

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

FEDERAL HOUSING FINANCE  
AGENCY, in its capacity as Conservator for  
the Federal National Mortgage Association,  
and FEDERAL NATIONAL MORTGAGE  
ASSOCIATION,

Appellants,

vs.

WESTLAND LIBERTY VILLAGE, LLC,  
a Nevada Limited Liability Company; and  
WESTLAND VILLAGE SQUARE, LLC a  
Nevada Limited Liability Company,

Respondents.

Electronically Filed  
Dec 07 2021 04:57 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
Case No. 83695

**APPEAL**

From the Eighth Judicial District Court  
The Honorable Kerry Earley and Mark Denton, District Court Judges  
Case No. A-20-819412-C

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**APPELLANTS' APPENDIX VOLUME XIV**

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DATED: December 7, 2021

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## CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On December 7, 2021, I caused to be served a true and correct copy of the foregoing **APPELLANTS' APPENDIX VOLUME XIV** upon the following by the method indicated:

- ☐ **BY E-MAIL:** by transmitting via e-mail the document(s) listed above to the e-mail addresses set forth below and/or included on the Court's Service List for the above-referenced case.
- ☒ **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.
- ☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below:

/s/ Maricris Williams

An Employee of SNELL & WILMER L.L.P.

## Unit 1206

## 3 Overall Fannie Mae Rating

3 bed 2 bath Unit Type

**Interiors****Front Door**

Quantity

**Washer/Dryer**

Quantity

Repair		\$0.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Trash Out****Kitchen Cabinets**

Required		\$0.00	Repair		\$0.00
Clean			Replace		\$0.00

**Carpet****Sink**

Requires Cleaning	1	\$175.00	Replace		\$0.00
Replace		\$0.00			

**Vinyl****Tub/Surround**

Requires Cleaning		\$0.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Paint****Bath Vanity/Countertop**

Touch Up		\$0.00	Repair		\$0.00
Complete Paint Job	1	\$800.00	Replace		\$0.00

**Final Clean****Toilet**

Yes	1	\$200.00	Repair	1	\$0.00
No			Replace		\$0.00

**Window Coverings****Water Heater**

Replace		\$0.00	Missing		\$0.00
			Repair		

**Interior Doors****Air Handler**

Repair		\$0.00	Missing		\$0.00
Replace		\$0.00	Repair		

**Drywall Damage****Electric Fixtures**

Estimate Quick \$\$ Amount		\$0.00	Missing		\$0.00
			Repair		\$0.00

**Refrigerator****Smoke/CO Detectors**

Missing		\$0.00	Missing	1	\$50.00
Repair					

**Range****Mold**

Missing		\$0.00	Yes		\$0.00
Repair			No		

**Vent Hood****Pests**

Missing		\$0.00	Yes		\$0.00
Repair			No		

**Dishwasher****Other**

Missing		\$0.00			\$0.00
Repair					

**Rent Ready?****Down?**

Yes			Yes		
No	1		No	1	

	<b>Total</b>	<b>\$1,225.00</b>			
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## Unit 2202

## 3 Overall Fannie Mae Rating

3 bed 2 bath Unit Type

**Interiors**

Front Door			Washer/Dryer		
	Quantity			Quantity	
Repair		\$0.00	Repair		\$0.00
Replace		\$0.00	Replace		
Trash Out			Kitchen Cabinets		
Required	1	\$100.00	Repair	1	\$175.00
Clean			Replace		\$0.00
Carpet			Sink		
Requires Cleaning	1	\$175.00	Replace		\$0.00
Replace		\$0.00			
Vinyl			Tub/Surround		
Requires Cleaning	1	\$50.00	Repair	1	\$1,200.00
Replace		\$0.00	Replace		
Paint			Bath Vanity/Countertop		
Touch Up		\$0.00	Repair		\$0.00
Complete Paint Job		\$0.00	Replace	1	\$400.00
Final Clean			Toilet		
Yes	1	\$200.00	Repair		\$0.00
No			Replace	1	\$200.00
Window Coverings			Water Heater		
Replace		\$0.00	Missing		\$0.00
			Repair		
Interior Doors			Air Handler		
Repair		\$0.00	Missing		\$0.00
Replace		\$0.00	Repair		
Drywall Damage			Electric Fixtures		
Estimate Quick \$\$ Amount		\$200.00	Missing		\$0.00
			Repair		\$0.00
Refrigerator			Smoke/CO Detectors		
Missing		\$0.00	Missing		\$0.00
Repair					
Range			Mold		
Missing		\$0.00	Yes		\$0.00
Repair			No		
Vent Hood			Pests		
Missing		\$0.00	Yes		\$0.00
Repair			No		
Dishwasher			Other		
Missing		\$0.00		Rip out carpet on entrance and balcony	\$750.00
Repair					
Rent Ready?			Down?		
Yes			Yes		
No	1		No	1	
	<b>Total</b>	<b>\$3,450.00</b>			



## Unit 1191

## 3 Overall Fannie Mae Rating

2 bed 2 bath Unit Type

**Interiors****Front Door**

Quantity

**Washer/Dryer**

Quantity

Repair		\$0.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Trash Out****Kitchen Cabinets**

Required		\$0.00	Repair		\$0.00
Clean			Replace		\$0.00

**Carpet****Sink**

Requires Cleaning		\$0.00	Replace/RESURFICE		\$0.00
Replace	1	\$600.00			

**Vinyl****Tub/Surround**

Requires Cleaning	1	\$50.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Paint****Bath Vanity/Countertop**

Touch Up		\$0.00	Repair		\$0.00
Complete Paint Job		\$0.00	Replace		\$0.00

**Final Clean****Toilet**

Yes	1	\$200.00	Repair		\$0.00
No			Replace		\$0.00

**Window Coverings****Water Heater**

Replace		\$0.00	Missing		\$0.00
			Repair		

**Interior Doors****Air Handler**

Repair		\$0.00	Missing		\$0.00
Replace		\$0.00	Repair		

**Drywall Damage****Electric Fixtures**

Estimate Quick \$\$ Amount		\$0.00	Missing		\$0.00
			Repair		\$0.00

**Refrigerator****Smoke/CO Detectors**

Missing		\$0.00	Missing		\$0.00
Repair					

**Range****Mold**

Missing		\$0.00	Yes		\$0.00
Repair	1		No		

**Vent Hood****Pests**

Missing		\$0.00	Yes		\$0.00
Repair			No		

**Dishwasher****Other**

Missing		\$0.00			\$0.00
Repair					

**Rent Ready?****Down?**

Yes			Yes		
No	1		No	1	

	<b>Total</b>	<b>\$850.00</b>			
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## Unit 1167

## 3 Overall Fannie Mae Rating

3 bed 2 bath Unit Type

**Interiors****Front Door**

Quantity

**Washer/Dryer**

Quantity

Repair		\$0.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Trash Out****Kitchen Cabinets**

Required	1	\$100.00	Repair		\$0.00
Clean			Replace		\$0.00

**Carpet****Sink**

Requires Cleaning		\$0.00	Replace		\$0.00
Replace	1	\$600.00			

**Vinyl****Tub/Surround**

Requires Cleaning	1	\$50.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Paint****Bath Vanity/Countertop**

Touch Up		\$0.00	Repair		\$0.00
Complete Paint Job	1	\$800.00	Replace		\$0.00

**Final Clean****Toilet**

Yes	1	\$200.00	Repair		\$0.00
No			Replace		\$0.00

**Window Coverings****Water Heater**

Replace		\$0.00	Missing		\$0.00
			Repair		

**Interior Doors****Air Handler**

Repair		\$0.00	Missing		\$0.00
Replace		\$0.00	Repair		

**Drywall Damage****Electric Fixtures**

Estimate Quick \$\$ Amount		\$0.00	Missing		\$0.00
			Repair		\$0.00

**Refrigerator****Smoke/CO Detectors**

Missing		\$0.00	Missing	1	\$50.00
Repair					

**Range****Mold**

Missing		\$0.00	Yes		\$0.00
Repair			No		

**Vent Hood****Pests**

Missing		\$0.00	Yes		\$0.00
Repair			No		

**Dishwasher****Other**

Missing		\$0.00			\$0.00
Repair					

**Rent Ready?****Down?**

Yes			Yes		
No	1		No	1	

	<b>Total</b>	<b>\$1,800.00</b>			
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## Unit 1105

## 5 Overall Fannie Mae Rating

1 bed 1 bath Unit Type

## Interiors

## Front Door

Quantity

## Washer/Dryer

Quantity

Repair		\$0.00	Repair	1	\$600.00
Replace		\$0.00	Replace	1	

## Trash Out

## Kitchen Cabinets

Required	1	\$100.00	Repair	1	\$175.00
Clean			Replace	1	\$1,500.00

## Carpet

## Sink

Requires Cleaning		\$0.00	Replace		\$0.00
Replace	1	\$600.00			

## Vinyl

## Tub/Surround

Requires Cleaning		\$0.00	Repair	1	\$1,200.00
Replace	1	\$225.00	Replace		

## Paint

## Bath Vanity/Countertop

Touch Up		\$0.00	Repair		\$0.00
Complete Paint Job		\$0.00	Replace	1	\$400.00

## Final Clean

## Toilet

Yes		\$0.00	Repair		\$0.00
No			Replace		\$0.00

## Window Coverings

## Water Heater

Replace		\$0.00	Missing		\$0.00
			Repair		

## Interior Doors

## Air Handler

Repair		\$0.00	Missing		\$0.00
Replace		\$0.00	Repair		

## Drywall Damage

## Electric Fixtures

Estimate Quick \$\$ Amount		\$150.00	Missing		\$0.00
			Repair		\$0.00

## Refrigerator

## Smoke/CO Detectors

Missing	1	\$500.00	Missing	1	\$50.00
Repair					

## Range

## Mold

Missing	1	\$375.00	Yes		\$0.00
Repair			No		

## Vent Hood

## Pests

Missing	1	\$145.00	Yes		\$0.00
Repair			No		

## Dishwasher

## Other

Missing	1	\$315.00			\$0.00
Repair					

## Rent Ready?

## Down?

Yes			Yes	1	
No	1		No		

**Total****\$6,335.00**

## Unit 1148

## 3 Overall Fannie Mae Rating

3 bed 2 bath Unit Type

**Interiors****Front Door**

Quantity

**Washer/Dryer**

Quantity

Repair

\$0.00

Repair

\$0.00

Replace

\$0.00

Replace

**Trash Out****Kitchen Cabinets**

Required

\$0.00

Repair

\$0.00

Clean

Replace

\$0.00

**Carpet****Sink**

Requires Cleaning

\$0.00

Replace

\$0.00

Replace

1

\$600.00

**Vinyl****Tub/Surround**

Requires Cleaning

\$0.00

Repair

\$0.00

Replace

1

\$225.00

Replace

**Paint****Bath Vanity/Countertop**

Touch Up

\$0.00

Repair

\$0.00

Complete Paint Job

\$0.00

Replace

\$0.00

**Final Clean****Toilet**

Yes

1

\$200.00

Repair

\$0.00

No

Replace

\$0.00

**Window Coverings****Water Heater**

Replace

\$0.00

Missing

\$0.00

Repair

**Interior Doors****Air Handler**

Repair

\$0.00

Missing

\$0.00

Replace

\$0.00

Repair

**Drywall Damage****Electric Fixtures**

Estimate Quick \$\$ Amount

\$0.00

Missing

\$0.00

Repair

\$0.00

**Refrigerator****Smoke/CO Detectors**

Missing

\$0.00

Missing

1

\$50.00

Repair

**Range****Mold**

Missing

\$0.00

Yes

\$0.00

Repair

No

**Vent Hood****Pests**

Missing

\$0.00

Yes

\$0.00

Repair

No

**Dishwasher****Other**

Missing

\$0.00

\$0.00

Repair

**Rent Ready?****Down?**

Yes

Yes

No

1

No

1

**Total****\$1,075.00**

## Unit 1142

## 3 Overall Fannie Mae Rating

3 bed 2 bath Unit Type

**Interiors****Front Door**

Quantity

**Washer/Dryer**

Quantity

Repair		\$0.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Trash Out****Kitchen Cabinets**

