address for disclosure about our debt securities is www.fanniemae.com/debtsearch. From this address, investors can access the offering circular and related supplements for debt securities offerings under Fannie Mae's universal debt facility, including pricing supplements for individual issuances of debt securities.

Disclosure about our obligations pursuant to some of the MBS we issue, some of which may be off-balance sheet obligations, can be found at www.fanniemae.com/mbsdisclosure. From this address, investors can access information and documents about our MBS, including prospectuses and related prospectus supplements.

We are providing our Web site address solely for your information. Information appearing on our Web site is not incorporated into this annual report on Form 10-K.

Purchases of Equity Securities by the Issuer

The following table displays shares of our common stock we repurchased during the fourth quarter of 2011.

	Total Number of Shares Purchased(1)	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Program(2)	Maximum Number of Shares that May Yet be Purchased Under the Program(2)
	(Shares in thousands)			
2011				
October 1-31	—	$ —	—	—
November 1-30	2	0.22	—	—
December 1-31	3	0.21	—	—
Total	5			

(1) Consists of shares of common stock reacquired from employees to pay an aggregate of approximately $950 in withholding taxes due upon the vesting of previously issued restricted stock.

(2) We do not have any publicly announced share repurchase program under which we could purchase our common stock.

Item 6. Selected Financial Data

The selected consolidated financial data displayed below are summarized from our results of operations for the five-year period ended December 31, 2011, as well as selected consolidated balance sheet data as of the end of each year within this five-year period. Certain prior period amounts have been reclassified to conform to the current period presentation. This data should be reviewed in conjunction with the audited consolidated financial statements and related notes and with the MD&A included in this annual report on Form 10-K.

As discussed in "MD&A—Consolidated Results of Operations," prospectively adopting the consolidation accounting guidance on January 1, 2010 had a significant impact on the presentation and comparability of our consolidated financial statements due to the consolidation of the substantial majority of our single-class securitization trusts and the elimination of previously recorded deferred revenue from our guaranty arrangements. While some line items in our consolidated financial statements were not impacted, others were impacted significantly, which reduces the comparability of our results for 2011 and 2010 with the results for prior years.

	For the Year Ended December 31,				
	2011	2010	2009	2008	2007
	(Dollars and shares in millions, except per share amounts)				
Statement of operations data:					
Net revenues[1]	$ 20,444	$ 17,493	$ 22,494	$ 17,436	$ 11,205
Net other-than-temporary impairments	(308)	(722)	(9,861)	(6,974)	(814)
Investment gains (losses), net	506	346	1,458	(246)	(53)
Fair value losses, net[2]	(6,621)	(511)	(2,811)	(20,129)	(4,668)
Administrative expenses	(2,370)	(2,597)	(2,207)	(1,979)	(2,669)
Credit-related expenses[3]	(27,498)	(26,614)	(73,536)	(29,809)	(5,012)
Other expenses, net[4]	(151)	(642)	(7,060)	(1,776)	(2,476)
(Benefit) provision for federal income taxes	(90)	(82)	(985)	13,749	(3,091)
Net loss attributable to Fannie Mae	(16,855)	(14,014)	(71,969)	(58,707)	(2,050)
Preferred stock dividends and issuance costs at redemption	(9,614)	(7,704)	(2,474)	(1,069)	(513)
Net loss attributable to common stockholders	(26,469)	(21,718)	(74,443)	(59,776)	(2,563)
Common share data:					
Loss per share:					
Basic and Diluted	$ (4.61)	$ (3.81)	$ (13.11)	$ (24.04)	$ (2.63)
Weighted-average common shares outstanding:[5]					
Basic and Diluted	5,737	5,694	5,680	2,487	973
Cash dividends declared per share	$ —	$ —	$ —	$ 0.75	$ 1.90
New business acquisition data:					
Fannie Mae MBS issues acquired by third parties[6]	$478,870	$497,975	$496,067	$434,711	$563,648
Mortgage portfolio purchases[7]	173,978	357,573	327,578	196,645	182,471
New business acquisitions	$652,848	$855,548	$823,645	$631,356	$746,119

	As of December 31,				
	2011	2010	2009	2008	2007
	(Dollars in millions)				
Balance sheet data:					
Investments in securities:					
Fannie Mae MBS	$ 24,274	$ 30,226	$ 229,169	$ 234,250	$ 179,401
Other agency MBS	16,744	19,951	43,905	35,440	32,957
Mortgage revenue bonds	10,978	11,650	13,446	13,183	16,213
Other mortgage-related securities	49,936	56,668	54,265	56,781	90,827
Non-mortgage-related securities	49,848	32,753	8,882	17,640	38,115
Mortgage loans:[8]					
Loans held for sale	311	915	18,462	13,270	7,008
Loans held for investment, net of allowance	2,898,310	2,922,805	376,099	412,142	396,516
Total assets	3,211,484	3,221,972	869,141	912,404	879,389
Short-term debt	151,725	157,243	200,437	330,991	234,160
Long-term debt	3,038,147	3,039,757	574,117	539,402	562,139
Total liabilities	3,216,055	3,224,489	884,422	927,561	835,271
Senior preferred stock	112,578	88,600	60,900	1,000	—
Preferred stock	19,130	20,204	20,348	21,222	16,913
Total Fannie Mae stockholders' (deficit) equity	(4,624)	(2,599)	(15,372)	(15,314)	44,011
Net worth (deficit) surplus[9]	(4,571)	(2,517)	(15,281)	(15,157)	44,118
Book of business data:					
Total mortgage assets[10]	$3,065,616	$3,099,250	$ 769,252	$ 792,196	$ 727,903
Unconsolidated Fannie Mae MBS, held by third parties[11]	19,612	21,323	2,432,789	2,289,459	2,118,909
Other guarantees[12]	42,406	35,619	27,624	27,809	41,588
Mortgage credit book of business	$3,127,634	$3,156,192	$3,229,665	$3,109,464	$2,888,400
Guaranty book of business[13]	$3,037,549	$3,054,488	$3,097,201	$2,975,710	$2,744,237
Credit quality:					
Total nonperforming loans[14][15]	$ 251,949	$ 253,579	$ 222,064	$ 119,955	$ 27,254
Total loss reserves	76,938	66,251	64,891	24,753	3,391
Total loss reserves as a percentage of total guaranty book of business	2.53%	2.17%	2.10%	0.83%	0.12%
Total loss reserves as a percentage of total nonperforming loans[15]	30.54	26.13	29.22	20.64	12.44

	For the Year Ended December 31,				
	2011	2010	2009	2008	2007
Performance ratios:					
Net interest yield[16]	0.60%	0.51%	1.65%	1.03%	0.57%
Average effective guaranty fee rate (in basis points)[17]	N/A	N/A	27.6 bp	31.0 bp	23.7 bp
Credit loss ratio (in basis points)[18]	61.3 bp	77.4 bp	44.6 bp	22.7 bp	5.3 bp
Return on assets[19]	(0.82)%	(0.67)%	(8.27)%	(6.77)%	(0.30)%

(1) Consists of net interest income and fee and other income.

(2) Consists of the following: (a) derivatives fair value gains (losses), net; (b) trading securities gains (losses), net; (c) hedged mortgage assets gains (losses), net; (d) debt foreign exchange gains (losses), net; (e) debt fair value gains (losses), net; and (f) mortgage loans fair value losses, net.

(3) Consists of provision for loan losses, provision for guaranty losses and foreclosed property expense.

(4) Consists of the following: (a) debt extinguishment gains (losses), net; (b) gains (losses) from partnership investments; and (c) losses on certain guaranty contracts.

(5) Includes the weighted-average shares of common stock that would be issuable upon the full exercise of the warrant issued to Treasury from the date of conservatorship through the end of the period for 2008 and for the full year for 2009, 2010, and 2011. Because the warrant's exercise price of $0.00001 per share is considered non-substantive (compared to the market price of our common stock), the warrant was evaluated based on its substance over form. It was determined to have characteristics of non-voting common stock, and thus is included in the computation of basic and diluted loss per share.

(6) Reflects unpaid principal balance of Fannie Mae MBS issued and guaranteed by us during the reporting period less: (a) securitizations of mortgage loans held in our mortgage portfolio during the reporting period and (b) Fannie Mae MBS purchased for our mortgage portfolio during the reporting period.

(7) Reflects unpaid principal balance of mortgage loans and mortgage-related securities we purchased for our mortgage portfolio during the reporting period. Includes acquisition of mortgage-related securities accounted for as the extinguishment of debt because the entity underlying the mortgage-related securities has been consolidated in our consolidated balance sheets. For 2011 and 2010, includes unpaid principal balance of approximately $67 billion and $217 billion, respectively, of delinquent loans purchased from our single-family MBS trusts. Under our MBS trust documents, we have the option to purchase from MBS trusts loans that are delinquent as to four or more consecutive monthly payments.

(8) Mortgage loans consist solely of domestic residential real-estate mortgages.

(9) Total assets less total liabilities.

(10) Reflects unpaid principal balance of mortgage loans and mortgage-related securities reported in our consolidated balance sheets. The principal balance of resecuritized Fannie Mae MBS is included only once in the reported amount. As a result of our adoption of the consolidation accounting guidance as of January 1, 2010, we reflect a substantial majority of our Fannie Mae MBS as mortgage assets and the balance as unconsolidated Fannie Mae MBS.

(11) Reflects unpaid principal balance of unconsolidated Fannie Mae MBS, held by third-party investors. The principal balance of resecuritized Fannie Mae MBS is included only once in the reported amount.

(12) Primarily includes long-term standby commitments we have issued and single-family and multifamily credit enhancements we have provided that are not otherwise reflected in the table.

(13) Reflects mortgage credit book of business less non-Fannie Mae mortgage-related securities held in our investment portfolio for which we do not provide a guaranty.

(14) Consists of on-balance sheet nonperforming loans held in our mortgage assets and off-balance sheet nonperforming loans in unconsolidated Fannie Mae MBS trusts held by third parties. Includes all nonaccrual loans, as well as troubled debt restructurings ("TDR") and HomeSaver Advance first-lien loans on accrual status. See "MD&A-Consolidated Results of Operations-Credit-Related Expenses-Nonperforming Loans" for a discussion of our nonperforming loans.

(15) In December 2011, we changed our definition of "total nonperforming loans." Under our new definition, we no longer reflect in this amount (1) our allowance for loan losses or (2) our allowance for accrued interest receivable related to these individually impaired loans. The amounts we report for prior periods have been revised from amounts we previously disclosed as a result of this change.

(16) Calculated based on net interest income for the reporting period divided by the average balance of total interest-earning assets during the period, expressed as a percentage.

(17) Calculated based on guaranty fee income for the reporting period divided by average outstanding Fannie Mae MBS and other guarantees during the period, expressed in basis points. After the adoption of consolidation accounting guidance on January 1, 2010, guaranty fee income is significantly less than prior years, making average effective guarantee fee rate an inconsequential performance ratio after 2009.

(18) Consists of (a) charge-offs, net of recoveries and (b) foreclosed property expense for the reporting period (adjusted to exclude the impact of fair value losses resulting from credit-impaired loans acquired from MBS trusts and HomeSaver Advance loans) divided by the average guaranty book of business during the period, expressed in basis points. See "MD&A-Consolidated Results of Operations-Credit-Related Expenses-Credit Loss Performance Metrics" for a discussion of how our credit loss metrics are calculated.

(19) Calculated based on net loss available to common stockholders for the reporting period divided by average total assets during the period, expressed as a percentage. Average balances for purposes of ratio calculations are based on balances at the beginning of the year and at the end of each quarter for each year shown.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

You should read this MD&A in conjunction with our consolidated financial statements as of December 31, 2011 and related notes, and with "Business—Executive Summary."