Required		\$0.00	Repair		\$0.00
Clean			Replace		\$0.00

**Carpet****Sink**

Requires Cleaning		\$0.00	Replace		\$0.00
Replace	1	\$600.00			

**Vinyl****Tub/Surround**

Requires Cleaning		\$0.00	Repair		\$0.00
Replace	1	\$225.00	Replace		

**Paint****Bath Vanity/Countertop**

Touch Up	1	\$0.00	Repair	1	\$100.00
Complete Paint Job		\$0.00	Replace		\$0.00

**Final Clean****Toilet**

Yes		\$0.00	Repair		\$0.00
No			Replace		\$0.00

**Window Coverings****Water Heater**

Replace	1	\$300.00	Missing		\$0.00
			Repair		

**Interior Doors****Air Handler**

Repair		\$0.00	Missing		\$0.00
Replace		\$0.00	Repair		

**Drywall Damage****Electric Fixtures**

Estimate Quick \$\$ Amount			Missing		\$0.00
			Repair		\$0.00

**Refrigerator****Smoke/CO Detectors**

Missing	1	\$500.00	Missing		\$0.00
Repair					

**Range****Mold**

Missing		\$0.00	Yes		\$0.00
Repair			No		

**Vent Hood****Pests**

Missing		\$0.00	Yes		\$0.00
Repair			No		

**Dishwasher****Other**

Missing		\$0.00			\$0.00
Repair					

**Rent Ready?****Down?**

Yes			Yes		
No	1		No	1	

**Total****\$1,725.00**



Unit 2142

3 Overall Fannie Mae Rating

3 bed 2 bath Unit Type

**Interiors****Front Door**

Quantity

**Washer/Dryer**

Quantity

Repair		\$0.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Trash Out****Kitchen Cabinets**

Required	1	\$100.00	Repair		\$0.00
Clean			Replace		\$0.00

**Carpet****Sink**

Requires Cleaning		\$0.00	Replace		\$0.00
Replace	1	\$600.00			

**Vinyl****Tub/Surround**

Requires Cleaning	1	\$50.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Paint****Bath Vanity/Countertop**

Touch Up		\$0.00	Repair		\$0.00
Complete Paint Job	1	\$800.00	Replace		\$0.00

**Final Clean****Toilet**

Yes	1	\$200.00	Repair		\$0.00
No			Replace		\$0.00

**Window Coverings****Water Heater**

Replace		\$0.00	Missing		\$0.00
			Repair		

**Interior Doors****Air Handler**

Repair		\$0.00	Missing		\$0.00
Replace		\$0.00	Repair		

**Drywall Damage****Electric Fixtures**

Estimate Quick \$\$ Amount		\$100.00	Missing		\$0.00
			Repair		\$0.00

**Refrigerator****Smoke/CO Detectors**

Missing		\$0.00	Missing		\$0.00
Repair	1				

**Range****Mold**

Missing		\$0.00	Yes		\$0.00
Repair			No		

**Vent Hood****Pests**

Missing		\$0.00	Yes		\$0.00
Repair	1		No		

**Dishwasher****Other**

Missing		\$0.00			\$0.00
Repair					

**Rent Ready?****Down?**

Yes			Yes		
No	1		No	1	

	<b>Total</b>	<b>\$1,850.00</b>			
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## Unit 2143

## 4 Overall Fannie Mae Rating

3 bed 2 bath Unit Type

**Interiors****Front Door**

Quantity

**Washer/Dryer**

Quantity

Repair		\$0.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Trash Out****Kitchen Cabinets**

Required		\$0.00	Repair		\$0.00
Clean			Replace		\$0.00

**Carpet****Sink**

Requires Cleaning		\$0.00	Replace		\$0.00
Replace	1	\$600.00			

**Vinyl****Tub/Surround**

Requires Cleaning	1	\$50.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Paint****Bath Vanity/Countertop**

Touch Up		\$0.00	Repair		\$0.00
Complete Paint Job		\$0.00	Replace		\$0.00

**Final Clean****Toilet**

Yes		\$0.00	Repair		\$0.00
No			Replace		\$0.00

**Window Coverings****Water Heater**

Replace		\$0.00	Missing		\$0.00
			Repair		

**Interior Doors****Air Handler**

Repair		\$0.00	Missing		\$0.00
Replace		\$0.00	Repair		

**Drywall Damage****Electric Fixtures**

Estimate Quick \$\$ Amount		\$0.00	Missing		\$0.00
			Repair		\$0.00

**Refrigerator****Smoke/CO Detectors**

Missing	1	\$500.00	Missing	1	\$50.00
Repair					

**Range****Mold**

Missing	1	\$375.00	Yes		\$0.00
Repair			No		

**Vent Hood****Pests**

Missing		\$0.00	Yes		\$0.00
Repair			No		

**Dishwasher****Other**

Missing		\$0.00		Rip out carpet on entrance and balcony	\$750.00
Repair					

**Rent Ready?****Down?**

Yes			Yes		
No	1		No	1	

**Total****\$2,325.00**

## Unit 2137

## 2 Overall Fannie Mae Rating

3 bed 2 bath Unit Type

**Interiors****Front Door**

Quantity

**Washer/Dryer**

Quantity

Repair		\$0.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Trash Out****Kitchen Cabinets**

Required		\$0.00	Repair		\$0.00
Clean			Replace		\$0.00

**Carpet****Sink**

Requires Cleaning		\$0.00	Replace		\$0.00
Replace		\$0.00			

**Vinyl****Tub/Surround**

Requires Cleaning		\$0.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Paint****Bath Vanity/Countertop**

Touch Up		\$0.00	Repair		\$0.00
Complete Paint Job		\$0.00	Replace		\$0.00

**Final Clean****Toilet**

Yes		\$0.00	Repair		\$0.00
No			Replace		\$0.00

**Window Coverings****Water Heater**

Replace		\$0.00	Missing		\$0.00
			Repair		

**Interior Doors****Air Handler**

Repair		\$0.00	Missing		\$0.00
Replace		\$0.00	Repair		

**Drywall Damage****Electric Fixtures**

Estimate Quick \$\$ Amount		\$0.00	Missing		\$0.00
			Repair		\$0.00

**Refrigerator****Smoke/CO Detectors**

Missing		\$0.00	Missing		\$0.00
Repair					

**Range****Mold**

Missing		\$0.00	Yes		\$0.00
Repair			No		

**Vent Hood****Pests**

Missing		\$0.00	Yes		\$0.00
Repair			No		

**Dishwasher****Other**

Missing		\$0.00			\$0.00
Repair					

**Rent Ready?****Down?**

Yes	1		Yes		
No			No	1	

	<b>Total</b>	<b>\$0.00</b>			
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## Unit 1139

## 3 Overall Fannie Mae Rating

3 bed 2 bath Unit Type

**Interiors****Front Door**

Quantity

**Washer/Dryer**

Quantity

Repair		\$0.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Trash Out****Kitchen Cabinets**

Required	1	\$100.00	Repair		\$0.00
Clean			Replace		\$0.00

**Carpet****Sink**

Requires Cleaning	1	\$175.00	Replace		\$0.00
Replace		\$0.00			

**Vinyl****Tub/Surround**

Requires Cleaning	1	\$50.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Paint****Bath Vanity/Countertop**

Touch Up		\$0.00	Repair		\$0.00
Complete Paint Job		\$0.00	Replace		\$0.00

**Final Clean****Toilet**

Yes	1	\$200.00	Repair		\$0.00
No			Replace		\$0.00

**Window Coverings****Water Heater**

Replace		\$0.00	Missing		\$0.00
			Repair		

**Interior Doors****Air Handler**

Repair		\$0.00	Missing		\$0.00
Replace		\$0.00	Repair		

**Drywall Damage****Electric Fixtures**

Estimate Quick \$\$ Amount		\$0.00	Missing		\$0.00
			Repair		\$0.00

**Refrigerator****Smoke/CO Detectors**

Missing		\$0.00	Missing		\$0.00
Repair					

**Range****Mold**

Missing		\$0.00	Yes		\$0.00
Repair			No		

**Vent Hood****Pests**

Missing		\$0.00	Yes		\$0.00
Repair			No		

**Dishwasher****Other**

Missing		\$0.00			\$500.00
Repair					

**Rent Ready?****Down?**

Yes			Yes		
No	1		No	1	

	<b>Total</b>	<b>\$1,025.00</b>			
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Unit 2099

4 Overall Fannie Mae Rating

1 bed 1 bath Unit Type

**Interiors****Front Door**

Quantity

**Washer/Dryer**

Quantity

Repair		\$0.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Trash Out****Kitchen Cabinets**

Required		\$0.00	Repair		\$0.00
Clean			Replace		\$0.00

**Carpet****Sink**

Requires Cleaning	1	\$175.00	Replace		\$0.00
Replace		\$0.00			

**Vinyl****Tub/Surround**

Requires Cleaning	1	\$50.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Paint****Bath Vanity/Countertop/Kitchen**

Touch Up		\$0.00	Repair		\$0.00
Complete Paint Job		\$0.00	Replace		\$0.00

**Final Clean****Toilet**

Yes	1	\$200.00	Repair		\$0.00
No			Replace		\$0.00

**Window Coverings****Water Heater**

Replace	1	\$300.00	Missing		\$0.00
			Repair		

**Interior Doors****Air Handler**

Repair		\$0.00	Missing		\$0.00
Replace		\$0.00	Repair		

**Drywall Damage****Electric Fixtures**

Estimate Quick \$\$ Amount		\$0.00	Missing		\$0.00
			Repair		\$0.00

**Refrigerator****Smoke/CO Detectors**

Missing	1	\$500.00	Missing		\$0.00
Repair					

**Range****Mold**

Missing		\$0.00	Yes		\$0.00
Repair	1		No		

**Vent Hood****Pests**

Missing		\$0.00	Yes		\$0.00
Repair			No		

**Dishwasher****Other**

Missing		\$0.00			\$100.00
Repair					

**Rent Ready?****Down?**

Yes			Yes		
No	1		No	1	

	<b>Total</b>	<b>\$1,325.00</b>			
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## Unit 1061

## 2 Overall Fannie Mae Rating

2 bed 2 bath Unit Type

**Interiors****Front Door**

Quantity

**Washer/Dryer**

Quantity

Repair		\$0.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Trash Out****Kitchen Cabinets**

Required		\$0.00	Repair		\$0.00
Clean			Replace		\$0.00

**Carpet****Sink**

Requires Cleaning		\$0.00	Replace		\$0.00
Replace		\$0.00			

**Vinyl****Tub/Surround**

Requires Cleaning		\$0.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Paint****Bath Vanity/Countertop**

Touch Up		\$0.00	Repair		\$0.00
Complete Paint Job		\$0.00	Replace		\$0.00

**Final Clean****Toilet**

Yes		\$0.00	Repair		\$0.00
No			Replace		\$0.00

**Window Coverings****Water Heater**

Replace		\$0.00	Missing		\$0.00
			Repair		

**Interior Doors****Air Handler**

Repair		\$0.00	Missing		\$0.00
Replace		\$0.00	Repair		

**Drywall Damage****Electric Fixtures**

Estimate Quick \$\$ Amount		\$0.00	Missing		\$0.00
			Repair		\$0.00

**Refrigerator****Smoke/CO Detectors**

Missing		\$0.00	Missing		\$0.00
Repair	1				

**Range****Mold**

Missing	1	\$375.00	Yes		\$0.00
Repair			No		

**Vent Hood****Pests**

Missing		\$0.00	Yes		\$0.00
Repair			No		

**Dishwasher****Other**

Missing		\$0.00			\$0.00
Repair					

**Rent Ready?****Down?**

Yes	1		Yes		
No			No	1	

	<b>Total</b>	<b>\$375.00</b>			
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## Unit 2060

## 3 Overall Fannie Mae Rating

2 bed 2 bath Unit Type

**Interiors****Front Door**

Quantity

**Washer/Dryer**

Quantity

Repair		\$0.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Trash Out****Kitchen Cabinets**

Required	1	\$100.00	Repair		\$0.00
Clean			Replace		\$0.00

**Carpet****Sink**

Requires Cleaning	1	\$175.00	Replace		\$0.00
Replace		\$0.00			

**Vinyl****Tub/Surround**

Requires Cleaning	1	\$50.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Paint****Bath Vanity/Countertop**

Touch Up		\$0.00	Repair		\$0.00
Complete Paint Job		\$0.00	Replace		\$0.00

**Final Clean****Toilet**

Yes	1	\$200.00	Repair		\$0.00
No			Replace		\$0.00

**Window Coverings****Water Heater**

Replace		\$0.00	Missing		\$0.00
			Repair		

**Interior Doors****Air Handler**

Repair		\$0.00	Missing		\$0.00
Replace		\$0.00	Repair		

**Drywall Damage****Electric Fixtures**

Estimate Quick \$\$ Amount		\$0.00	Missing		\$0.00
			Repair		\$0.00

**Refrigerator****Smoke/CO Detectors**

Missing		\$0.00	Missing		\$0.00
Repair					

**Range****Mold**

Missing		\$0.00	Yes		\$0.00
Repair			No		

**Vent Hood****Pests**

Missing		\$0.00	Yes		\$0.00
Repair			No		

**Dishwasher****Other**

Missing		\$0.00			\$0.00
Repair					

**Rent Ready?****Down?**

Yes	1		Yes		
No			No	1	

	<b>Total</b>	<b>\$525.00</b>			
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## Unit 2066

## 4 Overall Fannie Mae Rating

1 bed 1 bath Unit Type

**Interiors****Front Door**

Quantity

**Washer/Dryer**

Quantity

Repair		\$0.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Trash Out****Kitchen Cabinets**

Required		\$0.00	Repair	1	\$175.00
Clean			Replace		\$0.00

**Carpet****Sink**

Requires Cleaning	1	\$175.00	Replace		\$0.00
Replace		\$0.00			

**Vinyl****Tub/Surround**

Requires Cleaning		\$0.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Paint****Bath Vanity/Countertop**

Touch Up		\$0.00	Repair	1	\$100.00
Complete Paint Job		\$0.00	Replace		\$0.00

**Final Clean****Toilet**

Yes	1	\$200.00	Repair		\$0.00
No			Replace		\$0.00

**Window Coverings****Water Heater**

Replace		\$0.00	Missing		\$0.00
			Repair		

**Interior Doors****Air Handler**

Repair		\$0.00	Missing		\$0.00
Replace		\$0.00	Repair		

**Drywall Damage****Electric Fixtures**

Estimate Quick \$\$ Amount		\$0.00	Missing		\$0.00
			Repair		\$0.00

**Refrigerator****Smoke/CO Detectors**

Missing		\$0.00	Missing		\$0.00
Repair					

**Range****Mold**

Missing		\$0.00	Yes		\$0.00
Repair	1		No		

**Vent Hood****Pests**

Missing		\$0.00	Yes		\$0.00
Repair			No		

**Dishwasher****Other**

Missing		\$0.00			\$0.00
Repair					

**Rent Ready?****Down?**

Yes	1		Yes		
No			No	1	

	<b>Total</b>	<b>\$650.00</b>		Model Unit	
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## Unit 1066

## 5 Overall Fannie Mae Rating

1 bed 1 bath Unit Type

Interiors**Front Door**

Quantity

Repair		\$0.00
Replace		\$0.00

**Washer/Dryer**

Quantity

Repair		\$0.00
Replace		

**Trash Out**

Required		\$0.00
Clean		

**Kitchen Cabinets**

Repair	1	\$175.00
Replace		\$0.00

**Carpet**

Requires Cleaning	1	\$175.00
Replace		\$0.00

**Sink**

Replace	1	\$120.00
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**Vinyl**

Requires Cleaning	1	\$50.00
Replace		\$0.00

**Tub/Surround**

Repair	1	\$1,200.00
Replace		

**Paint**

Touch Up		\$0.00
Complete Paint Job		\$0.00

**Bath Vanity/Countertop**

Repair	1	\$100.00
Replace		\$0.00

**Final Clean**

Yes		\$0.00
No		

**Toilet**

Repair	1	\$0.00
Replace		\$0.00

**Window Coverings**

Replace		\$0.00
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**Water Heater**

Missing		\$0.00
Repair		

**Interior Doors**

Repair		\$0.00
Replace		\$0.00

**Air Handler**

Missing		\$0.00
Repair		

**Drywall Damage**

Estimate Quick \$\$ Amount		\$0.00
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**Electric Fixtures**

Missing		\$0.00
Repair		\$0.00

**Refrigerator**

Missing	1	\$500.00
Repair		

**Smoke/CO Detectors**

Missing		\$0.00
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**Range**

Missing	1	\$375.00
Repair		

**Mold**

Yes		\$0.00
No		

**Vent Hood**

Missing	1	\$145.00
Repair		

**Pests**

Yes		\$0.00
No		

**Dishwasher**

Missing	1	\$315.00
Repair		

**Other**

		\$500.00
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**Rent Ready?**

Yes		
No	1	

**Down?**

Yes	1	
No		

	<b>Total</b>	<b>\$3,655.00</b>
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## Unit 2068

## 3 Overall Fannie Mae Rating

1 bed 1 bath Unit Type

**Interiors****Front Door**

Quantity

**Washer/Dryer**

Quantity

Repair		\$0.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Trash Out****Kitchen Cabinets**

Required		\$0.00	Repair		\$0.00
Clean			Replace		\$0.00

**Carpet****Sink**

Requires Cleaning		\$0.00	Replace		\$0.00
Replace	1	\$600.00			

**Vinyl****Tub/Surround**

Requires Cleaning	1	\$50.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Paint****Bath Vanity/Countertop**

Touch Up	1	\$0.00	Repair		\$0.00
Complete Paint Job		\$0.00	Replace		\$0.00

**Final Clean****Toilet**

Yes	1	\$200.00	Repair	1	\$0.00
No			Replace		\$0.00

**Window Coverings****Water Heater**

Replace		\$0.00	Missing		\$0.00
			Repair		

**Interior Doors****Air Handler**

Repair		\$0.00	Missing		\$0.00
Replace		\$0.00	Repair		

**Drywall Damage****Electric Fixtures**

Estimate Quick \$\$ Amount		\$0.00	Missing		\$0.00
			Repair		\$0.00

**Refrigerator****Smoke/CO Detectors**

Missing		\$0.00	Missing	1	\$50.00
Repair					

**Range****Mold**

Missing		\$0.00	Yes		\$0.00
Repair			No		

**Vent Hood****Pests**

Missing		\$0.00	Yes		\$0.00
Repair			No		

**Dishwasher****Other**

Missing		\$0.00			\$0.00
Repair					

**Rent Ready?****Down?**

Yes			Yes		
No	1		No	1	

	<b>Total</b>	<b>\$900.00</b>		Screen damage outside window	
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## Unit 2035

## 4 Overall Fannie Mae Rating

1 bed 1 bath Unit Type

**Interiors****Front Door**

Quantity

**Washer/Dryer**

Quantity

Repair		\$0.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Trash Out****Kitchen Cabinets**

Required		\$0.00	Repair		\$0.00
Clean			Replace		\$0.00

**Carpet****Sink**

Requires Cleaning		\$0.00	Replace	1	\$120.00
Replace	1	\$600.00			

**Vinyl****Tub/Surround**

Requires Cleaning		\$0.00	Repair		\$0.00
Replace	1	\$225.00	Replace		

**Paint****Kitchen Vanity/Countertop**

Touch Up		\$0.00	Repair	1	\$100.00
Complete Paint Job	1	\$800.00	Replace		\$0.00

**Final Clean****Toilet**

Yes	1	\$200.00	Repair		\$0.00
No			Replace		\$0.00

**Window Coverings****Water Heater**

Replace		\$0.00	Missing		\$0.00
			Repair		

**Interior Doors****Air Handler**

Repair	1	\$75.00	Missing		\$0.00
Replace		\$0.00	Repair		

**Drywall Damage****Electric Fixtures**

Estimate Quick \$\$ Amount		\$0.00	Missing		\$0.00
			Repair		\$0.00

**Refrigerator****Smoke/CO Detectors**

Missing		\$0.00	Missing		\$0.00
Repair	1				

**Range****Mold**

Missing		\$0.00	Yes		\$0.00
Repair	1		No		

**Vent Hood****Pests**

Missing		\$0.00	Yes		\$0.00
Repair	1		No		

**Dishwasher****Other**

Missing		\$0.00			\$0.00
Repair	1				

**Rent Ready?****Down?**

Yes			Yes	1	
No	1		No		

	<b>Total</b>	<b>\$2,120.00</b>			
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## Unit 2047

## 4 Overall Fannie Mae Rating

1 bed 1 bath Unit Type

**Interiors****Front Door**

Quantity

**Washer/Dryer**

Quantity

Repair		\$0.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Trash Out****Kitchen Cabinets**

Required		\$0.00	Repair	1	\$175.00
Clean			Replace		\$0.00

**Carpet****Sink**

Requires Cleaning	1	\$175.00	Replace		\$0.00
Replace		\$0.00			

**Vinyl****Tub/Surround**

Requires Cleaning	1	\$50.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Paint****Bath Vanity/Countertop**