This report contains forward-looking statements that are based upon management's current expectations and are subject to significant uncertainties and changes in circumstances. Please review "Business—Forward-Looking Statements" for more information on the forward-looking statements in this report and "Risk Factors" for a discussion of factors that could cause our actual results to differ, perhaps materially, from our forward-looking statements. Please also see "Glossary of Terms Used in This Report."

CRITICAL ACCOUNTING POLICIES AND ESTIMATES

The preparation of financial statements in accordance with GAAP requires management to make a number of judgments, estimates and assumptions that affect the reported amount of assets, liabilities, income and expenses in the consolidated financial statements. Understanding our accounting policies and the extent to which we use management judgment and estimates in applying these policies is integral to understanding our financial statements. We describe our most significant accounting policies in "Note 1, Summary of Significant Accounting Policies."

We evaluate our critical accounting estimates and judgments required by our policies on an ongoing basis and update them as necessary based on changing conditions. Management has discussed any significant changes in judgments and assumptions in applying our critical accounting policies with the Audit Committee of our Board of Directors. See "Risk Factors" for a discussion of the risk associated with the use of models. We have identified three of our accounting policies as critical because they involve significant judgments and assumptions about highly complex and inherently uncertain matters, and the use of reasonably different estimates and assumptions could have a material impact on our reported results of operations or financial condition. These critical accounting policies and estimates are as follows:

- Fair Value Measurement
- Other-Than-Temporary Impairment of Investment Securities
- Total Loss Reserves

Fair Value Measurement

The use of fair value to measure our assets and liabilities is fundamental to our financial statements and is a critical accounting estimate because we account for and record a portion of our assets and liabilities at fair value. In determining fair value, we use various valuation techniques. We describe the valuation techniques and inputs used to determine the fair value of our assets and liabilities and disclose their carrying value and fair value in "Note 18, Fair Value."

The fair value accounting rules provide a three-level fair value hierarchy for classifying financial instruments. This hierarchy is based on whether the inputs to the valuation techniques used to measure fair value are observable or unobservable. Each asset or liability is assigned to a level based on the lowest level of any input that is significant to its fair value measurement. The three levels of the fair value hierarchy are described below:

Level 1: Quoted prices (unadjusted) in active markets for identical assets or liabilities.

Level 2: Observable market-based inputs, other than quoted prices in active markets for identical assets or liabilities.

Level 3: Unobservable inputs.

The majority of the financial instruments that we report at fair value in our consolidated financial statements fall within the Level 2 category and are valued primarily utilizing inputs and assumptions that are observable in the marketplace, that can be derived from observable market data or that can be corroborated by recent trading activity of similar instruments with similar characteristics. For example, we generally request non-binding prices from at least three independent pricing services to estimate the fair value of our trading and available-for-sale securities at an individual security level. We use the average of these prices to determine the fair value.

In the absence of such information or if we are not able to corroborate these prices by other available, relevant market information, we estimate their fair values based on single source quotations from brokers or dealers or by using internal calculations or discounted cash flow techniques that incorporate inputs, such as prepayment rates, discount rates and delinquency, default and cumulative loss expectations, that are implied by market prices for similar securities and collateral structure types. Because this valuation technique relies on significant unobservable inputs, the fair value estimation is classified as Level 3. The process for determining fair value using unobservable inputs is generally more subjective and involves a high degree of management judgment and assumptions. These assumptions may have a significant effect on our estimates of fair value, and the use of different assumptions as well as changes in market conditions could have a material effect on our results of operations or financial condition.

Fair Value Hierarchy—Level 3 Assets and Liabilities

The assets and liabilities that we have classified as Level 3 consist primarily of financial instruments for which there is limited market activity and therefore little or no price transparency. As a result, the valuation techniques that we use to estimate the fair value of Level 3 instruments involve significant unobservable inputs, which generally are more subjective and involve a high degree of management judgment and assumptions. Our Level 3 assets and liabilities consist of certain mortgage securities and residual interests, certain mortgage loans, acquired property, partnership investments, our guaranty assets and buy-ups, our master servicing assets, certain long-term debt arrangements and certain highly structured, complex derivative instruments.

Table 5 displays a comparison, by balance sheet category, of the amount of financial assets carried in our consolidated balance sheets at fair value on a recurring basis ("recurring asset") that were classified as Level 3 as of December 31, 2011 and 2010. The availability of observable market inputs to measure fair value varies based on changes in market conditions, such as liquidity. As a result, we expect the amount of financial instruments carried at fair value on a recurring basis and classified as Level 3 to vary each period.

Table 5: Level 3 Recurring Financial Assets at Fair Value

	As of December 31,	
	2011	2010
	(Dollars in millions)	
Trading securities	$ 4,238	$ 4,576
Available-for-sale securities	29,492	31,934
Mortgage loans	2,319	2,207
Other assets	238	247
Level 3 recurring assets	$ 36,287	$ 38,964
Total assets	$3,211,484	$3,221,972
Total recurring assets measured at fair value	$ 156,552	$ 161,696
Level 3 recurring assets as a percentage of total assets	1%	1%
Level 3 recurring assets as a percentage of total recurring assets measured at fair value	23%	24%
Total recurring assets measured at fair value as a percentage of total assets	5%	5%

Assets measured at fair value on a nonrecurring basis and classified as Level 3, which are not presented in the table above, primarily include mortgage loans and acquired property. The fair value of Level 3 nonrecurring assets totaled $69.0 billion for the year ended December 31, 2011 and $63.0 billion for the year ended December 31, 2010.

Financial liabilities measured at fair value on a recurring basis and classified as Level 3 consisted of long-term debt with a fair value of $1.2 billion as of December 31, 2011 and $1.0 billion as of December 31, 2010, and other liabilities with a fair value of $173 million as of December 31, 2011 and $143 million as of December 31, 2010.

Fair Value Control Processes

We have control processes that are designed to ensure that our fair value measurements are appropriate and reliable, that they are based on observable inputs wherever possible and that our valuation approaches are consistently applied and the assumptions used are reasonable. Our control processes consist of a framework that provides for a segregation of duties and oversight of our fair value methodologies and valuations and validation procedures.

Our Valuation Oversight Committee includes senior representation from our Capital Markets segment, our Enterprise Risk Office and our Finance division. The composition of the Committee is determined by the committee chair, our Chief Financial Officer, with the objective of obtaining appropriate representation from finance, risk and select business units within Fannie Mae. The Committee is responsible for advising the committee chair based on its review of valuation methodologies and results for various financial instruments, including significant asset or liability valuations used for financial reporting. Our Price Verification Group, which is an independent control group separate from the group responsible for obtaining prices, is responsible for performing monthly independent price verification. The Price Verification Group also performs independent reviews of the assumptions used in determining the fair value of products we hold that have material estimation risk because observable market-based inputs do not exist.

Our validation procedures are intended to ensure that the individual prices we receive are consistent with our observations of the marketplace and prices that are provided to us by pricing services or dealers. We verify selected prices using a variety of methods, including comparing the prices to secondary pricing services and corroborating the prices by reference to other independent market data, such as non-binding broker or dealer quotations, relevant benchmark indices, and prices of similar instruments. We review prices for reasonableness based on variations from prices provided in previous periods, comparing prices to internally calculated expected prices and conducting relative value comparisons based on specific characteristics of securities. In addition, we compare our derivatives valuations to counterparty valuations as part of the collateral exchange process. We have formal discussions with the pricing services as part of our due diligence process in order to maintain a current understanding of the models and related assumptions and inputs that these vendors use in developing prices. The prices provided to us by independent pricing services reflect the existence of credit enhancements, including monoline insurance coverage, and the current lack of liquidity in the marketplace. If we determine that a price provided to us is outside established parameters, we will further examine the price, including having follow-up discussions with the pricing service or dealer. If we conclude that a price is not valid, we will adjust the price for various factors, such as liquidity, bid-ask spreads and credit considerations. These adjustments are generally based on available market evidence. In the absence of such evidence, management's best estimate is used. All of these processes are executed before we use the prices in preparing our financial statements.

We continually refine our valuation methodologies as markets and products develop and the pricing for certain products becomes more or less transparent. While we believe our valuation methods are appropriate and consistent with those of other market participants, using different methodologies or assumptions to determine fair value could result in a materially different estimate of the fair value of some of our financial instruments.

The dislocation of historical pricing relationships between certain financial instruments persisted during 2011 due to the housing and financial market crisis. These conditions, which have resulted in greater market volatility, wider credit spreads and a lack of price transparency, made the measurement of fair value more difficult and complex for some financial instruments, particularly for financial instruments for which there is no active market, such as our guaranty contracts and loans purchased with evidence of credit deterioration.

Other-Than-Temporary Impairment of Investment Securities

We evaluate available-for-sale securities in an unrealized loss position as of the end of each quarter for other-than-temporary impairment. A debt security is evaluated for other-than-temporary impairment if its fair value is less than its amortized cost basis. We recognize other-than-temporary impairment in earnings if one of the following conditions exists: (1) our intent is to sell the security; (2) it is more likely than not that we will be required to sell the security before the impairment is recovered; or (3) we do not expect to recover our amortized cost basis. If, by contrast, we do not intend to sell the security and will not be required to sell prior to recovery of the amortized cost basis, we recognize only the credit component of other-than-temporary impairment in earnings. We record the noncredit component in other comprehensive income. The credit component is the difference between the security's amortized cost basis and the present value of its expected future cash flows, while the noncredit component is the remaining difference between the security's fair value and the present value of expected future cash flows. If, subsequent to recognizing other-than-temporary impairment, our estimates of future cash flows improve, we recognize the change in estimate prospectively over the remaining life of securities as a component of interest income.

Our evaluation requires significant management judgment and consideration of various factors to determine if we will receive the amortized cost basis of our investment securities. We evaluate a debt security for other-than-temporary impairment using an econometric model that estimates the present value of cash flows given multiple factors. These factors include: the severity and duration of the impairment; recent events specific to the issuer and/or industry to which the issuer belongs; the payment structure of the security; external credit ratings and the failure of the issuer to make scheduled interest or principal payments. We rely on expected future cash flow projections to determine if we will recover the amortized cost basis of our available-for-sale securities.

We provide more detailed information on our accounting for other-than-temporary impairment in "Note 1, Summary of Significant Accounting Policies" and "Note 5, Investments in Securities." Also refer to "Consolidated Balance Sheet Analysis—Investments in Mortgage-Related Securities—Investments in Private-Label Mortgage-Related Securities" for a discussion of other-than-temporary impairment recognized on our investments in Alt-A and subprime private-label securities. See "Risk Factors" for a discussion of the risks associated with possible future write-downs of our investment securities.

Total Loss Reserves

Our total loss reserves consist of the following components:

- Allowance for loan losses;
- Allowance for accrued interest receivable;
- Reserve for guaranty losses; and
- Allowance for preforeclosure property tax and insurance receivable.

These components can be further divided into single-family portions, which collectively make up our single-family loss reserves, and multifamily portions, which collectively make up our multifamily loss reserves.

We maintain an allowance for loan losses and an allowance for accrued interest receivable for loans classified as held for investment, including both loans we hold in our portfolio and loans held in consolidated Fannie Mae MBS trusts. We maintain a reserve for guaranty losses for loans held in unconsolidated Fannie Mae MBS trusts we guarantee and loans we have guaranteed under long-term standby commitments and other credit enhancements we have provided. We also maintain an allowance for preforeclosure property tax and insurance receivable on delinquent loans that is included in "Other assets" in our consolidated balance sheets. These amounts, which we collectively refer to as our total loss reserves, represent probable losses incurred related to loans in our guaranty book of business, including concessions granted to borrowers upon modifications of their loans, as of the balance sheet date.

The allowance for loan losses, allowance for accrued interest receivable and allowance for preforeclosure property tax and insurance receivable are valuation allowances that reflect an estimate of incurred credit losses related to our recorded investment in loans held for investment. The reserve for guaranty losses is a liability account in our consolidated balance sheets that reflects an estimate of incurred credit losses related to our guaranty to each unconsolidated Fannie Mae MBS trust that we will supplement amounts received by the Fannie Mae MBS trust as required to permit timely payments of principal and interest on the related Fannie Mae MBS. As a result, the guaranty reserve considers not only the principal and interest due on the loan at the current balance sheet date, but also an estimate of any additional interest payments due to the trust from the current balance sheet date until the point of loan acquisition or foreclosure. Our loss reserves consist of a specific loss reserve for individually impaired loans and a collective loss reserve for all other loans.

We have an established process, using analytical tools, benchmarks and management judgment, to determine our loss reserves. Although our loss reserve process benefits from extensive historical loan performance data, this process is subject to risks and uncertainties, including a reliance on historical loss information that may not be representative of current conditions. We continually monitor delinquency and default trends and make changes in our historically developed assumptions and estimates as necessary to better reflect present conditions, including current trends in borrower risk and/or general economic trends, changes in risk management practices, and changes in public policy and the regulatory environment. We also consider the recoveries that we expect to receive on mortgage insurance and other loan-specific credit enhancements entered into contemporaneously with and in contemplation of a guaranty or loan purchase transaction, as such recoveries reduce the severity of the loss associated with defaulted loans. Due to the stress in the housing and credit markets and the extent of deterioration in these markets, our process for determining our loss reserves has become significantly more complex and involves a greater degree of management judgment than prior to this period of housing and mortgage market stress.

Single-Family Loss Reserves

We establish a specific single-family loss reserve for individually impaired loans, which includes loans we restructure in troubled debt restructurings, certain nonperforming loans in MBS trusts and acquired credit-impaired loans that have been further impaired subsequent to acquisition. The single-family loss reserve for individually impaired loans has grown as a proportion of the total single-family loss reserves in recent periods due to increases in the population of restructured loans. We typically measure impairment based on the difference between our recorded investment in the loan and the present value of the estimated cash flows we expect to receive, which we calculate using the effective interest rate of the original loan or the effective interest rate at acquisition for an acquired credit-impaired loan. However, when foreclosure is probable on an individually impaired loan, we measure impairment based on the difference between our recorded investment in the loan and the fair value of the underlying property, adjusted for the estimated discounted costs to sell the property and estimated insurance or other proceeds we expect to receive. We then allocate a portion of the reserve to interest accrued on the loans as of the balance sheet date.

We establish a collective single-family loss reserve for all other single-family loans in our single-family guaranty book of business using a model that estimates the probability of default of loans to derive an overall loss reserve estimate given multiple factors such as: origination year, mark-to-market LTV ratio, delinquency status and loan product type. We believe that the loss severity estimates we use in determining our loss reserves reflect current available information on actual events and conditions as of each balance sheet date, including current home prices. Our loss severity estimates do not incorporate assumptions about future changes in home prices. We do, however, use a look back period to develop our loss severity estimates for all loan categories. We then allocate a portion of the reserve to interest accrued on the loans as of the balance sheet date.

In the fourth quarter of 2011, we updated the estimated probability, based on historical trends, of a trial modification becoming a permanent modification. Permanent modifications are a better indicator of a loan's performance than loans that do not complete a trial modification period. The impact of applying a higher probability of success to our trial modifications reduced our allowance for loan losses and credit-related expenses by approximately $700 million. Additionally, we enhanced our process to estimate the recovery amount incorporated in our allowance for loan losses related to repurchase requests. The recovery estimate takes into account individual loan attributes such as the probability of default and severity on our individually impaired loans and resulted in a reduction in our allowance for loan losses and our credit-related expenses of approximately $800 million.

In the third quarter of 2011, we updated our allowance for loan loss models for individually impaired loans to incorporate more home price data at the regional level rather than at the national level. We believe this approach provides a better estimation of possible home price paths and related default expectations; it has resulted in a decrease to our allowance for loan losses and a reduction in our provision for loan losses of approximately $800 million.

In the second quarter of 2011, we updated our loan loss models to incorporate more recent data on prepayments of modified loans, which contributed to an increase in our allowance for loan losses and an increase in credit-related expenses of approximately $1.5 billion. The change resulted in slower expected prepayment speeds, which extended the expected lives of modified loans and lowered the present value of cash flows on those loans. Also in the second quarter of 2011, we updated our estimate of the reserve for guaranty losses related to private-label mortgage-related securities that we have guaranteed to increase our focus on earlier stage delinquency, rather than foreclosure trends, as the primary driver in estimating incurred losses. We believe delinquencies are a better indicator of incurred losses compared to foreclosure trends because the recent delays in the foreclosure process have interrupted the normal flow of delinquent mortgages into foreclosure. This update resulted in an increase in our reserve for guaranty losses included within "Other liabilities" and an increase in credit related-expenses of approximately $700 million.

Multifamily Loss Reserves

We establish a specific multifamily loss reserve for multifamily loans that we determine are individually impaired. We identify multifamily loans for evaluation for impairment through a credit risk assessment process. As part of this assessment process, we stratify multifamily loans into different internal risk categories based on the credit risk inherent in each individual loan and management judgment. We categorize loan credit risk, taking into consideration available operating statements and expected cash flows from the underlying property, the estimated value of the property, the historical loan payment experience and current relevant market conditions that may impact credit quality. If we conclude that a multifamily loan is impaired, we measure the impairment based on the difference between our recorded investment in the loan and the fair value of the underlying property less the estimated discounted costs to sell the property and any lender loss sharing or other proceeds we expect to receive. When a modified loan is deemed individually impaired, we measure the impairment based on the difference between our recorded investment in the loan and the present value of expected cash flows discounted at the loan's original interest rate. However, when foreclosure is probable on an individually impaired loan, we measure impairment based on the difference between our recorded investment in the loan and the fair value of the underlying property, less the estimated costs to sell the property and any lender loss sharing or other proceeds we expect to receive. We generally obtain property appraisals from independent third-parties to determine the fair value of multifamily loans that we consider to be individually impaired. We also obtain property appraisals and broker price opinions when we foreclose on a multifamily property. We then allocate a portion of the reserve to interest accrued on the loans as of the balance sheet date.

The collective multifamily loss reserve for all other loans in our multifamily guaranty book of business is established using an internal model that applies loss factors to loans in similar risk categories. Our loss factors are developed based on our historical default and loss severity experience. Management may also apply judgment to adjust the loss factors derived from our models, taking into consideration model imprecision and specifically known events, such as current credit conditions, that may affect the credit quality of our multifamily loan portfolio but are not yet reflected in our model-generated loss factors. We then allocate a portion of the reserve to interest accrued on the loans as of the balance sheet date.

CONSOLIDATED RESULTS OF OPERATIONS

The section below provides a discussion of our consolidated results of operations for the periods indicated and should be read together with our consolidated financial statements, including the accompanying notes.

In 2009, the FASB concurrently revised the accounting guidance related to the consolidation of variable interest entities (the "consolidation accounting guidance") and the accounting guidance related to transfers of financial assets. The revisions to the accounting guidance for these topics replaced the previous accounting model with a qualitative model for determining the primary beneficiary of a VIE and also increased the population of entities that are subject to assessment under the consolidation accounting guidance by removing the scope exception for qualifying special purpose entities. On January 1, 2010, we prospectively adopted the revised guidance for these topics, which had a significant impact on the presentation and comparability of our consolidated financial statements. We consolidate the substantial majority of our single-class securitization trusts and upon adoption of the consolidation accounting guidance, eliminated previously recorded deferred revenue from our guaranty arrangements. While some line items in our consolidated statements of operations were not impacted, others were impacted significantly, which reduces the comparability of our results for 2011 and 2010 with our results for 2009. The following table provides a summary of the line items that were impacted significantly as a result of our adoption of the consolidation accounting standards.

Item	Accounting Treatment
Net interest income	• We recognize the underlying assets and liabilities of the substantial majority of our MBS trusts in our consolidated balance sheets, which increases both our interest-earning assets and interest-bearing liabilities and related interest income and interest expense. • Contractual guaranty fees and the amortization of deferred cash fees received after December 31, 2009 are recognized into interest income. • We include nonaccrual loans from the majority of our MBS trusts in our consolidated financial statements, which decreases our net interest income as we do not recognize interest income on these loans while we continue to recognize interest expense for amounts owed to MBS certificateholders.
Guaranty fee income (included in Fee and other income)	• Substantially all of our guaranty-related assets and liabilities in our consolidated balance sheets are eliminated. We do not recognize income or loss from amortizing these assets and liabilities nor do we recognize changes in their fair value. We recognize both contractual guaranty fees and the amortization of deferred cash fees received after December 31, 2009 through guaranty fee income only on those amounts related to unconsolidated trusts and other credit enhancement arrangements, such as our long-term standby commitments.
Credit-related expenses	• As the majority of our trusts are consolidated, we do not record fair value losses on credit-impaired loans acquired from the substantial majority of our trusts. • The substantial majority of our combined loss reserves are recognized in our allowance for loan losses to reflect the loss allowance against the consolidated mortgage loans. We use a different methodology to estimate incurred losses for our allowance for loan losses as compared with our reserve for guaranty losses, which reduces our credit-related expenses.
Investment gains (losses), net	• Our portfolio securitization transactions that reflect transfers of assets to consolidated trusts do not qualify as sales. Accordingly, we do not designate the substantial majority of our loans held for securitization as held-for-sale, thereby reducing the amount we recognize as portfolio securitization gains and losses and our lower of cost or fair value adjustments. • We do not record gains or losses on the sale from our portfolio of the substantial majority of our available-for-sale MBS because these securities are eliminated in consolidation.
Fair value gains (losses), net	• We do not record fair value gains or losses on the majority of our trading MBS, which reduces the amount of securities subject to recognition of changes in fair value in our consolidated statement of operations.

See "Note 1, Summary of Significant Accounting Policies" for a further discussion of the impacts of the consolidation accounting guidance on our consolidated financial statements.

Additionally, we expect high levels of period-to-period volatility in our results of operations and financial condition, principally due to changes in market conditions that result in periodic fluctuations in the estimated fair value of financial instruments that we mark to market through our earnings. These instruments include trading securities and derivatives. The estimated fair value of our trading securities and derivatives may fluctuate substantially from period-to-period because of changes in interest rates, credit spreads and interest rate volatility, as well as activity related to these financial instruments. While the estimated fair value of our derivatives may fluctuate, some of the financial instruments that the derivatives hedge are not recorded at fair value in our consolidated financial statements.

Table 6 displays our consolidated results of operations for the periods indicated.

Table 6: Summary of Consolidated Results of Operations

	For the Year Ended December 31,			Variance	
	2011	2010	2009	2011 vs. 2010	2010 vs. 2009
	(Dollars in millions)				
Net interest income	$ 19,281	$ 16,409	$ 14,510	$ 2,872	$ 1,899
Fee and other income	1,163	1,084	7,984	79	(6,900)
Net revenues	**$ 20,444**	**$ 17,493**	**$ 22,494**	**$ 2,951**	**$ (5,001)**
Investment gains, net	506	346	1,458	160	(1,112)
Net other-than-temporary impairments	(308)	(722)	(9,861)	414	9,139
Fair value losses, net	(6,621)	(511)	(2,811)	(6,110)	2,300
Administrative expenses	(2,370)	(2,597)	(2,207)	227	(390)
Credit-related expenses[(1)]	(27,498)	(26,614)	(73,536)	(884)	46,922
Other non-interest expenses[(2)]	(1,098)	(1,495)	(8,544)	397	7,049
Loss before federal income taxes	(16,945)	(14,100)	(73,007)	(2,845)	58,907
Benefit for federal income taxes	(90)	(82)	(985)	(8)	903
Net loss	**(16,855)**	**(14,018)**	**(72,022)**	**(2,837)**	**58,004**
Less: Net loss attributable to the noncontrolling interest	—	4	53	(4)	(49)
Net loss attributable to Fannie Mae	**$(16,855)**	**$(14,014)**	**$(71,969)**	**$(2,841)**	**$57,955**
Total comprehensive loss attributable to Fannie Mae	$(16,408)	$(10,570)	$(60,472)	$(5,838)	$49,902

(1) Consists of provision for loan losses, provision for guaranty losses, and foreclosed property expense.