Touch Up		\$0.00	Repair	1	\$100.00
Complete Paint Job	1	\$800.00	Replace		\$0.00

**Final Clean****Toilet**

Yes	1	\$200.00	Repair		\$0.00
No			Replace		\$0.00

**Window Coverings****Water Heater**

Replace		\$0.00	Missing		\$0.00
			Repair		

**Interior Doors****Air Handler**

Repair		\$0.00	Missing		\$0.00
Replace		\$0.00	Repair		

**Drywall Damage****Electric Fixtures**

Estimate Quick \$\$ Amount		\$0.00	Missing		\$0.00
			Repair		\$0.00

**Refrigerator****Smoke/CO Detectors**

Missing		\$0.00	Missing		\$0.00
Repair					

**Range****Mold**

Missing		\$0.00	Yes		\$0.00
Repair			No		

**Vent Hood****Pests**

Missing		\$0.00	Yes		\$0.00
Repair			No		

**Dishwasher****Other**

Missing		\$0.00		Rip out carpet on entrance and balcony	\$750.00
Repair					

**Rent Ready?****Down?**

Yes			Yes		
No	1		No	1	

**Total****\$2,250.00**

## Unit 2080

## 4 Overall Fannie Mae Rating

2 bed 1 bath Unit Type

**Interiors****Front Door**

Quantity

**Washer/Dryer**

Quantity

Repair		\$0.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Trash Out****Kitchen Cabinets**

Required		\$0.00	Repair	1	\$175.00
Clean			Replace		\$0.00

**Carpet****Sink**

Requires Cleaning	1	\$175.00	Replace		\$0.00
Replace		\$0.00			

**Vinyl****Tub/Surround**

Requires Cleaning	1	\$50.00	Repair	1	#####
Replace		\$0.00	Replace		

**Paint****Bath Vanity/Countertop**

Touch Up		\$0.00	Repair		\$0.00
Complete Paint Job	1	\$800.00	Replace		\$0.00

**Final Clean****Toilet**

Yes	1	\$200.00	Repair		\$0.00
No			Replace		\$0.00

**Window Coverings****Water Heater**

Replace		\$0.00	Missing		\$0.00
			Repair		

**Interior Doors****Air Handler**

Repair		\$0.00	Missing		\$0.00
Replace		\$0.00	Repair		

**Drywall Damage****Electric Fixtures**

Estimate Quick \$\$ Amount		\$0.00	Missing		\$0.00
			Repair		\$0.00

**Refrigerator****Smoke/CO Detectors**

Missing	1	\$500.00	Missing		\$0.00
Repair					

**Range****Mold**

Missing		\$0.00	Yes		\$0.00
Repair	1		No		

**Vent Hood****Pests**

Missing		\$0.00	Yes		\$0.00
Repair			No		

**Dishwasher****Other**

Missing		\$0.00			\$0.00
Repair					

**Rent Ready?****Down?**

Yes			Yes		
No	1		No	1	

**Total****\$3,100.00**



## Unit 1052

## 3 Overall Fannie Mae Rating

2 bed 1 bath Unit Type

**Interiors****Front Door**

Quantity

**Washer/Dryer**

Quantity

Repair		\$0.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Trash Out****Kitchen Cabinets**

Required		\$0.00	Repair		\$0.00
Clean			Replace		\$0.00

**Carpet****Sink**

Requires Cleaning		\$0.00	Replace		\$0.00
Replace	1	\$600.00			

**Vinyl****Tub/Surround**

Requires Cleaning	1	\$50.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Paint****Bath Vanity/Countertop**

Touch Up	1	\$0.00	Repair		\$0.00
Complete Paint Job		\$0.00	Replace		\$0.00

**Final Clean****Toilet**

Yes	1	\$200.00	Repair		\$0.00
No			Replace		\$0.00

**Window Coverings****Water Heater**

Replace		\$0.00	Missing		\$0.00
			Repair		

**Interior Doors****Air Handler**

Repair		\$0.00	Missing		\$0.00
Replace		\$0.00	Repair		

**Drywall Damage****Electric Fixtures**

Estimate Quick \$\$ Amount		\$0.00	Missing		\$0.00
			Repair		\$0.00

**Refrigerator****Smoke/CO Detectors**

Missing		\$0.00	Missing		\$0.00
Repair					

**Range****Mold**

Missing		\$0.00	Yes		\$0.00
Repair			No		

**Vent Hood****Pests**

Missing		\$0.00	Yes		\$0.00
Repair			No		

**Dishwasher****Other**

Missing		\$0.00			\$0.00
Repair					

**Rent Ready?****Down?**

Yes			Yes		
No	1		No	1	

	<b>Total</b>	<b>\$850.00</b>			
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Unit 2339

3 Overall Fannie Mae Rating

1 bed 1 bath Unit Type

**Interiors****Front Door**

Quantity

**Washer/Dryer**

Quantity

Repair		\$0.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Trash Out****Kitchen Cabinets**

Required		\$0.00	Repair		\$0.00
Clean			Replace		\$0.00

**Carpet****Sink**

Requires Cleaning	1	\$175.00	Replace		\$0.00
Replace		\$0.00			

**Vinyl****Tub/Surround**

Requires Cleaning	1	\$50.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Paint****Bath Vanity/Countertop**

Touch Up	1	\$0.00	Repair		\$0.00
Complete Paint Job		\$0.00	Replace		\$0.00

**Final Clean****Toilet**

Yes	1	\$200.00	Repair		\$0.00
No			Replace		\$0.00

**Window Coverings****Water Heater**

Replace		\$0.00	Missing		\$0.00
			Repair		

**Interior Doors****Air Handler**

Repair		\$0.00	Missing		\$0.00
Replace		\$0.00	Repair		

**Drywall Damage****Electric Fixtures**

Estimate Quick \$\$ Amount		\$0.00	Missing		\$0.00
			Repair		\$0.00

**Refrigerator****Smoke/CO Detectors**

Missing	1	\$500.00	Missing		\$0.00
Repair					

**Range****Mold**

Missing		\$0.00	Yes		\$0.00
Repair			No		

**Vent Hood****Pests**

Missing		\$0.00	Yes		\$0.00
Repair			No		

**Dishwasher****Other**

Missing		\$0.00			\$0.00
Repair					

**Rent Ready?****Down?**

Yes			Yes		
No	1		No	1	

	<b>Total</b>	<b>\$925.00</b>			
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Unit 2356

3 Overall Fannie Mae Rating

1 bed 1 bath Unit Type

**Interiors****Front Door**

Quantity

**Washer/Dryer**

Quantity

Repair		\$0.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Trash Out****Kitchen Cabinets**

Required		\$0.00	Repair		\$0.00
Clean	1		Replace		\$0.00

**Carpet****Sink**

Requires Cleaning		\$0.00	Replace		\$0.00
Replace		\$0.00			

**Vinyl****Tub/Surround**

Requires Cleaning	1	\$50.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Paint****Bath Vanity/Countertop**

Touch Up	1	\$0.00	Repair		\$0.00
Complete Paint Job		\$0.00	Replace		\$0.00

**Final Clean****Toilet**

Yes	1	\$200.00	Repair		\$0.00
No			Replace		\$0.00

**Window Coverings****Water Heater**

Replace		\$0.00	Missing		\$0.00
			Repair		

**Interior Doors****Air Handler**

Repair		\$0.00	Missing		\$0.00
Replace		\$0.00	Repair		

**Drywall Damage****Electric Fixtures**

Estimate Quick \$\$ Amount		\$0.00	Missing		\$0.00
			Repair		\$0.00

**Refrigerator****Smoke/CO Detectors**

Missing		\$0.00	Missing		\$0.00
Repair					

**Range****Mold**

Missing		\$0.00	Yes		\$0.00
Repair			No		

**Vent Hood****Pests**

Missing		\$0.00	Yes		\$0.00
Repair			No		

**Dishwasher****Other**

Missing		\$0.00			\$0.00
Repair					

**Rent Ready?****Down?**

Yes			Yes		
No	1		No	1	

	<b>Total</b>	<b>\$250.00</b>			
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## Unit 1363

## 5 Overall Fannie Mae Rating

3 bed 2 bath Unit Type

## Interiors

## Front Door

Quantity

## Washer/Dryer

Quantity

Repair		\$0.00	Repair		\$0.00
Replace		\$0.00	Replace	1	\$1,000.00

## Trash Out

## Kitchen Cabinets

Required	1	\$100.00	Repair		\$0.00
Clean			Replace	1	\$1,500.00

## Carpet

## Sink

Requires Cleaning		\$0.00	Replace	1	\$120.00
Replace	1	\$600.00			

## Vinyl

## Tub/Surround

Requires Cleaning		\$0.00	Repair	1	\$1,200.00
Replace	1	\$225.00	Replace		

## Paint

## Bath Vanity/Countertop

Touch Up		\$0.00	Repair		\$0.00
Complete Paint Job	1	\$800.00	Replace	1	\$400.00

## Final Clean

## Toilet

Yes	1	\$200.00	Repair		\$0.00
No			Replace		\$0.00

## Window Coverings

## Water Heater

Replace		\$0.00	Missing		\$0.00
			Repair		

## Interior Doors

## Air Handler

Repair		\$0.00	Missing		\$0.00
Replace		\$0.00	Repair		

## Drywall Damage

## Electric Fixtures

Estimate Quick \$\$ Amount		\$0.00	Missing		\$0.00
			Repair		\$0.00

## Refrigerator

## Smoke/CO Detectors

Missing	1	\$500.00	Missing	1	\$50.00
Repair					

## Range

## Mold

Missing	1	\$375.00	Yes		\$0.00
Repair			No		

## Vent Hood

## Pests

Missing	1	\$145.00	Yes		\$0.00
Repair			No		

## Dishwasher

## Other

Missing	1	\$315.00			\$0.00
Repair					

## Rent Ready?

## Down?

Yes			Yes	1	
No	1		No		

**Total****\$7,530.00**

## Unit 1301

## 2 Overall Fannie Mae Rating

2 bed 2 bath Unit Type

**Interiors****Front Door**

Quantity

**Washer/Dryer**

Quantity

Repair		\$0.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Trash Out****Kitchen Cabinets**

Required		\$0.00	Repair		\$0.00
Clean			Replace		\$0.00

**Carpet****Sink**

Requires Cleaning		\$0.00	Replace		\$0.00
Replace		\$0.00			

**Vinyl****Tub/Surround**

Requires Cleaning		\$0.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Paint****Bath Vanity/Countertop**

Touch Up		\$0.00	Repair		\$0.00
Complete Paint Job		\$0.00	Replace		\$0.00

**Final Clean****Toilet**

Yes		\$0.00	Repair		\$0.00
No			Replace		\$0.00

**Window Coverings****Water Heater**

Replace		\$0.00	Missing		\$0.00
			Repair		

**Interior Doors****Air Handler**

Repair		\$0.00	Missing		\$0.00
Replace		\$0.00	Repair		

**Drywall Damage****Electric Fixtures**

Estimate Quick \$\$ Amount		\$0.00	Missing		\$0.00
			Repair		\$0.00

**Refrigerator****Smoke/CO Detectors**

Missing		\$0.00	Missing		\$0.00
Repair					

**Range****Mold**

Missing		\$0.00	Yes		\$0.00
Repair			No		

**Vent Hood****Pests**

Missing		\$0.00	Yes		\$0.00
Repair			No		

**Dishwasher****Other**

Missing		\$0.00			\$0.00
Repair					

**Rent Ready?****Down?**

Yes	1		Yes		
No			No	1	

	<b>Total</b>	<b>\$0.00</b>		rent ready being painted	
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## Unit 2307

## 3 Overall Fannie Mae Rating

2 bed 2 bath Unit Type

## Interiors

## Front Door

Quantity

## Washer/Dryer

Quantity

Repair		\$0.00	Repair		\$0.00
Replace		\$0.00	Replace	1	\$1,000.00

## Trash Out

## Kitchen Cabinets

Required		\$0.00	Repair		\$0.00
Clean	1		Replace		\$0.00

## Carpet

## Sink

Requires Cleaning		\$0.00	Replace		\$0.00
Replace	1	\$600.00			

## Vinyl

## Tub/Surround

Requires Cleaning	1	\$50.00	Repair		\$0.00
Replace		\$0.00	Replace		

## Paint

## Bath Vanity/Countertop

Touch Up		\$0.00	Repair		\$0.00
Complete Paint Job	1	\$800.00	Replace		\$0.00

## Final Clean

## Toilet

Yes	1	\$200.00	Repair		\$0.00
No			Replace		\$0.00

## Window Coverings

## Water Heater

Replace		\$0.00	Missing		\$0.00
			Repair		

## Interior Doors

## Air Handler

Repair		\$0.00	Missing		\$0.00
Replace		\$0.00	Repair		

## Drywall Damage

## Electric Fixtures

Estimate Quick \$\$ Amount		\$0.00	Missing		\$0.00
			Repair		\$0.00

## Refrigerator

## Smoke/CO Detectors

Missing		\$0.00	Missing		\$0.00
Repair					

## Range

## Mold

Missing		\$0.00	Yes		\$0.00
Repair			No		

## Vent Hood

## Pests

Missing		\$0.00	Yes		\$0.00
Repair			No		

## Dishwasher

## Other

Missing		\$0.00			\$0.00
Repair					

## Rent Ready?

## Down?

Yes			Yes		
No	1		No	1	

**Total****\$2,650.00**



Unit 2314

2 Overall Fannie Mae Rating

1 bed 1 bath Unit Type

**Interiors****Front Door**

Quantity

**Washer/Dryer**

Quantity

Repair		\$0.00	Repair		\$0.00
Replace		\$0.00	Replace	1	\$1,000.00

**Trash Out****Kitchen Cabinets**

Required		\$0.00	Repair		\$0.00
Clean			Replace		\$0.00

**Carpet****Sink**

Requires Cleaning		\$0.00	Replace		\$0.00
Replace		\$0.00			

**Vinyl****Tub/Surround**

Requires Cleaning		\$0.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Paint****Bath Vanity/Countertop**

Touch Up		\$0.00	Repair		\$0.00
Complete Paint Job		\$0.00	Replace		\$0.00

**Final Clean****Toilet**

Yes		\$0.00	Repair		\$0.00
No			Replace		\$0.00

**Window Coverings****Water Heater**

Replace		\$0.00	Missing		\$0.00
			Repair		

**Interior Doors****Air Handler**

Repair		\$0.00	Missing		\$0.00
Replace		\$0.00	Repair		

**Drywall Damage****Electric Fixtures**

Estimate Quick \$\$ Amount		\$0.00	Missing		\$0.00
			Repair		\$0.00

**Refrigerator****Smoke/CO Detectors**

Missing		\$0.00	Missing		\$0.00
Repair					

**Range****Mold**

Missing		\$0.00	Yes		\$0.00
Repair			No		

**Vent Hood****Pests**

Missing		\$0.00	Yes		\$0.00
Repair			No		

**Dishwasher****Other**

Missing		\$0.00			\$0.00
Repair					

**Rent Ready?****Down?**

Yes	1		Yes		
No			No	1	

	<b>Total</b>	<b>\$1,000.00</b>			
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## Unit 1314

## 5 Overall Fannie Mae Rating

1 bed 1 bath Unit Type

Interiors**Front Door**

Quantity

Repair		\$0.00
Replace		\$0.00

**Washer/Dryer**

Quantity

Repair		\$0.00
Replace		

**Trash Out**

Required		\$0.00
Clean		

**Kitchen Cabinets**

Repair		\$0.00
Replace	1	\$1,500.00

**Carpet**

Requires Cleaning		\$0.00
Replace	1	\$600.00

**Sink**

Replace		\$0.00
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**Vinyl**

Requires Cleaning		\$0.00
Replace	1	\$225.00

**Tub/Surround**

Repair		\$0.00
Replace		

**Paint**

Touch Up		\$0.00
Complete Paint Job		\$0.00

**Bath Vanity/Countertop**

Repair		\$0.00
Replace	1	\$400.00

**Final Clean**

Yes		\$0.00
No		

**Toilet**

Repair		\$0.00
Replace	1	\$200.00

**Window Coverings**

Replace		\$0.00
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**Water Heater**

Missing		\$0.00
Repair		

**Interior Doors**

Repair		\$0.00
Replace		\$0.00

**Air Handler**

Missing	1	\$1,600.00
Repair		

**Drywall Damage**

Estimate Quick \$\$ Amount		\$200.00
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**Electric Fixtures**

Missing		\$0.00
Repair		\$0.00

**Refrigerator**

Missing	1	\$500.00
Repair		

**Smoke/CO Detectors**

Missing		\$0.00
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**Range**

Missing		\$0.00
Repair	1	

**Mold**

Yes		\$0.00
No		

**Vent Hood**

Missing	1	\$145.00
Repair		

**Pests**

Yes		\$0.00
No		

**Dishwasher**

Missing	1	\$315.00
Repair		

**Other**

		\$0.00
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**Rent Ready?**

Yes		
No	1	

**Down?**

Yes	1	
No		

	<b>Total</b>	<b>\$5,685.00</b>
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## Unit 1315

## 4 Overall Fannie Mae Rating

1 bed 1 bath Unit Type

**Interiors****Front Door**

Quantity

**Washer/Dryer**

Quantity

Repair		\$0.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Trash Out****Kitchen Cabinets**

Required		\$0.00	Repair	1	\$175.00
Clean			Replace		\$0.00

**Carpet****Sink**

Requires Cleaning		\$0.00	Replace		\$0.00
Replace	1	\$600.00			

**Vinyl****Tub/Surround**

Requires Cleaning	1	\$50.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Paint****Bath Vanity/Countertop**

Touch Up		\$0.00	Repair		\$0.00
Complete Paint Job	1	\$800.00	Replace		\$0.00

**Final Clean****Toilet**

Yes	1	\$200.00	Repair		\$0.00
No			Replace		\$0.00

**Window Coverings****Water Heater**

Replace		\$0.00	Missing		\$0.00
			Repair		

**Interior Doors****Air Handler**

Repair		\$0.00	Missing		\$0.00
Replace		\$0.00	Repair		

**Drywall Damage****Electric Fixtures**

Estimate Quick \$\$ Amount		\$0.00	Missing		\$0.00
			Repair		\$0.00

**Refrigerator****Smoke/CO Detectors**

Missing	1	\$500.00	Missing	1	\$50.00
Repair					

**Range****Mold**

Missing		\$0.00	Yes		\$0.00
Repair			No		

**Vent Hood****Pests**

Missing		\$0.00	Yes		\$0.00
Repair			No		

**Dishwasher****Other**

Missing		\$0.00			\$0.00
Repair					

**Rent Ready?****Down?**

Yes			Yes		
No	1		No	1	

	<b>Total</b>	<b>\$2,375.00</b>			
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## Unit 2315

## 4 Overall Fannie Mae Rating

1 bed 1 bath Unit Type

**Interiors****Front Door**

Quantity

**Washer/Dryer**

Quantity

Repair		\$0.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Trash Out****Kitchen Cabinets**

Required	1	\$100.00	Repair		\$0.00
Clean			Replace		\$0.00

**Carpet****Sink**

Requires Cleaning	1	\$175.00	Replace		\$0.00
Replace		\$0.00			

**Vinyl****Tub/Surround**

Requires Cleaning	1	\$50.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Paint****Bath Vanity/Countertop**

Touch Up	1	\$0.00	Repair		\$0.00
Complete Paint Job		\$0.00	Replace		\$0.00

**Final Clean****Toilet**

Yes	1	\$200.00	Repair		\$0.00
No			Replace		\$0.00

**Window Coverings****Water Heater**

Replace		\$0.00	Missing		\$0.00
			Repair		

**Interior Doors****Air Handler**

Repair		\$0.00	Missing		\$0.00
Replace		\$0.00	Repair		

**Drywall Damage****Electric Fixtures**

Estimate Quick \$\$ Amount		\$0.00	Missing		\$0.00
			Repair		\$0.00

**Refrigerator****Smoke/CO Detectors**

Missing	1	\$500.00	Missing		\$0.00
Repair					

**Range****Mold**

Missing	1	\$375.00	Yes		\$0.00
Repair			No		

**Vent Hood****Pests**

Missing		\$0.00	Yes		\$0.00
Repair			No		

**Dishwasher****Other**

Missing		\$0.00			\$0.00
Repair					

**Rent Ready?****Down?**

Yes			Yes		
No	1		No	1	

	<b>Total</b>	<b>\$1,400.00</b>			
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## Unit 2316

## 4 Overall Fannie Mae Rating

1 bed 1 bath Unit Type

**Interiors****Front Door**

Quantity

**Washer/Dryer**

Quantity

Repair		\$0.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Trash Out****Kitchen Cabinets**

Required	1	\$100.00	Repair	1	\$175.00
Clean			Replace		\$0.00

**Carpet****Sink**

Requires Cleaning	1	\$175.00	Replace		\$0.00
Replace		\$0.00			

**Vinyl****Tub/Surround**

Requires Cleaning	1	\$50.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Paint****Bath Vanity/Countertop**

Touch Up		\$0.00	Repair		\$0.00
Complete Paint Job	1	\$800.00	Replace		\$0.00

**Final Clean****Toilet**

Yes	1	\$200.00	Repair		\$0.00
No			Replace		\$0.00

**Window Coverings****Water Heater**

Replace		\$0.00	Missing		\$0.00
			Repair		

**Interior Doors****Air Handler**

Repair		\$0.00	Missing		\$0.00
Replace		\$0.00	Repair		

**Drywall Damage****Electric Fixtures**

Estimate Quick \$\$ Amount		\$500.00	Missing		\$0.00
			Repair		\$0.00

**Refrigerator****Smoke/CO Detectors**

Missing		\$0.00	Missing		\$0.00
Repair					

**Range****Mold**

Missing		\$0.00	Yes		\$0.00
Repair			No		

**Vent Hood****Pests**

Missing		\$0.00	Yes		\$0.00
Repair			No		

**Dishwasher****Other**

Missing		\$0.00			\$0.00
Repair					

**Rent Ready?****Down?**

Yes			Yes		
No	1		No	1	

	<b>Total</b>	<b>\$2,000.00</b>			
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## Unit 1316

## 5 Overall Fannie Mae Rating

1 bed 1 bath Unit Type

Interiors**Front Door**

Quantity

Repair		\$0.00
Replace		\$0.00

**Washer/Dryer**

Quantity

Repair		\$0.00
Replace	1	\$1,000.00

**Trash Out**

Required	1	\$100.00
Clean		

**Kitchen Cabinets**

Repair		\$0.00
Replace	1	\$1,500.00

**Carpet**

Requires Cleaning		\$0.00
Replace	1	\$600.00

**Sink**

Replace	1	\$120.00
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**Vinyl**