(2) Consists of debt extinguishment losses, net and other expenses.

Net Interest Income

Net interest income represents the difference between interest income and interest expense and is a primary source of our revenue. The amount of interest income and interest expense we recognize in the consolidated statements of operations and comprehensive loss is affected by our investment and debt activity, asset yields and our funding costs.

Table 7 displays an analysis of our net interest income, average balances, and related yields earned on assets and incurred on liabilities for the periods indicated. For most components of the average balances, we use a daily weighted average of amortized cost. When daily average balance information is not available, such as for mortgage loans, we use monthly averages. Table 8 displays the change in our net interest income between periods and the extent to which that variance is attributable to: (1) changes in the volume of our interest-earning assets and interest-bearing liabilities or (2) changes in the interest rates of these assets and liabilities.

Table 7: Analysis of Net Interest Income and Yield

	For the Year Ended December 31,								
	2011			2010			2009		
	Average Balance	Interest Income/ Expense	Average Rates Earned/ Paid	Average Balance	Interest Income/ Expense	Average Rates Earned/ Paid	Average Balance	Interest Income/ Expense	Average Rates Earned/Paid
	(Dollars in millions)								
Interest-earning assets:									
Mortgage loans of Fannie Mae[1]	$ 392,719	$ 14,829	3.78%	$ 362,785	$ 14,992	4.13%	$321,394	$15,378	4.78%
Mortgage loans of consolidated trusts[1]	2,596,816	123,633	4.76	2,619,258	132,591	5.06	104,385	6,143	5.88
Total mortgage loans	2,989,535	138,462	4.63	2,982,043	147,583	4.95	425,779	21,521	5.05
Mortgage-related securities	316,963	14,607	4.61	387,798	19,552	5.04			
Elimination of Fannie Mae MBS held in portfolio	(202,806)	(10,360)	5.11	(250,748)	(13,232)	5.28			
Total mortgage-related securities, net[2]	114,157	4,247	3.72	137,050	6,320	4.61	347,467	17,230	4.96
Non-mortgage securities[3]	71,713	117	0.16	91,613	221	0.24	53,724	247	0.46
Federal funds sold and securities purchased under agreements to resell or similar arrangements	26,045	32	0.12	28,685	62	0.22	46,073	260	0.56
Advances to lenders	3,943	85	2.16	3,523	84	2.38	4,580	97	2.12
Total interest-earning assets	$3,205,393	$142,943	4.46%	$3,242,914	$154,270	4.76%	$877,623	$39,355	4.48%
Interest-bearing liabilities:									
Short-term debt[4]	$ 160,704	$ 301	0.19%	$ 212,784	$ 619	0.29%	$280,260	$ 2,306	0.82%
Long-term debt	585,362	14,711	2.51	583,369	18,857	3.23	561,907	22,195	3.95
Total short-term and long-term funding debt	746,066	15,012	2.01	796,153	19,476	2.45	842,167	24,501	2.91
Debt securities of consolidated trusts	2,651,121	119,010	4.49	2,682,434	131,617	4.91			
Elimination of Fannie Mae MBS held in portfolio	(202,806)	(10,360)	5.11	(250,748)	(13,232)	5.28			
Total debt securities of consolidated trusts held by third parties	2,448,315	108,650	4.44	2,431,686	118,385	4.87	6,033	344	5.70
Total interest-bearing liabilities	$3,194,381	$123,662	3.87%	$3,227,839	$137,861	4.27%	$848,200	$24,845	2.93%
Impact of net non-interest bearing funding	$ 11,012		0.01%	$ 15,075		0.02%	$ 29,423		0.10%
Net interest income/net interest yield[2]		$ 19,281	0.60%		$ 16,409	0.51%		$14,510	1.65%
Net interest income/net interest yield of consolidated trusts[5]		$ 4,623	0.18%		$ 974	0.04%			

	As of December 31,		
	2011	2010	2009
Selected benchmark interest rates[6]			
3-month LIBOR	0.58%	0.30%	0.25%
2-year swap rate	0.73	0.80	1.42
5-year swap rate	1.22	2.17	2.98
30-year Fannie Mae MBS par coupon rate	2.88	4.13	4.56

(1) Interest income includes interest income on acquired credit-impaired loans of $2.1 billion, $2.2 billion and $619 million for the years ended December 31, 2011, 2010 and 2009, respectively. These amounts include accretion income of $1.0 billion, $1.0 billion and $405 million for the years ended December 31, 2011, 2010 and 2009, respectively, relating to a portion of the fair value losses recorded upon the acquisition of the loans. Average balance includes loans on nonaccrual status, for which interest income is recognized when collected.

(2) Includes an out-of-period adjustment of $727 million to reduce "Interest income: Available-for-sale securities" in our consolidated statements of operations and comprehensive loss for the year ended December 31, 2011. Without this adjustment the average interest rate earned on total mortgage-related securities would have been 4.36% and the total net interest yield would have been 0.62%.

(3) Includes cash equivalents.

(4) Includes federal funds purchased and securities sold under agreements to repurchase.

(5) Net interest income of consolidated trusts represents interest income from mortgage loans of consolidated trusts less interest expense from debt securities of consolidated trusts. Net interest yield is calculated based on net interest income from consolidated trusts divided by average balance of mortgage loans of consolidated trusts.

(6) Data from British Bankers' Association, Thomson Reuters Indices and Bloomberg L.P.

Table 8: Rate/Volume Analysis of Changes in Net Interest Income

	2011 vs. 2010			2010 vs. 2009		
	Total Variance	Variance Due to:[1] Volume	Rate	Total Variance	Variance Due to:[1] Volume	Rate
	(Dollars in millions)					
Interest income:						
Mortgage loans of Fannie Mae	$ (163)	$ 1,185	$ (1,348)	$ (386)	$ 1,849	$(2,235)
Mortgage loans of consolidated trusts	(8,958)	(1,128)	(7,830)	126,448	127,426	(978)
Total mortgage loans	(9,121)	57	(9,178)	126,062	129,275	(3,213)
Total mortgage-related securities, net[2]	(1,346)	(902)	(444)	(10,910)	(9,779)	(1,131)
Non-mortgage securities[3]	(104)	(42)	(62)	(26)	125	(151)
Federal funds sold and securities purchased under agreements to resell or similar arrangements	(30)	(5)	(25)	(198)	(75)	(123)
Advances to lenders	1	9	(8)	(13)	(24)	11
Total interest income	(10,600)	(883)	(9,717)	114,915	119,522	(4,607)
Interest expense:						
Short-term debt[4]	(318)	(130)	(188)	(1,687)	(458)	(1,229)
Long-term debt	(4,146)	64	(4,210)	(3,338)	821	(4,159)
Total short-term and long-term funding debt	(4,464)	(66)	(4,398)	(5,025)	363	(5,388)
Total debt securities of consolidated trusts held by third parties	(9,735)	940	(10,675)	118,041	118,099	(58)
Total interest expense	(14,199)	874	(15,073)	113,016	118,462	(5,446)
Net interest income[2]	$ 3,599	$(1,757)	$ 5,356	$ 1,899	$ 1,060	$ 839

(1) Combined rate/volume variances are allocated to both rate and volume based on the relative size of each variance.

(2) Excludes an out-of-period adjustment of $727 million that reduced the interest income on mortgage related securities for the year ended December 31, 2011.

(3) Includes cash equivalents.

(4) Includes federal funds purchased and securities sold under agreements to repurchase.

Net interest income increased during 2011, as compared with 2010, due to lower interest expense on debt, which was partially offset by lower interest income on loans and securities. The primary drivers of these changes were:

- a reduction in the interest expense of debt of consolidated trusts driven by a decrease in rates. The rate on debt of consolidated trusts is generally driven by mortgage rates of loans securitized in MBS, and these mortgage rates declined in 2011;
- lower interest expense on funding debt due to lower borrowing rates, which allowed us to continue to replace higher-cost debt with lower-cost debt;

- lower interest income on mortgage securities due to a decrease in the balance of our mortgage securities, as we continue to manage our portfolio requirements; and
- lower yields on mortgage loans as new business acquisitions continue to replace higher-yielding loans with loans issued at lower mortgage rates. The reduction in interest income on loans due to lower yields was partially offset by a reduction in the amount of interest income not recognized for nonaccrual mortgage loans, due to a decline in the balance of nonaccrual loans in our consolidated balance sheets as we continue to complete a high number of loan modifications and foreclosures.

In the three month period ended December 31, 2011, we identified an error in the rate used to calculate interest income on available-for-sale securities, which resulted in an overstatement of interest income. To correct the error, we recorded an out-of-period adjustment of $727 million to reduce "Interest Income: Available-for-sale securities" in our consolidated statement of operations and comprehensive loss for the year ended December 31, 2011.

Net interest income increased during 2010 compared with 2009 primarily as a result of an increase in interest income due to the recognition of contractual guaranty fees in interest income upon adoption of the consolidation accounting guidance and a reduction in the interest expense on debt that we have issued as lower borrowing rates allowed us to replace higher-cost debt with lower-cost debt. Partially offsetting these positive effects for 2010 was lower interest income from the interest-earning assets that we own due to lower yields on our mortgage and non-mortgage assets. The increase in net interest income was further offset by a significant increase in the number of loans on nonaccrual status in our consolidated balance sheets, because we do not recognize interest income on loans that have been placed on nonaccrual status, except when cash payments are received. The increase in loans on nonaccrual status in 2010 was due to our adoption of the consolidation accounting guidance.

Net interest yield significantly decreased for 2010 compared with 2009. We recognize the contractual guaranty fee and the amortization of deferred cash fees received after December 31, 2009 on the underlying mortgage loans of consolidated trusts as interest income, which represents the spread between the net interest yield on the underlying mortgage assets and the rate on the debt of the consolidated trusts. Upon adoption of the consolidation accounting guidance, our interest-earning assets and interest-bearing liabilities both increased by approximately $2.4 trillion. The lower spread on these interest-earning assets and liabilities reduced our net interest yield for 2010 as compared with 2009.

Additionally, our net interest income and net interest yield were higher than they would have otherwise been in 2011 and 2010 because our debt funding needs were lower than they would otherwise have been required as a result of funds we received from Treasury under the senior preferred stock purchase agreement. Further, dividends paid to Treasury are not recognized in interest expense.

Table 9 displays the interest income not recognized for loans on nonaccrual status and the resulting reduction in our net interest yield from mortgage loans.

Table 9: Impact of Nonaccrual Loans on Net Interest Income

	For the Year Ended December 31,					
	2011		2010		2009	
	Interest Income not Recognized for Nonaccrual Loans(1)	Reduction in Net Interest Yield(2)	Interest Income not Recognized for Nonaccrual Loans(1)	Reduction in Net Interest Yield(2)	Interest Income not Recognized for Nonaccrual Loans(1)	Reduction in Net Interest Yield(2)
	(Dollars in millions)					
Mortgage loans of Fannie Mae	$(4,666)		$(4,721)			
Mortgage loans of consolidated trusts	(896)		(3,692)			
Total mortgage loans	$(5,562)	(18) bp	$(8,413)	(26) bp	$(1,238)	(14) bp

(1) Amount includes cash received for loans on nonaccrual status.