Requires Cleaning		\$0.00
Replace	1	\$225.00

**Tub/Surround**

Repair		\$0.00
Replace		

**Paint**

Touch Up		\$0.00
Complete Paint Job		\$0.00

**Bath Vanity/Countertop**

Repair	1	\$100.00
Replace		\$0.00

**Final Clean**

Yes	1	\$200.00
No		

**Toilet**

Repair		\$0.00
Replace		\$0.00

**Window Coverings**

Replace		\$0.00
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**Water Heater**

Missing	1	\$450.00
Repair		

**Interior Doors**

Repair		\$0.00
Replace		\$0.00

**Air Handler**

Missing		\$0.00
Repair		

**Drywall Damage**

Estimate Quick \$\$ Amount		\$1,500.00
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**Electric Fixtures**

Missing	1	\$1,000.00
Repair		\$0.00

**Refrigerator**

Missing	1	\$500.00
Repair		

**Smoke/CO Detectors**

Missing		\$0.00
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**Range**

Missing	1	\$375.00
Repair		

**Mold**

Yes		\$0.00
No		

**Vent Hood**

Missing	1	\$145.00
Repair		

**Pests**

Yes		\$0.00
No		

**Dishwasher**

Missing	1	\$315.00
Repair		

**Other**

		\$0.00
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**Rent Ready?**

Yes		
No	1	

**Down?**

Yes	1	
No		

	<b>Total</b>	<b>\$8,130.00</b>
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## Unit 2313

## 3 Overall Fannie Mae Rating

1 bed 1 bath Unit Type

Interiors**Front Door**

Quantity

Repair		\$0.00
Replace		\$0.00

**Washer/Dryer**

Quantity

Repair		\$0.00
Replace	1	\$1,000.00

**Trash Out**

Required	1	\$100.00
Clean		

**Kitchen Cabinets**

Repair		\$0.00
Replace		\$0.00

**Carpet**

Requires Cleaning	1	\$175.00
Replace		\$0.00

**Sink**

Replace		\$0.00
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**Vinyl**

Requires Cleaning	1	\$50.00
Replace		\$0.00

**Tub/Surround**

Repair		\$0.00
Replace		

**Paint**

Touch Up		\$0.00
Complete Paint Job	1	\$800.00

**Bath Vanity/Countertop**

Repair		\$0.00
Replace		\$0.00

**Final Clean**

Yes	1	\$200.00
No		

**Toilet**

Repair		\$0.00
Replace		\$0.00

**Window Coverings**

Replace		\$0.00
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**Water Heater**

Missing		\$0.00
Repair		

**Interior Doors**

Repair		\$0.00
Replace		\$0.00

**Air Handler**

Missing		\$0.00
Repair		

**Drywall Damage**

Estimate Quick \$\$ Amount		\$0.00
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**Electric Fixtures**

Missing		\$0.00
Repair		\$0.00

**Refrigerator**

Missing		\$0.00
Repair		

**Smoke/CO Detectors**

Missing		\$0.00
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**Range**

Missing		\$0.00
Repair		

**Mold**

Yes		\$0.00
No		

**Vent Hood**

Missing		\$0.00
Repair		

**Pests**

Yes		\$0.00
No		

**Dishwasher**

Missing		\$0.00
Repair		

**Other**

	Rip out carpet on entrance and balcony	\$750.00
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**Rent Ready?**

Yes		
No	1	

**Down?**

Yes		
No	1	

	<b>Total</b>	<b>\$3,075.00</b>
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## Unit 1313

## 4 Overall Fannie Mae Rating

1 bed 1 bath Unit Type

**Interiors****Front Door**

Quantity

**Washer/Dryer**

Quantity

Repair		\$0.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Trash Out****Kitchen Cabinets**

Required	1	\$100.00	Repair	1	\$175.00
Clean			Replace		\$0.00

**Carpet****Sink**

Requires Cleaning		\$0.00	Replace	1	\$120.00
Replace		\$0.00			

**Vinyl****Tub/Surround**

Requires Cleaning		\$0.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Paint****Bath Vanity/Countertop**

Touch Up		\$0.00	Repair		\$0.00
Complete Paint Job	1	\$800.00	Replace		\$0.00

**Final Clean****Toilet**

Yes	1	\$200.00	Repair		\$0.00
No			Replace		\$0.00

**Window Coverings****Water Heater**

Replace		\$0.00	Missing		\$0.00
			Repair		

**Interior Doors****Air Handler**

Repair		\$0.00	Missing		\$0.00
Replace		\$0.00	Repair		

**Drywall Damage****Electric Fixtures**

Estimate Quick \$\$ Amount		\$0.00	Missing		\$0.00
			Repair		\$0.00

**Refrigerator****Smoke/CO Detectors**

Missing		\$0.00	Missing		\$0.00
Repair					

**Range****Mold**

Missing	1	\$375.00	Yes		\$0.00
Repair			No		

**Vent Hood****Pests**

Missing		\$0.00	Yes		\$0.00
Repair			No		

**Dishwasher****Other**

Missing		\$0.00			\$0.00
Repair					

**Rent Ready?****Down?**

Yes			Yes		
No	1		No	1	

	<b>Total</b>	<b>\$1,770.00</b>			
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## Unit 2022

## 4 Overall Fannie Mae Rating

1 bed 1 bath Unit Type

**Interiors****Front Door**

Quantity

**Washer/Dryer**

Quantity

Repair		\$0.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Trash Out****Kitchen Cabinets**

Required		\$0.00	Repair		\$0.00
Clean			Replace		\$0.00

**Carpet****Sink**

Requires Cleaning		\$0.00	Replace		\$0.00
Replace	1	\$600.00			

**Vinyl****Tub/Surround**

Requires Cleaning	1	\$50.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Paint****Bath Vanity/Countertop**

Touch Up		\$0.00	Repair		\$0.00
Complete Paint Job	1	\$800.00	Replace		\$0.00

**Final Clean****Toilet**

Yes	1	\$200.00	Repair		\$0.00
No			Replace		\$0.00

**Window Coverings****Water Heater**

Replace		\$0.00	Missing		\$0.00
			Repair		

**Interior Doors****Air Handler**

Repair		\$0.00	Missing	1	#####
Replace		\$0.00	Repair		

**Drywall Damage****Electric Fixtures**

Estimate Quick \$\$ Amount		\$0.00	Missing		\$0.00
			Repair		\$0.00

**Refrigerator****Smoke/CO Detectors**

Missing	1	\$500.00	Missing		\$0.00
Repair					

**Range****Mold**

Missing		\$0.00	Yes		\$0.00
Repair			No		

**Vent Hood****Pests**

Missing		\$0.00	Yes		\$0.00
Repair			No		

**Dishwasher****Other**

Missing		\$0.00			\$0.00
Repair					

**Rent Ready?****Down?**

Yes			Yes		
No	1		No	1	

	<b>Total</b>	<b>\$3,750.00</b>			
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Unit 2014

3 Overall Fannie Mae Rating

1 bed 1 bath Unit Type

**Interiors****Front Door**

Quantity

**Washer/Dryer**

Quantity

Repair		\$0.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Trash Out****Kitchen Cabinets**

Required	1	\$100.00	Repair	1	\$175.00
Clean			Replace		\$0.00

**Carpet****Sink**

Requires Cleaning		\$0.00	Replace	1	\$120.00
Replace	1	\$600.00			

**Vinyl****Tub/Surround**

Requires Cleaning		\$0.00	Repair		\$0.00
Replace	1	\$225.00	Replace		

**Paint****Bath Vanity/Countertop**

Touch Up		\$0.00	Repair		\$0.00
Complete Paint Job	1	\$800.00	Replace		\$0.00

**Final Clean****Toilet**

Yes	1	\$200.00	Repair		\$0.00
No			Replace		\$0.00

**Window Coverings****Water Heater**

Replace		\$0.00	Missing		\$0.00
			Repair		

**Interior Doors****Air Handler**

Repair		\$0.00	Missing		\$0.00
Replace		\$0.00	Repair		

**Drywall Damage****Electric Fixtures**

Estimate Quick \$\$ Amount		\$0.00	Missing		\$0.00
			Repair		\$0.00

**Refrigerator****Smoke/CO Detectors**

Missing	1	\$500.00	Missing		\$0.00
Repair					

**Range****Mold**

Missing		\$0.00	Yes		\$0.00
Repair			No		

**Vent Hood****Pests**

Missing		\$0.00	Yes		\$0.00
Repair			No		

**Dishwasher****Other**

Missing		\$0.00		Rip out carpet on entrance and balcony	\$750.00
Repair					

**Rent Ready?****Down?**

Yes			Yes		
No	1		No	1	

**Total****\$3,470.00**



Unit 2015

3 Overall Fannie Mae Rating

1 bed 1 bath Unit Type

**Interiors****Front Door**

Quantity

**Washer/Dryer**

Quantity

Repair		\$0.00	Repair		\$0.00
Replace		\$0.00	Replace		

**Trash Out****Kitchen Cabinets**

Required	1	\$100.00	Repair		\$0.00
Clean			Replace		\$0.00

**Carpet****Sink**

Requires Cleaning		\$0.00	Replace		\$0.00
Replace	1	\$600.00			

**Vinyl****Tub/Surround**

Requires Cleaning		\$0.00	Repair		\$0.00
Replace	1	\$225.00	Replace		

**Paint****Bath Vanity/Countertop**

Touch Up		\$0.00	Repair		\$0.00
Complete Paint Job	1	\$800.00	Replace		\$0.00

**Final Clean****Toilet**

Yes	1	\$200.00	Repair		\$0.00
No			Replace		\$0.00

**Window Coverings****Water Heater**

Replace		\$0.00	Missing		\$0.00
			Repair		

**Interior Doors****Air Handler**

Repair		\$0.00	Missing		\$0.00
Replace		\$0.00	Repair		

**Drywall Damage****Electric Fixtures**

Estimate Quick \$\$ Amount		\$0.00	Missing		\$0.00
			Repair		\$0.00

**Refrigerator****Smoke/CO Detectors**

Missing		\$0.00	Missing		\$0.00
Repair					

**Range****Mold**

Missing		\$0.00	Yes		\$0.00
Repair			No		

**Vent Hood****Pests**

Missing		\$0.00	Yes		\$0.00
Repair			No		

**Dishwasher****Other**

Missing		\$0.00			\$0.00
Repair					

**Rent Ready?****Down?**

Yes			Yes		
No	1		No	1	

	<b>Total</b>	<b>\$1,925.00</b>			
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# **EXHIBIT “2”**

**TO**

**DEFENDANTS’ OPPOSITION TO FHFA’S MOTION TO DISSOLVE THE  
PRELIMINARY INJUNCTION**

# **EXHIBIT “2”**

**TO**

**DEFENDANTS’ OPPOSITION TO FHFA’S MOTION TO DISSOLVE THE  
PRELIMINARY INJUNCTION**



PO Box 890817  
Charlotte NC 28289-0817

Statement Date June 16, 2021

#### IMPORTANT MESSAGES

Please note that payments are processed only on business days (typically Monday through Friday). Any payments sent for delivery on a weekend or a holiday will be deemed received and processed the next business day.