(2) Calculated based on annualized interest income not recognized divided by total interest-earning assets, expressed in basis points.

For a discussion of the interest income from the assets we have purchased and the interest expense from the debt we have issued, see the discussion of our Capital Markets group's net interest income in "Business Segment Results."

Net Other-Than-Temporary Impairment

The net other-than-temporary impairment charges recorded in 2011 and 2010 were primarily driven by a net decline in forecasted home prices for certain geographic regions, which resulted in a decrease in the present value of our cash flow projections on Alt-A and subprime securities. The charges recorded in 2011 were partially offset by an out-of-period adjustment, which reduced "Other-than-temporary-impairments" in our consolidated statements of operations and comprehensive loss for the year ended December 31, 2011. Net other-than-temporary impairment decreased in 2010 compared with 2009 due to slower deterioration of the estimated credit component of the fair value losses of these securities. In addition, net other-than-temporary impairment decreased in 2010 compared with 2009 because, effective beginning in the second quarter of 2009, we recognize only the credit portion of other-than-temporary impairment in our consolidated statements of operations due to the adoption of new other-than-temporary impairment accounting guidance. The net other-than-temporary impairment charge recorded prior to April 1, 2009 included both the credit and non-credit components of the loss in fair value. Approximately 57% of the impairment recorded in 2009 was recorded in the first quarter of 2009 prior to the change in accounting guidance.

See "Note 5, Investments in Securities" for additional information regarding the net other-than-temporary impairment recognized in 2011, 2010 and 2009, including a discussion of an out-of-period adjustment we recorded in 2011.

Fair Value Gains (Losses), Net

Table 10 displays the components of our fair value gains and losses.

Table 10: Fair Value Gains (Losses), Net

	For the Year Ended December 31,		
	2011	**2010**	**2009**
	(Dollars in millions)		
Risk management derivatives fair value losses attributable to:			
Net contractual interest expense accruals on interest rate swaps	$(2,185)	$(2,895)	$(3,359)
Net change in fair value during the period	(3,954)	1,088	(1,337)
Total risk management derivatives fair value losses, net	(6,139)	(1,807)	(4,696)
Mortgage commitment derivatives fair value losses, net	(423)	(1,193)	(1,654)
Total derivatives fair value losses, net	(6,562)	(3,000)	(6,350)
Trading securities gains, net	266	2,692	3,744
Other, net(1)	(325)	(203)	(205)
Fair value losses, net	$(6,621)	$ (511)	$(2,811)

	2011	**2010**	**2009**
5-year swap rate:			
As of March 31	2.47%	2.73%	2.22%
As of June 30	2.03	2.06	2.97
As of September 30	1.26	1.51	2.65
As of December 31	1.22	2.18	2.98

(1) Consists of the following: debt fair value gains (losses), net, debt foreign exchange gains (losses), net, and mortgage loans fair value gains (losses), net.

Risk Management Derivatives Fair Value (Losses) Gains, Net

Risk management derivative instruments are an integral part of our management of interest rate risk. We supplement our issuance of debt securities with derivative instruments to further reduce duration risk, which includes prepayment risk. We purchase option-based risk management derivatives to economically hedge prepayment risk. In cases where options obtained through callable debt issuances are not needed for risk management derivative purposes, we may sell options in the over-the-counter derivatives market in order to offset the options obtained in the callable debt. Our principal purpose in using derivatives is to manage our aggregate interest rate risk profile within prescribed risk parameters. We generally use only derivatives that are relatively liquid and straightforward to value. We consider the cost of derivatives used in our management of interest rate risk to be an inherent part of the cost of funding and hedging our mortgage investments and economically similar to the interest expense that we recognize on the debt we issue to fund our mortgage investments.

We present, by derivative instrument type, the fair value gains and losses on our derivatives for the years ended December 31, 2011, 2010 and 2009 in "Note 9, Derivative Instruments."

The primary factors affecting the fair value of our risk management derivatives include the following:

- *Changes in interest rates:* Our derivatives, in combination with our issuances of debt securities, are intended to offset changes in the fair value of our mortgage assets. Mortgage assets tend to increase in value when interest rates decrease and, conversely, decrease in value when interest rates rise. Pay-fixed swaps decrease in value and receive-fixed swaps increase in value as swap rates decrease (with the opposite being true when swap rates increase). Because the composition of our pay-fixed and receive-fixed derivatives varies across the yield curve, the overall fair value gains and losses of our derivatives are sensitive to flattening and steepening of the yield curve.
- *Implied interest rate volatility:* Our derivatives portfolio includes option-based derivatives, which we purchase to economically hedge the prepayment option embedded in our mortgage investments and sell to offset the options obtained through callable debt issuances when those options are not needed for risk management purposes. A key variable in estimating the fair value of option-based derivatives is implied volatility, which reflects the market's expectation of the magnitude of future changes in interest rates. Assuming all other factors are held equal, including interest rates, a decrease in implied volatility would reduce the fair value of our purchased options and an increase in implied volatility would increase the fair value of our purchased options, while having the opposite effect on the options that we have sold.
- *Changes in our derivative activity:* As interest rates change, we are likely to rebalance our portfolio to manage our interest rate exposure. As interest rates decrease, expected mortgage prepayments are likely to increase, which reduces the duration of our mortgage investments. In this scenario, we generally will rebalance our existing portfolio to manage this risk by adding receive-fixed swaps, which shortens the duration of our liabilities. Conversely, when interest rates increase and the duration of our mortgage assets increases, we are likely to add pay-fixed swaps, which have the effect of extending the duration of our liabilities. We use derivatives to rebalance our portfolio when the duration of our mortgage assets changes as the result of mortgage purchases or sales. We also use foreign-currency swaps to manage the foreign exchange impact of our foreign currency-denominated debt issuances.
- *Time value of purchased options:* Intrinsic value and time value are the two primary components of an option's price. The intrinsic value is determined by the amount by which the market rate exceeds or is below the exercise, or strike rate, such that the option is in-the-money. The time value of an option is the amount by which the price of an option exceeds its intrinsic value. Time decay refers to the diminishing value of an option over time as less time remains to exercise the option.

We recorded risk management derivative fair value losses in 2011 primarily as a result of a decrease in the fair value of our pay-fixed derivatives due to a significant decline in swap rates during the period.

We recorded risk management derivative fair value losses in 2010 primarily as a result of time decay on our purchased options; a decrease in the fair value of our pay-fixed derivatives during the first quarter of 2010 due to a decline in swap rates during that period; and a decrease in implied interest rate volatility, which reduced the fair value of our purchased options.

Risk management derivative losses in 2009 were driven by losses on our receive-fixed swaps and receive-fixed option-based derivatives due to an increase in swap rates and by time decay on our purchased options, partially offset by gains on our net-pay fixed book due to higher swap rates.

Because risk management derivatives are an important part of our interest rate risk management strategy, it is important to evaluate the impact of our derivatives in the context of our overall interest rate risk profile and in conjunction with the other offsetting mark-to-market gains and losses presented in Table 10. For additional information on our use of derivatives to manage interest rate risk, including the economic objective of our use of various types of derivative instruments, changes in our derivatives activity and the outstanding notional amounts, see "Risk Management—Market Risk Management, Including Interest Rate Risk Management—Interest Rate Risk Management." See "Consolidated Balance Sheet Analysis—Derivative Instruments" for a discussion of the effect of derivatives on our consolidated balance sheets.

Mortgage Commitment Derivatives Fair Value Losses, Net

Commitments to purchase or sell some mortgage-related securities and to purchase single-family mortgage loans are generally accounted for as derivatives. For open mortgage commitment derivatives, we include changes in their fair value in our consolidated statements of operations and comprehensive loss. When derivative purchase commitments settle, we include the fair value of the commitment on the settlement date in the cost basis of the loan or security we purchase. When derivative commitments to sell securities settle, we include the fair value of the commitment on the settlement date in the cost basis of the security we sell. Purchases of securities issued by our consolidated MBS trusts are treated as extinguishments of debt; we recognize the fair value of the commitment on the settlement date as a component of debt extinguishment gains and losses. Sales of securities issued by our consolidated MBS trusts are treated as issuances of consolidated debt; we recognize the fair value of the commitment on the settlement date as a component of debt in the cost basis of the debt issued.

We recognized losses on our mortgage commitments in 2011, 2010 and 2009 primarily due to losses on commitments to sell mortgage-related securities as a result of a decline in interest rates during the commitment period. Additionally, mortgage commitment losses in 2009 were associated with a large volume of dollar roll transactions.

Trading Securities Gains (Losses), Net

We recognized fair value gains on our trading securities in 2011, 2010 and 2009. The estimated fair value of our trading securities may fluctuate substantially from period-to-period primarily due to changes in interest rates and credit spreads. Gains from our trading securities in 2011 were primarily driven by higher prices on our CMBS as a result of significant narrowing of the U.S. Treasury yield curve and swap yield curve spreads offset by widening credit spreads. Gains from trading securities in 2010 were primarily driven by a decrease in interest rates and narrowing of credit spreads, primarily on CMBS. Gains from trading securities in 2009 were primarily attributable to the narrowing of spreads on CMBS, agency MBS and non-mortgage related securities, partially offset by an increase in interest rates.

We provide additional information on our trading and available-for-sale securities in "Consolidated Balance Sheet Analysis—Investments in Mortgage-Related Securities." We disclose the sensitivity of changes in the fair value of our trading securities to changes in interest rates in "Risk Management—Market Risk Management, Including Interest Rate Risk Management—Measurement of Interest Rate Risk."

Administrative Expenses

Administrative expenses decreased in 2011 compared with 2010 due to ongoing operating cost reduction efforts we are undertaking to increase productivity and lower our administrative costs. We have taken recent steps to realign our organization, personnel and resources to focus on our most critical priorities, which include providing liquidity, stability and affordability to the mortgage market. Administrative expenses increased in 2010 compared with 2009 due to an increase in employees and third-party services primarily related to our foreclosure prevention and credit loss mitigation efforts.

Credit-Related Expenses

We refer to our provision for loan losses and our provision for guaranty losses collectively as our "provision for credit losses." Credit-related expenses consist of our provision for credit losses and foreclosed property expense.

Provision for Credit Losses

Our total loss reserves provide for an estimate of credit losses incurred in our guaranty book of business, including concessions we granted borrowers upon modification of their loans, as of each balance sheet date. We establish our loss reserves through our provision for credit losses for losses that we believe have been incurred and will eventually be reflected over time in our charge-offs. When we determine that a loan is uncollectible, typically upon foreclosure, we record a charge-off against our loss reserves. We record recoveries of previously charged-off amounts as a reduction to charge-offs.

Table 11 displays the components of our total loss reserves and our total fair value losses previously recognized on loans purchased out of unconsolidated MBS trusts reflected in our consolidated balance sheets. Because these fair value losses lowered our recorded loan balances, we have fewer inherent losses in our guaranty book of business and consequently require lower total loss reserves. For these reasons, we consider these fair value losses as an "effective reserve," apart from our total loss reserves, to the extent that we expect to realize these amounts as credit losses on the acquired loans in the future. As of December 31, 2011 and 2010, we estimate that over two-thirds of this amount represents credit losses we expect to realize in the future and nearly one-third will eventually be recovered, either through net interest income for loans that cure or through foreclosed property income for loans where the sale of the collateral exceeds our recorded investment in the loan. We exclude these fair value losses from our credit loss calculation as described in "Credit Loss Performance Metrics."

Table 11: Total Loss Reserves

	As of December 31,	
	2011	2010
	(Dollars in millions)	
Allowance for loan losses	$72,156	$61,556
Reserve for guaranty losses[1]	994	323
Combined loss reserves	73,150	61,879
Allowance for accrued interest receivable	2,496	3,414
Allowance for preforeclosure property taxes and insurance receivable[2]	1,292	958
Total loss reserves	76,938	66,251
Fair value losses previously recognized on acquired credit impaired loans[3]	16,273	19,171
Total loss reserves and fair value losses previously recognized on acquired credit-impaired loans	$93,211	$85,422

(1) Amount included in "Other liabilities" in our consolidated balance sheets.

(2) Amount included in "Other assets" in our consolidated balance sheets.

(3) Represents the fair value losses on loans purchased out of unconsolidated MBS trusts reflected in our consolidated balance sheets.

We refer to our allowance for loan losses and reserve for guaranty losses collectively as our combined loss reserves. We summarize the changes in our combined loss reserves in Table 12. Because we recognized mortgage loans held by newly consolidated trusts upon adoption of the consolidation accounting guidance on January 1, 2010, we increased our "Allowance for loan losses" and decreased our "Reserve for guaranty losses." The impact at the transition date is reported as "Adoption of consolidation accounting guidance." The decrease in the combined loss reserves on the adoption date represents a difference in the methodology used to estimate incurred losses for our allowance for loan losses as compared with our reserve for guaranty losses and our separate presentation of the portion of the allowance related to accrued interest as our "Allowance for accrued interest receivable."

Table 12: Allowance for Loan Losses and Reserve for Guaranty Losses (Combined Loss Reserves)

	For the Year Ended December 31,								
	2011			2010					
	Of Fannie Mae	Of Consolidated Trusts	Total	Of Fannie Mae	Of Consolidated Trusts	Total	2009	2008	2007
	(Dollars in millions)								
Changes in combined loss reserves:									
Allowance for loan losses:									
Beginning balance, January 1	$ 48,530	$13,026	$ 61,556	$ 8,078	$ 1,847	$ 9,925	$ 2,772	$ 629	$ 284
Adoption of consolidation accounting guidance	—	—	—	—	43,576	43,576	—	—	—
Provision for loan losses	14,080	11,834	25,914	13,067	11,635	24,702	9,569	4,022	658
Charge-offs[1][2]	(19,398)	(1,772)	(21,170)	(15,852)	(7,026)	(22,878)	(2,245)	(1,987)	(407)
Recoveries	3,636	1,636	5,272	1,913	1,164	3,077	214	190	107
Transfers[3]	9,980	(9,980)	—	44,714	(44,714)	—	—	—	—
Other[4]	481	103	584	(3,390)	6,544	3,154	(385)	(82)	(13)
Ending balance, December 31[5]	$ 57,309	$14,847	$ 72,156	$ 48,530	$ 13,026	$ 61,556	$ 9,925	$ 2,772	$ 629
Reserve for guaranty losses:									
Beginning balance, January 1	$ 323	$ —	$ 323	$ 54,430	$ —	$ 54,430	$ 21,830	$ 2,693	$ 519
Adoption of consolidation accounting guidance	—	—	—	(54,103)	—	(54,103)	—	—	—
Provision for guaranty losses	804	—	804	194	—	194	63,057	23,929	3,906
Charge-offs	(138)	—	(138)	(203)	—	(203)	(31,142)	(4,986)	(1,782)
Recoveries	5	—	5	5	—	5	685	194	50
Ending balance, December 31	$ 994	$ —	$ 994	$ 323	$ —	$ 323	$ 54,430	$21,830	$ 2,693
Combined loss reserves:									
Beginning balance, January 1	$ 48,853	$13,026	$ 61,879	$ 62,508	$ 1,847	$ 64,355	$ 24,602	$ 3,322	$ 803
Adoption of consolidation accounting guidance	—	—	—	(54,103)	43,576	(10,527)	—	—	—
Total provision for credit losses	14,884	11,834	26,718	13,261	11,635	24,896	72,626	27,951	4,564
Charge-offs[1][2]	(19,536)	(1,772)	(21,308)	(16,055)	(7,026)	(23,081)	(33,387)	(6,973)	(2,189)
Recoveries	3,641	1,636	5,277	1,918	1,164	3,082	899	384	157
Transfers[3]	9,980	(9,980)	—	44,714	(44,714)	—	—	—	—
Other[4]	481	103	584	(3,390)	6,544	3,154	(385)	(82)	(13)
Ending balance, December 31[5]	$ 58,303	$14,847	$ 73,150	$ 48,853	$ 13,026	$ 61,879	$ 64,355	$24,602	$ 3,322
Attribution of charge-offs:									
Charge-offs attributable to guaranty book of business			$(21,192)			$(22,901)	$(12,832)	$ (4,544)	$ (825)
Charge-offs attributable to fair value losses on:									
Acquired credit-impaired loans			(116)			(180)	(20,327)	(2,096)	(1,364)
HomeSaver Advance loans			—			—	(228)	(333)	—
Total charge-offs			$(21,308)			$(23,081)	$(33,387)	$ (6,973)	$(2,189)
Allocation of combined loss reserves:									
Balance at end of each period attributable to:									
Single-family			$ 71,512			$ 60,163	$ 62,312	$24,498	$ 3,249
Multifamily			1,638			1,716	2,043	104	73
Total			$ 73,150			$ 61,879	$ 64,355	$24,602	$ 3,322
Single-family and multifamily combined loss reserves as a percentage of applicable guaranty book of business:									
Single-family			2.52%			2.10%	2.14%	0.87%	0.13%
Multifamily			0.84			0.91	1.10	0.06	0.05
Combined loss reserves as a percentage of:									
Total guaranty book of business			2.41%			2.03%	2.08%	0.83%	0.12%
Total nonperforming loans[6]			29.03			24.40	28.98	20.51	12.19

(1) Includes accrued interest of $1.4 billion, $2.4 billion, $1.5 billion, $642 million and $128 million for the years ended December 31, 2011, 2010, 2009, 2008 and 2007, respectively.

(2) While we purchase the substantial majority of loans that are four or more months delinquent from our MBS trusts, we do not exercise this option to purchase loans during a forbearance period. Accordingly, charge-offs of consolidated trusts generally represent loans that remained in our consolidated trusts at the time of default.

(3) Includes transfers from trusts for delinquent loan purchases.

(4) Amounts represent the net activity recorded in our allowances for accrued interest receivable and preforeclosure property taxes and insurance receivable from borrowers. The provision for credit losses, charge-offs, recoveries and transfer activity included in this table reflects all changes for both the allowance for loan losses and the valuation allowances for accrued interest and preforeclosure property taxes and insurance receivable that relate to the mortgage loans.

(5) Includes $375 million, $385 million, $726 million, $150 million, and $39 million as of December 31, 2011, 2010, 2009, 2008 and 2007, respectively, for acquired credit-impaired loans.

(6) In December 2011, we changed our definition of "total nonperforming loans." Under our new definition, we no longer reflect in this amount (1) our allowance for loan losses or (2) our allowance for accrued interest receivable related to these individually impaired loans. The amounts we report for prior periods have been revised from amounts we previously disclosed as a result of this change.

The prolonged decline in home prices and the continued stress on a broad segment of borrowers from continued high levels of unemployment and underemployment have caused our total loss reserves to remain high for the past few years. We expect our loss reserves will remain significantly elevated relative to historical levels for an extended period because: (1) we expect future defaults on loans from our legacy book of business and the resulting charge-offs will occur over a period of years; and (2) a significant portion of our reserves represents concessions granted to borrowers upon modification of their loans and will remain in our reserves until the loans are fully repaid or default. Our provision for credit losses continues to be a key driver of our net losses for each period presented. The amount of our provision for credit losses varies from period to period based on changes in home prices, borrower payment behavior, the types and volumes of loss mitigation activities completed, and actual and estimated recoveries from our lender and mortgage insurer counterparties. In addition, our provision for credit losses and our loss reserves can be impacted by updates to our allowance for loan loss models that we use to estimate our loss reserves. For further information on estimates and assumptions that are used to calculate our loan loss reserves and the impact of specific changes in estimates during 2011 see "Critical Accounting Policies and Estimates."

Our provision for credit losses increased in 2011 compared with 2010 primarily due to: (1) a decline in actual and projected home prices, which led to an increase in projected defaults and higher loss severity rates; (2) a decrease in the estimated recovery amount from mortgage insurance coverage; and (3) the implementation of new accounting guidance that increased our troubled debt restructuring ("TDR") population, which increased the number of loans that are individually impaired. A TDR is a loan restructuring that grants a concession to a borrower experiencing financial difficulties. The increase in our provision was partially offset by: (1) an increase in cash received by us and estimated amounts due to us for repurchase requests; and (2) accelerated expected prepayment speeds due to the lower interest rate environment, which reduced the expected lives of loans and increased the present value of cash flows expected on those loans.

Our provision for credit losses was impacted in 2010 by an agreement with Bank of America, N.A., and its affiliates, on December 31, 2010, to address outstanding repurchase requests for residential mortgage loans. Bank of America agreed, among other things, to make a cash payment to us of $1.3 billion, $930 million of which was recognized as a recovery of charge-offs resulting in a reduction to our provision for loan losses and allowance for loan losses.

Our provision for credit losses substantially decreased in 2010 compared with 2009 primarily because there was neither an increase in the number of seriously delinquent loans, nor a sharp decline in home prices in 2010 compared with the significant changes in these factors in 2009; therefore, we did not need to substantially increase our reserves in 2010 compared with the significant increase in our reserves in 2009. In addition, our provision for credit losses decreased in 2010 compared with 2009 due to a decline in fair value losses on acquired credit-impaired loans. Because of our adoption of consolidation accounting guidance in the beginning of 2010, we no longer record fair value losses upon our acquisition of credit-impaired loans from most of our MBS trusts, as the substantial majority of these trusts are now consolidated.

Individual Impairment and Troubled Debt Restructurings

Because of the substantial volume of loan modifications we completed and the number of loans that entered a trial modification period since 2009, approximately two-thirds of our total loss reserves are attributable to individual impairment rather than the collective reserve for loan losses. Individual impairment for a TDR is based on the restructured loan's expected cash flows over the life of the loan, taking into account the effect of any concessions granted to the borrower, discounted at the loan's original effective interest rate. The individual impairment model includes forward-looking assumptions using multiple scenarios of the future economic environment, including interest rates and home prices. If we expect to recover our recorded investment in an individually impaired loan through probable foreclosure of the underlying collateral, we measure the impairment based on the fair value of the collateral, less selling costs. Based on the structure of our modifications, in particular the size of the concessions granted, and the performance of modified loans combined with the forward-looking assumptions used in our model, the allowance calculated for an individually impaired loan has generally been greater than the allowance that would be calculated under the collective reserve.

In April 2011, FASB issued new accounting guidance regarding TDRs effective for the third quarter of 2011 that applied retrospectively to January 1, 2011. In the third quarter of 2011, we recognized an incremental increase of $514 million in our provision for credit losses due to loans that were reassessed as TDRs as a result of adopting the new TDR accounting guidance. For additional information on the new TDR accounting guidance, see "Note 1, Summary of Significant Accounting Policies."

Loss Reserves Concentration Analysis

Certain loan categories continued to contribute disproportionately to the increase in our nonperforming loans and credit losses as displayed in Table 16. These categories include: loans on properties in California, Florida, Arizona and Nevada and certain Midwest states; loans originated in 2006 and 2007; and loans related to higher-risk product types, such as Alt-A loans. Although we have identified other vintages as unprofitable, the largest and most disproportionate contributors to credit losses have been the 2006 and 2007 vintages. Accordingly, our concentration statistics throughout this MD&A focus on only these two vintages. Our combined single-family loss reserves are also disproportionately higher for these states, Alt-A loans and our 2006 and 2007 vintages. Table 13 displays our loss reserves concentration analysis.