Westland Village Square LLC  
520 West Willow Street  
Long Beach, California 90806

#### LOAN INFORMATION\*

Loan Number	330455177
-------------	-----------

#### CURRENT BALANCES

Principal Balance	\$	9,244,785.28
Interest Rate		2.45800%
Tax Escrow Balance	\$	9,906.55
Insurance and/or FHA/MIP Escrow Balance	\$	99,461.73
Reserve and/or Misc. Fee Escrow Balance*	\$	347,817.62
Other Escrow Balance	\$	0.00

#### YEAR TO DATE AMOUNTS

Interest Paid YTD	\$	0.00
Taxes Disbursed YTD	\$	0.00
Insurance Disbursed YTD	\$	0.00

#### PAYMENT INFORMATION

Past Due Principal	\$	0.00
Past Due Interest	\$	0.00
Past Due T/I, FHA/MIP or Reserve Escrows	\$	0.00
Past Due Other	\$	0.00
Past Due Late Charge	\$	0.00
<b>Total Past Due</b>	<b>\$</b>	<b>0.00</b>

Current Principal Due	\$	20,652.88
Current Interest Due	\$	18,936.40
Current Tax Due	\$	5,448.61
Current Insurance and/or FHA/MIP Due	\$	11,486.39
Current Reserve	\$	10,259.08
Current Misc. Fee Due	\$	0.00
Current Other Escrow	\$	0.00
<b>Total Current Due</b>	<b>\$</b>	<b>66,783.36</b>

<b>Total Amount Due</b>	<b>\$</b>	<b>66,783.36</b>
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<b>Payment Due Date</b>	<b>7/1/2021</b>
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\*Subject to adjustment following posting of all funds into the loan accounting system of record and accompanying internal analysis

Fold and detach here and return this portion with your payment in the enclosed envelope. Please retain the top portion of this statement for your records. Allow at least 7 days for the postal delivery.

Loan Number	330455177
Due Date	7/1/2021
<b>Total Amount Due</b>	<b>\$66,783.36</b>

Westland Village Square LLC  
5025 Nellis Oasis Lane  
Las Vegas, Nevada 89115

Please do not remit.

This billing statement is for  
information only.

Your payment is paid by bank draft.

- Please do not include any correspondence with payment
- Include loan number on check and make payable to:  
**Grandbridge Real Estate Capital LLC**

[-Private-]

APP3345



PO Box 890817  
Charlotte NC 28289-0817

Statement Date June 16, 2021

#### IMPORTANT MESSAGES

Please note that payments are processed only on business days (typically Monday through Friday). Any payments sent for delivery on a weekend or a holiday will be deemed received and processed the next business day.

Westland Liberty Village LLC  
520 West Willow Street  
Suite 110  
Long Beach, California 90806

#### LOAN INFORMATION\*

Loan Number	330455178
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#### CURRENT BALANCES

Principal Balance	\$	28,616,584.64
Interest Rate		2.31800%
Tax Escrow Balance	\$	161,799.06
Insurance and/or FHA/MIP Escrow Balance	\$	212,151.43
Reserve and/or Misc. Fee Escrow Balance*	\$	702,275.69
Other Escrow Balance	\$	0.00

#### YEAR TO DATE AMOUNTS

Interest Paid YTD	\$	0.00
Taxes Disbursed YTD	\$	0.00
Insurance Disbursed YTD	\$	0.00

#### PAYMENT INFORMATION

Past Due Principal	\$	0.00
Past Due Interest	\$	0.00
Past Due T/I, FHA/MIP or Reserve Escrows	\$	0.00
Past Due Other	\$	0.00
Past Due Late Charge	\$	0.00
<b>Total Past Due**</b>	<b>\$</b>	<b>0.00</b>

Current Principal Due	\$	65,246.60
Current Interest Due	\$	55,277.70
Current Tax Due	\$	14,283.76
Current Insurance and/or FHA/MIP Due	\$	53,134.29
Current Reserve	\$	18,600.00
Current Misc. Fee Due	\$	0.00
Current Other Escrow	\$	0.00
<b>Total Current Due</b>	<b>\$</b>	<b>206,542.35</b>

<b>Total Amount Due</b>	<b>\$</b>	<b>206,542.35</b>
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<b>Payment Due Date</b>	<b>7/1/2021</b>
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\*Subject to adjustment following posting of all funds to the loan accounting system of record and accompanying internal analysis

Fold and detach here and return this portion with your payment in the enclosed envelope. Please retain the top portion of this statement for your records. Allow at least 7 days for the postal delivery.

Loan Number	330455178
Due Date	7/1/2021
<b>Total Amount Due</b>	<b>\$206,542.35</b>

Westland Liberty Village LLC  
5025 Nellis Oasis Lane  
Las Vegas, Nevada 89115

Please do not remit.  
This billing statement is for  
information only. Your payment is  
paid by bank draft.

- Please do not include any correspondence with payment
- Include loan number on check and make payable to:  
**Grandbridge Real Estate Capital LLC**

[-Private-]

APP3346



# **EXHIBIT “3”**

**TO**

**DEFENDANTS’ OPPOSITION TO FHFA’S MOTION TO DISSOLVE THE  
PRELIMINARY INJUNCTION**

# **EXHIBIT “3”**

**TO**

**DEFENDANTS’ OPPOSITION TO FHFA’S MOTION TO DISSOLVE THE  
PRELIMINARY INJUNCTION**

**FEDERAL HOUSING FINANCE AGENCY  
OFFICE OF INSPECTOR GENERAL**

**FHFA's Conservator Approval Process for  
Fannie Mae and Freddie Mac  
Business Decisions**



**Audit Report: AUD-2012-008**

**September 27, 2012**

**SA02027  
APP3348**



## FEDERAL HOUSING FINANCE AGENCY OFFICE OF INSPECTOR GENERAL

# AT A GLANCE

### FHFA's Conservator Approval Process for Fannie Mae and Freddie Mac Business Decisions

#### Why FHFA-OIG Did This Audit

The Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) lost billions of dollars when the housing market collapsed in 2007 and 2008. In response, Congress enacted the Housing and Economic Recovery Act of 2008 (HERA), which created the Federal Housing Finance Agency (FHFA or the Agency) to regulate Fannie Mae and Freddie Mac (collectively, the Enterprises) in order to ensure their safety and soundness and facilitate a stable and liquid mortgage market.

On September 6, 2008, the Enterprises entered into conservatorships supervised by FHFA. As conservator, FHFA has extensive authority over the Enterprises' operations. However, in November 2008, the Agency broadly delegated most of its conservatorship authority back to the Enterprises. As part of the delegation, the Agency required the Enterprises to obtain Agency approval for selected business decisions, such as those involving legal settlements over \$50 million and risk limit increases. FHFA's Office of Inspector General (FHFA-OIG) audited FHFA's process for approving these non-delegated Enterprise business decisions.

#### What FHFA-OIG Found

FHFA-OIG concluded that the Agency can better accomplish its oversight mission by proactively exerting greater control over its conservator approval process.

FHFA-OIG found that FHFA did not require conservatorship approval for various major business decisions such as reviewing and approving Fannie Mae's single family underwriting standards and its High Touch Servicing Program, which involved multiple transfers of mortgage servicing rights for over 700,000 loans with an unpaid principal balance in excess of \$130 billion. FHFA should revisit the authorities delegated to the Enterprises to ensure that the Agency, in its role as conservator, is involved in their major business decisions.

Moreover, even when conservatorship approval of Enterprise business decisions is required, FHFA cannot be assured that the Enterprises always request such approval. FHFA has informed the Enterprises which actions remain under FHFA's authority,

but the Agency primarily relies on the Enterprises to decide when to seek approval for their actions. As a consequence, Enterprise requests for approval have been inconsistent. For example, FHFA-OIG determined that Fannie Mae executed seven insurance settlement discounts totaling over \$306 million that should have been approved by FHFA in advance. By contrast, Freddie Mac executed similar settlements after seeking FHFA's approval. FHFA-OIG also found that over a three-year period Fannie Mae took over 4,500 actions to increase the Enterprise's counterparty risk limits without first obtaining conservator approval. Freddie Mac, by contrast, had a process for requesting and receiving approval for risk limit increases from the conservator.

Additionally, the Agency can improve how it processes requests for conservatorship decisions and follows up on the decisions it makes. FHFA-OIG determined that FHFA has not established criteria or policies to ensure rigorous review of Enterprise business decisions. FHFA-OIG also found that FHFA does not have a formal process to verify that the Enterprises abide by conservatorship decisions, but instead has relied on informal conversations and unrelated reviews (e.g., routine examinations) to assess compliance.

FHFA-OIG believes that strengthening control over the Agency's conservator approval process will help FHFA achieve its goals of preserving and conserving Enterprise assets.

#### What FHFA-OIG Recommends

Overall, FHFA has taken some positive steps as conservator by retaining authority over certain Enterprise business decisions. However, the Agency can further improve its performance as conservator by establishing controls to accomplish its intended outcomes. Specifically, FHFA-OIG recommends that the Agency: (1) revisit FHFA's non-delegated authorities to ensure that significant Enterprise business decisions are sent to the conservator for approval; (2) guide the Enterprises to establish processes to ensure that actions requiring conservator approval are properly submitted for consideration; (3) properly analyze, document, and support conservator decisions; and (4) confirm compliance by the Enterprises with conservator decisions. FHFA agreed with most of FHFA-OIG's recommendations.

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## ABBREVIATIONS

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CGC .....	Conservatorship Governance Committee
Treasury .....	Department of the Treasury
DEPS .....	Division of Examination Programs and Support
DER.....	Division of Enterprise Regulation
Enterprises.....	Fannie Mae and Freddie Mac
Fannie Mae.....	Federal National Mortgage Association
FHFA .....	Federal Housing Finance Agency
FHFA-OIG .....	Federal Housing Finance Agency Office of Inspector General
Freddie Mac .....	Federal Home Loan Mortgage Corporation
HERA.....	Housing and Economic Recovery Act of 2008
OCO .....	Office of Conservatorship Operations
OGC .....	Office of General Counsel
OPAR.....	Office of Policy Analysis and Research

**Federal Housing Finance Agency  
Office of Inspector General  
Washington, DC**

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## **PREFACE**

HERA, which amended the Inspector General Act, created FHFA-OIG and authorized it to conduct audits, evaluations, investigations, and other law enforcement activities pertaining to FHFA's programs and operations.<sup>1</sup> FHFA-OIG also recommends policies that promote economy and efficiency, and works to prevent and detect fraud and abuse.

This audit report supports FHFA-OIG's mission to promote the economy and efficiency of FHFA's programs and operations. It also furthers FHFA-OIG's first strategic goal to help FHFA support the Enterprises and to understand the conservatorships' causes and costs.<sup>2</sup> Specifically, the report is intended to add value with respect to FHFA's role as conservator and its oversight of the Enterprises' business decisions. The report also reinforces FHFA-OIG's commitment to prioritize projects related to FHFA's conservatorships and oversight of Fannie Mae and Freddie Mac.<sup>3</sup> Along these same lines, FHFA-OIG has recently released a white paper addressing FHFA's role as conservator and the challenges faced by the Agency in managing the conservatorships.<sup>4</sup>

FHFA-OIG appreciates the cooperation of everyone who contributed to the audit, including officials at Fannie Mae, Freddie Mac, and FHFA. This audit was led by Laura Benton, Audit Director; Kevin Carson, Audit Director; and Scott H. Smith, Auditor-in-Charge.