Table 13: Loss Reserves Concentration Analysis[1]

	Combined Single-Family Loss Reserves	
	As of December 31,	
	2011	2010
Midwest states[2]	16%	14%
California, Florida, Arizona, Nevada	49	52
Alt-A	29	30
2006 and 2007	62	67

(1) Loans that meet more than one category are included in each applicable category.
(2) Midwest consists of IL, IN, IA, MI, MN, NE, ND, OH, SD, KS, MO and WI.

Nonperforming Loans

Our balance of nonperforming single-family loans remained high as of December 31, 2011 due to both high levels of delinquencies and an increase in TDRs. When a TDR occurs, the loan may return to a current status, but it will continue to be classified as a nonperforming loan as the loan is not performing in accordance with its original terms. Table 14 displays the composition of our nonperforming loans, which includes our single-family and multifamily held-for-investment and held-for-sale mortgage loans. For information on the impact of TDRs and other individually impaired loans on our allowance for loan losses, see "Note 3, Mortgage Loans."

Table 14: Nonperforming Single-Family and Multifamily Loans [(1)]

	As of December 31,				
	2011	2010	2009	2008	2007
	(Dollars in millions)				
On-balance sheet nonperforming loans including loans in consolidated Fannie Mae MBS trusts:					
Nonaccrual loans	$142,998	$170,788	$ 37,596	$ 15,610	$ 8,397
Troubled debt restructurings on accrual status[(2)]	108,797	82,702	9,880	5,799	1,809
Total on-balance sheet nonperforming loans[(3)]	251,795	253,490	47,476	21,409	10,206
Off-balance sheet nonperforming loans in unconsolidated Fannie Mae MBS trusts[(4)]	154	89	174,588	98,546	17,048
Total nonperforming loans[(3)]	251,949	253,579	222,064	119,955	27,254
Allowance for loan losses and allowance for accrued interest receivable related to individually impaired on-balance sheet nonperforming loans	(47,711)	(38,827)	(5,609)	(723)	(98)
Total nonperforming loans, net of allowance	$204,238	$214,752	$216,455	$119,232	$27,156
Accruing on-balance sheet loans past due 90 days or more[(5)]	$ 768	$ 896	$ 612	$ 317	$ 204

	For the Year Ended December 31,				
	2011	2010	2009	2008	2007
	(Dollars in millions)				
Interest related to on-balance sheet nonperforming loans:					
Interest income forgone[(6)]	$8,224	$8,185	$1,341	$401	$215
Interest income recognized for the period[(7)]	6,598	7,995	1,206	771	328

(1) Certain prior period amounts have been reclassified to conform to the current period presentation.

(2) Includes HomeSaver Advance first-lien loans on accrual status.

(3) In December 2011, we changed our definition of "total on-balance sheet nonperforming loans" and "total nonperforming loans." Under our new definitions, we no longer reflect in these amounts (1) our allowance for loan losses or (2) our allowance for accrued interest receivable related to these individually impaired loans. The amounts we report in Table 14 for prior periods have been revised from amounts we previously disclosed as a result of this change.

(4) Represents loans that would meet our criteria for nonaccrual status if the loans had been on-balance sheet.

(5) Recorded investment in loans that, as of the end of each period, are 90 days or more past due and continuing to accrue interest. The majority of this amount consists of loans insured or guaranteed by the U.S. government and loans for which we have recourse against the seller in the event of a default.

(6) Represents the amount of interest income we did not record but would have recorded during the period for on-balance sheet nonperforming loans as of the end of each period had the loans performed according to their original contractual terms.

(7) Represents interest income recognized during the period for on-balance sheet loans classified as nonperforming as of the end of each period. Includes primarily amounts accrued while the loans were performing and cash payments received on nonaccrual loans.

Foreclosed Property Expense

Foreclosed property expense, which is displayed in Table 15, decreased in 2011 compared with 2010 due, in part, to an increase in cash received by us and estimated amounts due to us for repurchase requests. These amounts were recognized in our provision for credit losses and foreclosed property expense. In addition, we had fewer REO properties in 2011 compared with 2010, primarily driven by delays in the foreclosure process, which resulted in lower foreclosed property expense. The decrease in foreclosed property expense was partially offset by a decrease in the estimated recovery amount from mortgage insurance coverage.

Foreclosed property expense increased during 2010 compared with 2009 primarily due to the substantial increase in our REO inventory and an increase in valuation adjustments that reduced the value of our REO inventory during the period. Foreclosed property expense reflected the recognition of cash fees of $796 million in 2010 and $668 million in 2009 from the cancellation and restructuring of some of our pool mortgage insurance coverage. There were no such cash fees recognized in 2011. The cancelled and restructured policies covered the unpaid principal balance of approximately $42 billion in 2010 and approximately $40 billion in 2009. The fees represented an acceleration of, and discount on, claims expected to be received pursuant to the coverage net of premiums expected to be paid. These cancellations and restructurings resulted in operational savings from reduced claims processing and mitigated our counterparty credit risk given the weakened financial condition of our mortgage insurer counterparties. Further, under our December 31, 2010 agreement with Bank of America, N.A., and its affiliates, Bank of America agreed, among other things, to a cash payment of $1.3 billion, $266 million of which was recognized as a reduction to foreclosed property expense. In addition, during the second quarter of 2010, we began recording expenses related to preforeclosure property taxes and insurance to the provision for loan losses.

Credit Loss Performance Metrics

Our credit-related expenses should be considered in conjunction with our credit loss performance metrics. Our credit loss performance metrics, however, are not defined terms within GAAP and may not be calculated in the same manner as similarly titled measures reported by other companies. Because management does not view changes in the fair value of our mortgage loans as credit losses, we adjust our credit loss performance metrics for the impact associated with our acquisition of credit-impaired loans from unconsolidated MBS trusts and HomeSaver Advance loans. We also exclude interest forgone on nonperforming loans in our mortgage portfolio, other-than-temporary impairment losses resulting from deterioration in the credit quality of our mortgage-related securities and accretion of interest income on acquired credit-impaired loans from credit losses.

Historically, management viewed our credit loss performance metrics, which include our historical credit losses and our credit loss ratio, as indicators of the effectiveness of our credit risk management strategies. As our credit losses are now at such high levels, management has shifted its focus to our loss mitigation strategies and the reduction of our total credit losses and away from the credit loss ratio to measure performance. However, we believe that credit loss performance metrics may be useful to investors as the losses are presented as a percentage of our book of business and have historically been used by analysts, investors and other companies within the financial services industry. They also provide a consistent treatment of credit losses for on- and off-balance sheet loans. Moreover, by presenting credit losses with and without the effect of fair value losses associated with the acquisition of credit-impaired loans and HomeSaver Advance loans, investors are able to evaluate our credit performance on a more consistent basis among periods. Table 15 displays the components of our credit loss performance metrics as well as our average single-family and multifamily default rate and initial charge-off severity rate.

Table 15: Credit Loss Performance Metrics

	For the Year Ended December 31,					
	2011		2010		2009	
	Amount	Ratio(1)	Amount	Ratio(1)(2)	Amount	Ratio(1)
	(Dollars in millions)					
Charge-offs, net of recoveries(3)	$16,031	52.4 bp	$19,999	65.6 bp	$ 32,488	106.7 bp
Foreclosed property expense(3)	780	2.6	1,718	5.6	910	3.0
Credit losses including the effect of fair value losses on acquired credit-impaired loans and HomeSaver Advance loans	16,811	55.0	21,717	71.2	33,398	109.7
Less: Fair value losses resulting from acquired credit-impaired loans and HomeSaver advanced loans	(116)	(0.4)	(180)	(0.6)	(20,555)	(67.5)
Plus: Impact of acquired credit-impaired loans on charge-offs and foreclosed property expense	2,042	6.7	2,094	6.8	739	2.4
Credit losses and credit loss ratio	$18,737	61.3 bp	$23,631	77.4 bp	$ 13,582	44.6 bp
Credit losses attributable to:						
Single-family	$18,346		$23,133		$ 13,362	
Multifamily	391		498		220	
Total	$18,737		$23,631		$ 13,582	
Single-family default rate		1.71%		1.99%		1.07%
Single-family initial charge-off severity rate(4)		34.82%		34.07%		37.21%
Average multifamily default rate		0.53%		0.61%		0.28%
Average multifamily initial charge-off severity rate(4)		37.10%		39.18%		32.46%

(1) Basis points are based on the amount for each line item presented divided by the average guaranty book of business during the period.

(2) Beginning in the second quarter of 2010, expenses relating to preforeclosure taxes and insurance were recorded as charge-offs. These expenses were recorded as foreclosed property expense in the first quarter of 2010. The impact of including these costs in charge-offs was 4.7 basis points for the year ended December 31, 2010.

(3) Includes cash received pursuant to our December 31, 2010 agreement with Bank of America. The impact of this cash receipt was a reduction in charge-offs, net of recoveries, of $930 million or 3.0 basis points and a reduction in foreclosed property expense of $266 million or 0.9 basis points for the year ended December 31, 2010.

(4) Single-family and multifamily rates exclude fair value losses on credit-impaired loans acquired from MBS trusts and any costs, gains or losses associated with REO after initial acquisition through final disposition; single-family rate excludes charge-offs from short sales.

Credit losses decreased in 2011 compared with 2010 primarily due to delays in the foreclosure process, which resulted in fewer charge-offs in 2011. In addition, credit losses declined in 2011 due to an increase in cash received by us and estimated amounts due to us for repurchase requests. The increase in our credit losses in 2010 compared with 2009 was driven by an increase in the number of defaults due to the prolonged decline in the housing market and home prices.

Table 16 displays an analysis of our credit losses in certain higher-risk loan categories, loan vintages and loans within certain states that continue to account for a disproportionate share of our credit losses as compared with our other loans.

Table 16: Credit Loss Concentration Analysis

	Percentage of Single-Family Conventional Guaranty Book of Business Outstanding(1) As of December 31,			Percentage of Single-Family Credit Losses For the Year Ended December 31,		
	2011	2010	2009	2011	2010	2009
Geographical distribution:						
Arizona, California, Florida and Nevada	28%	28%	28%	58%	56%	57%
Illinois, Indiana, Michigan and Ohio	10	11	11	12	14	15
All other states	62	61	61	30	30	28
Select higher-risk product features(2)	21	22	24	56	61	69
Vintages:						
2006	7	8	11	28	29	31
2007	10	12	15	30	36	36
All other vintages	83	80	74	42	35	33

(1) Calculated based on the unpaid principal balance of loans, where we have detailed loan-level information, for each category divided by the unpaid principal balance of our single-family conventional guaranty book of business.

(2) Includes Alt-A loans, subprime loans, interest-only loans, loans with original LTV ratios greater than 90% and loans with FICO credit scores less than 620.

Our 2009, 2010 and 2011 vintages accounted for approximately 2% of our single-family credit losses for 2011. Credit losses on mortgage loans typically do not peak until the third through sixth years following origination; however, this range can vary based on many factors, including changes in macroeconomic conditions and foreclosure timelines. We provide more detailed credit performance information, including serious delinquency rates by geographic region and foreclosure activity, in "Risk Management—Credit Risk Management—Mortgage Credit Risk Management."

Regulatory Hypothetical Stress Test Scenario

Under a September 2005 agreement with FHFA's predecessor, OFHEO, we are required to disclose on a quarterly basis the present value of the change in future expected credit losses from our existing single-family guaranty book of business from an immediate 5% decline in single-family home prices for the entire United States. Although other provisions of the September 2005 agreement were suspended in March 2009 by FHFA until further notice, this disclosure requirement was not suspended. For purposes of this calculation, we assume that, after the initial 5% shock, home price growth rates return to the average of the possible growth rate paths used in our internal credit pricing models. The sensitivity results represent the difference between future expected credit losses under our base case scenario, which is derived from our internal home price path forecast, and a scenario that assumes an instantaneous nationwide 5% decline in home prices.

Table 17 displays a comparison of the credit loss sensitivities for the periods indicated for first-lien single-family whole loans we own or that back Fannie Mae MBS, before and after consideration of projected credit risk sharing proceeds, such as private mortgage insurance claims and other credit enhancements.

Table 17: Single-Family Credit Loss Sensitivity[(1)]

	As of December 31,	
	2011	2010
	(Dollars in millions)	
Gross single-family credit loss sensitivity	$ 21,922	$ 25,937
Less: Projected credit risk sharing proceeds	(1,690)	(2,771)
Net single-family credit loss sensitivity	$ 20,232	$ 23,166
Outstanding single-family whole loans and loans underlying Fannie Mae MBS	$2,769,454	$2,782,512
Single-family net credit loss sensitivity as a percentage of outstanding single-family whole loans and Fannie Mae MBS	0.73%	0.83%

(1) Represents total economic credit losses, which consist of credit losses and forgone interest. Calculations are based on 97% of our total single-family guaranty book of business as of December 31, 2011 and December 31, 2010, respectively. The mortgage loans and mortgage-related securities that are included in these estimates consist of: (a) single-family Fannie Mae MBS (whether held in our mortgage portfolio or held by third parties), excluding certain whole loan REMICs and private-label wraps; (b) single-family mortgage loans, excluding mortgages secured only by second liens, subprime mortgages, manufactured housing chattel loans and reverse mortgages; and (c) long-term standby commitments. We expect the inclusion in our estimates of the excluded products may impact the estimated sensitivities set forth in this table. Single-family mortgage loans as of December 31, 2010 exclude subprime mortgages.

Because these sensitivities represent hypothetical scenarios, they should be used with caution. Our regulatory stress test scenario is limited in that it assumes an instantaneous uniform 5% nationwide decline in home prices, which is not representative of the historical pattern of changes in home prices. Changes in home prices generally vary on a regional, as well as a local, basis. In addition, these stress test scenarios are calculated independently without considering changes in other interrelated assumptions, such as unemployment rates or other economic factors, which are likely to have a significant impact on our future expected credit losses.

Other Non-Interest Expenses

Other non-interest expenses consist of credit enhancement expenses, which reflect the amortization of the credit enhancement asset we record at the inception of guaranty contracts; costs associated with the purchase of additional mortgage insurance to protect against credit losses; net gains and losses on the extinguishment of debt; servicer incentive fees in connection with loans modified under HAMP; and other miscellaneous expenses.

Other non-interest expenses also include losses from partnership investments. We are a limited liability investor in LIHTC and non-LIHTC investments formed for the purpose of providing equity funding for affordable multifamily rental properties. Historically, we generally received tax benefits (tax credits and tax deductions for net operating losses) on our LIHTC investments that we used to reduce our income tax expense. Given our current tax position, it is unlikely that we will be able to use the tax benefits that we expect to receive this year and in the future from these LIHTC investments. In 2009, we reduced the carrying value of our LIHTC investments to zero because we no longer had the intent and ability to sell or otherwise transfer our LIHTC investments for value. As a result, we no longer recognize net operating losses or other-than-temporary impairment on our LIHTC investments.

Other non-interest expenses decreased in 2011 compared with 2010 primarily due to a decrease in net losses recorded on the extinguishment of debt as a result of lower funding needs in 2011 compared with higher call activity due to low interest rates in 2010. Other non-interest expenses decreased in 2010 compared with 2009 due primarily to: (1) the recognition of a $5.0 billion loss during the fourth quarter of 2009 to reduce the carrying value of our LIHTC partnership investments to zero in our consolidated financial statements; (2) a decrease in master servicing costs related to our master servicing assets and liabilities as a result of derecognizing the portion of our master servicing asset and liability relating to consolidated trusts upon adoption of the consolidation accounting guidance; (3) lower expenses for legal claim reserves; and (4) lower interest expense associated with unrecognized tax benefits related to certain unresolved tax positions. The decrease in 2010 was partially offset by an increase in HAMP incentive payments and net losses recorded on the extinguishment of debt, because our borrowing costs declined and it became advantageous for us to redeem higher cost debt and replace it with lower cost debt.

Federal Income Taxes

We recorded a tax benefit for federal income taxes of $90 million for 2011 because we effectively settled our 2007 and 2008 tax years with the Internal Revenue Service ("IRS") in 2011. We recorded a tax benefit for federal income taxes of $82 million for 2010 primarily due to the reversal of a portion of the valuation allowance for deferred tax assets resulting from a settlement agreement reached with the IRS for our unrecognized tax benefits for the tax years 1999 through 2004. We recorded a tax benefit for federal income taxes of $985 million for 2009, due primarily to the benefit of carrying back a portion of our 2009 loss, net of the reversal of the use of certain tax credits, to prior years.

We discuss federal income taxes and the factors that led us to record a partial valuation allowance against our net deferred tax assets in "Note 10, Income Taxes." The amount of deferred tax assets considered realizable is subject to adjustment in future periods. We will continue to monitor all available evidence related to our ability to utilize our remaining deferred tax assets. If we determine that recovery is not likely, we will record an additional valuation allowance against the deferred tax assets that we estimate may not be recoverable. Our income tax expense in future periods will be reduced or increased to the extent of offsetting decreases or increases to our valuation allowance.

Financial Impact of the Making Home Affordable Program on Fannie Mae

Home Affordable Refinance Program

Because we already own or guarantee the original mortgages that we refinance under HARP, our expenses under that program have consisted mostly of limited administrative costs. See "Business—Making Home Affordable—Changes to the Home Affordable Refinance Program," for a discussion on the recent changes to HARP.

Home Affordable Modification Program

Loans in trial modification plans are considered TDRs and are assessed for individual impairment. These TDRs include loans that entered into a trial modification under the program but that did not receive a permanent modification under the program. We incurred impairments related to these loans that had entered a trial modification under HAMP of $5.2 billion during 2011, compared with $14.1 billion during 2010 and $26.4 billion in 2009. During 2009, approximately 40% of the impairments on these loans related to fair value losses on credit impaired loans acquired from unconsolidated MBS trusts, which represents approximately 84,000 loans. These impairments increased our provision for loan losses in our consolidated results of operations and comprehensive loss. The impairments do not reflect the reduction in our collective loss reserves that occurred as a result of beginning to individually assess the loans for impairment upon entering a trial modification.

We paid or accrued HAMP incentive fees for servicers of $338 million during 2011, compared with $339 million during 2010 and $17 million during 2009. These fees were related to loans modified under HAMP, which we recorded as part of "Other expenses." Borrower incentive payments are included in the calculation of our allowance for loan losses for individually impaired loans. Additionally, our expenses under HAMP also include administrative costs.

Overall Impact of the Making Home Affordable Program

Because of the unprecedented nature of the circumstances that led to the Making Home Affordable Program, we cannot quantify what the impact would have been on Fannie Mae if the Making Home Affordable Program had not been introduced. We do not know how many loans we would have modified under alternative programs, what the terms or costs of those modifications would have been, how many foreclosures would have resulted nationwide, and at what pace, or the impact on housing prices if the program had not been put in place. As a result, the amounts we discuss above are not intended to measure how much the program is costing us in comparison to what it would have cost us if we did not have the program at all. See "Risk Factors" for a discussion of how efforts we may undertake in support of the housing market may affect us.

BUSINESS SEGMENT RESULTS

We provide a more complete description of our business segments in "Business–Business Segments." Results of our three business segments are intended to reflect each segment as if it were a stand-alone business. We are working on reorganizing our company by function rather than by business in order to improve our operational efficiencies and effectiveness. In future periods, we may change some of our management reporting and how we report our business segment results. We describe the management reporting and allocation process used to generate our segment results in "Note 14, Segment Reporting." In this section, we discuss changes to our presentation for reporting results for our three business segments, Single-Family, Multifamily and Capital Markets, which have been revised due to our prospective adoption of the revised accounting guidance in 2010 on the consolidation of VIE's and transfers of financial assets. We then display our segment results for 2011, 2010 and 2009, in the tables below and provide a comparative discussion of these results. This section should be read together with our comparative discussion of our consolidated results of operations in "Consolidated Results of Operations." See "Note 14, Segment Reporting" for a reconciliation of our segment results to our consolidated results.

Current Segment Reporting Presentation

Our prospective adoption of the consolidation accounting guidance in 2010 had a significant impact on the presentation and comparability of our consolidated financial statements because we consolidated the substantial majority of our single-class securitization trusts and eliminated previously recorded deferred revenue from our guaranty arrangements. We continue to manage Fannie Mae based on the same three business segments; however, effective in 2010 we changed the presentation of segment financial information that is currently evaluated by management.

While some line items in our segment results were not impacted by either the change from the consolidation accounting guidance or changes to our segment presentation, others were impacted materially, which reduces the comparability of our 2011 and 2010 segment results with 2009. We have not restated results prior to 2010 nor have we presented 2011 and 2010 results under the old presentation because we determined that it was impracticable to do so; therefore, our segment results reported in 2011 and 2010 are not comparable with years prior to 2010. See "Note 1, Summary of Significant Accounting Policies" for additional information regarding the impact upon adoption.

Under our current segment reporting structure, the sum of the results for our three business segments does not equal our consolidated results of operations as we separate the activity related to our consolidated trusts from the results generated by our three segments. In addition, because we apply accounting methods that differ from our consolidated results for segment reporting purposes, we include an eliminations/adjustments category to reconcile our business segment results and the activity related to our consolidated trusts to our consolidated statements of operations and comprehensive loss.

Summary

Table 18 displays a summary of our segment results under our current segment reporting presentation for 2011 and 2010 and our prior segment presentation for 2009.

Table 18: Business Segment Summary

	For the Year Ended December 31,		
	2011	2010	2009
	(Dollars in millions)		
Net revenues:[1]			
Single-Family	$ 5,675	$ 2,126	$ 8,784
Multifamily	1,064	940	582
Capital Markets	12,901	13,400	13,128
Consolidated trusts	950	460	—
Eliminations/adjustments	(146)	567	—
Total	$ 20,444	$ 17,493	$ 22,494
Net (loss) income attributable to Fannie Mae:			
Single-Family	$(23,941)	$(26,680)	$(63,798)
Multifamily	583	216	(9,028)
Capital Markets	8,999	16,074	857
Consolidated trusts	429	(224)	—
Eliminations/adjustments	(2,925)	(3,400)	—
Total	$(16,855)	$(14,014)	$(71,969)

	As of December 31,		
	2011	2010	2009
	(Dollars in millions)		
Total assets:			
Single-Family[2]	$ 11,822	$ 14,843	$ 19,991
Multifamily[2]	5,747	4,881	5,698
Capital Markets	836,700	873,052	843,452
Consolidated trusts	2,676,952	2,673,937	—
Eliminations/adjustments[2]	(319,737)	(344,741)	—
Total	$3,211,484	$3,221,972	$869,141

(1) Includes net interest (loss) income, guaranty fee income (expense), and fee and other income (expense).

(2) The allowance for loan losses, allowance for accrued interest receivable and fair value losses previously recognized on acquired credit impaired loans are not treated as assets for Single-Family and Multifamily segment reporting purposes because these allowances and losses relate to loan assets that are held by the Capital Markets segment and consolidated trusts.

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of February, 2016, I electronically filed the foregoing document with the Clerk of the Court for the U.S. Court of Appeals for the D.C. Circuit using the CM/ECF system. Service was accomplished by the CM/ECF system on the following counsel, who are registered CM/ECF users:

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