Russell A. Rau  
Deputy Inspector General for Audits

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<sup>1</sup> HERA (Public Law No. 110-289); the Inspector General Act (Public Law No. 95-452).

<sup>2</sup> See FHFA-OIG, *Strategic Plan: Fiscal Years 2012-2014* ("Strategic Goal 1—Adding Value," p. 10).

<sup>3</sup> See FHFA-OIG, *Audit, Evaluation, and Survey Plan: FY 2012* ("Key Areas of FHFA-OIG Audit, Evaluation, and Survey Focus," p. 4).

<sup>4</sup> See FHFA-OIG, *FHFA-OIG's Current Assessment of FHFA's Conservatorships of Fannie Mae and Freddie Mac*, WPR-2012-001, March 28, 2012.

## BACKGROUND

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HERA was enacted on July 30, 2008, and created FHFA to supervise and regulate the Enterprises in order to ensure their safety and soundness, and, by doing so, to facilitate a stable and liquid mortgage market. Six weeks later, the Enterprises were placed into conservatorships overseen by FHFA. To stave off insolvency, the U.S. Department of the Treasury (Treasury) simultaneously began to support the Enterprises with significant capital investments of taxpayer funds (totaling \$187.5 billion as of June 30, 2012).<sup>5</sup> When the conservatorships were created, they were regarded as temporary measures. The then-Treasury Secretary described the conservatorships as a temporary “time-out” to allow policymakers to further consider the future role of the federal government and the Enterprises in the housing finance system.<sup>6</sup> But more than four years have elapsed since that action was taken—likely far more time than anyone anticipated—and the conservatorships remain in place.

As conservator, FHFA’s objective is to conserve and preserve Enterprise assets. FHFA is empowered to operate Fannie Mae and Freddie Mac and conduct their business, but has broadly delegated authority back to each Enterprise.<sup>7</sup> FHFA’s approach to operating the conservatorships has been for the Enterprises to “continue to be responsible for normal business activities and day-to-day operations,” and “not to manage every aspect of the Enterprises’ operations.”<sup>8</sup> For example, FHFA generally does not make decisions about individual mortgages, property sales, or foreclosures because “the Enterprises each have a review process to look into situations that arise involving their mortgages or property transactions.”<sup>9</sup> The Agency, though, retains the right to review and reverse any delegated action.

FHFA retains its authority as conservator over selected Enterprise business decisions. FHFA has identified eight categories of Enterprise actions that require conservator approval. FHFA also has established the Office of Conservatorship Operations (OCO) to ensure that the Agency is involved in, and exercises final approval over, the Enterprises’ major business decisions. OCO

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<sup>5</sup> HERA expanded Treasury’s authority to provide financial support to the Enterprises, which it has done by purchasing the Enterprises’ preferred stock pursuant to Senior Preferred Stock Purchase Agreements.

<sup>6</sup> See FHFA-OIG, *FHFA-OIG’s Current Assessment of FHFA’s Conservatorships of Fannie Mae and Freddie Mac*, WPR-2012-001, March 28, 2012.

<sup>7</sup> For FHFA’s authority as conservator, see P.L. 110-289 § 1145(b)(2) “General Powers;” for FHFA’s delegation of this authority see Letter from James B. Lockhart III, Director, FHFA, “RE: Instructions for the Board of Directors for Order No. 2008-0006” (November 24, 2008).

<sup>8</sup> Letter from FHFA’s Acting Director Edward J. DeMarco to Chairman Christopher Dodd and Ranking Minority Member Richard C. Shelby, U.S. Senate Committee on Banking, Housing, and Urban Affairs; and to Chairman Barney Frank and Ranking Minority Member Spencer Bachus, U.S. House of Representatives (February 2, 2010).

<sup>9</sup> See “What FHFA’s Role is ...” on FHFA’s website (<http://www.fhfa.gov/Default.aspx?Page=369>, accessed: September 20, 2012).



offers advice if the Enterprises ask, but otherwise the Enterprises generally determine which actions require conservator approval.

The sections that follow summarize the types of Enterprise actions that require FHFA approval, how the Enterprises request (and the Agency grants) approval, and what process FHFA has in place to oversee Enterprise requests and approvals.

## **Enterprise Actions That Require FHFA's Approval**

By letters dated November 24, 2008, FHFA informed the Enterprises' respective boards of directors which actions—out of a “broad delegation of functions”—require Agency approval (also referred to as the Agency's “non-delegated authorities” or “letters of instruction to the Enterprises”).<sup>10</sup>

Specifically, the Enterprises must seek FHFA's approval for the following:

1. Actions involving capital stock, dividends, the Senior Preferred Stock Purchase Agreements, increases in risk limits, material changes in accounting policy, and reasonably foreseeable material increases in operational risk;<sup>11</sup>
2. Creation of any subsidiary or affiliate or any substantial transaction between the Enterprise and any of its subsidiaries or affiliates, except for transactions undertaken in the ordinary course of business;
3. Matters that relate to conservatorship, such as the initiation and material actions in connection with significant litigation addressing the actions or authority of the conservator, repudiation of contracts, qualified financial contracts in dispute due to conservatorship status, and counterparties attempting to nullify or amend contracts due to conservatorship status;
4. Actions involving hiring, compensation, and termination benefits of directors and officers at the executive vice president level and above;

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<sup>10</sup> Letters to the Enterprises from James B. Lockhart III, Director, FHFA, “RE: Instructions for the Board of Directors for Order No. 2008-0006” (November 24, 2008).

<sup>11</sup> Treasury provides the Enterprises with financial support through the Senior Preferred Stock Purchase Agreements. These agreements were designed to ensure each Enterprise maintains positive net worth. Currently, the terms of the agreements require a 10% reduction in the Enterprises' retained investment portfolios each year. The only material additions to these portfolios come from delinquent mortgages pulled out of Enterprise mortgage-backed securities after being four months delinquent. Under these agreements, each Enterprise is required to pay Treasury a quarterly dividend equal to 10% of the total amount drawn under their respective agreements. However, on August 17, 2012, the agreements were amended. As of January 1, 2013, the dividend will be replaced by a sweep of each Enterprises' net worth and the retained portfolios will be reduced by 15% each year.

5. Actions involving the retention and termination of external auditors and law firms serving as consultants to the Enterprises' respective boards of directors;
6. Settlements in excess of \$50 million of litigation, claims, regulatory proceedings, or tax-related matters;
7. Any merger with (or purchase or acquisition of) a business involving over \$50 million; and
8. Actions that in the reasonable business judgment of the Enterprises' respective boards of directors are likely to cause significant reputational risk.

FHFA's authority as conservator is not limited to these eight areas. FHFA retains broad authority to review any activity or transaction at any time. Further, the Enterprises may contact OCO for help in determining which actions require approval, but FHFA does not require them to do so. Instead, FHFA generally allows each Enterprise to decide whether or not particular actions warrant seeking Agency approval. As a result, the Agency also reviews actions and renders conservatorship decisions for actions that fall outside the eight non-delegated areas.

### **How the Enterprises Ask for FHFA's Approval**

In FHFA's November 2008 letters discussed above, the Agency made the Enterprises' respective boards of directors responsible for implementing measures to coordinate with FHFA and for ensuring "appropriate regulatory approvals" are received.<sup>12</sup> In turn, the boards delegated this responsibility down and spread decision-making authority out to senior managers in their various business units (e.g., Counterparty Risk Management, and Housing and Community Development). These managers determine if FHFA's prior approval should be obtained for a proposed action. If they decide that a proposed action meets FHFA's criteria for conservator approval, a request is submitted to FHFA, a decision is received from the Agency, and the managers are supposed to ensure their units comply with FHFA's decision.

Prior to May 2011, neither Enterprise had implemented any formal policies or procedures for coordinating with FHFA on approval requests. In the third quarter of 2009, FHFA requested Freddie Mac's assistance in tracking items requiring FHFA approval and implemented a framework for reporting and tracking these requests. On May 17, 2011, Freddie Mac established procedures to compile, track, and update the status of its requests. Pursuant to these procedures, Freddie Mac, on a weekly basis, updates the list of outstanding requests and their status by soliciting relevant data from the responsible business units. Unlike Freddie Mac, Fannie Mae

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<sup>12</sup> Letter from James B. Lockhart III, Director, FHFA, "RE: Instructions for the Board of Directors for Order No. 2008-0006" (November 24, 2008).

has established no written procedures but, since 2009, it has provided FHFA with a weekly update to a list of outstanding requests for conservatorship approval.

Both Enterprises continue to take a decentralized approach to seeking FHFA's approval for actions that fall under the conservator's authority. When the Enterprises determine that conservatorship approval is necessary, requests are formulated and forwarded to FHFA. Before December 2011, the Enterprises' individual business unit managers generally would submit requests for conservator approval to OCO, but they also could submit requests to other offices within FHFA.<sup>13</sup> OCO, however, was not always apprised of the requests submitted to other FHFA offices.

In December 2011, OCO notified the Enterprises of the establishment of a "one-entry" notification system, thereby eliminating any potential confusion regarding where to submit a request for conservatorship action. FHFA instructed the Enterprises that beginning immediately all issues—with the exception of executive compensation items and certain legal questions—requiring conservatorship approval must be submitted to OCO through a designated electronic mailbox. Issues involving individual executive compensation must be submitted through another designated electronic mailbox. The Enterprises were also informed that approval requests submitted to FHFA through any other means are not considered items requiring FHFA action until they are properly submitted to FHFA through the appropriate electronic mailbox. Further, communications (i.e., approvals) from FHFA that are not processed in this manner are not considered binding or valid decisions of the conservator.

## **How FHFA Determines Whether to Approve Enterprise Requests**

FHFA's conservatorship review and approval process varies depending on the type of request. For example, OCO has the authority to approve requests based on guidance received from the FHFA Acting Director. It can decide a matter itself, assign the matter to another office, or work directly with a lead FHFA office on the matter in order to take advantage of the lead office's expertise. For more significant requests, OCO utilizes a "red folder" process in which OCO establishes a lead office to review the request while also obtaining input from other FHFA offices. OCO compiles an approval package that includes a memorandum approving or disapproving the Enterprise's request based on the input received from the various FHFA offices. The decision memorandum is then circulated in a red folder with a sign-off sheet for each of the involved FHFA offices. After each participating office reviews and signs off on the decision memorandum, it is submitted to the FHFA Acting Director for review and a final

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<sup>13</sup> Requests involving compensation issues were forwarded directly to FHFA's Office of Policy Analysis and Research. In addition, requests that involved litigation or legal issues were typically sent directly to the Office of General Counsel. The Enterprises also occasionally submitted requests directly to other offices within FHFA.

conservatorship decision. OCO relies on expertise throughout FHFA to evaluate issues and provide recommendations regarding the conservatorship.

Enterprise requests that are submitted to the Office of Policy Analysis and Research (OPAR)—compensation-related issues—or Office of General Counsel (OGC)—legal-related questions—are reviewed independently of OCO. When Enterprise requests are submitted in this manner, OPAR and OGC may consult FHFA’s Acting Director and others before making a decision, or they may decide internally with no further discussion. In either case, OPAR and OGC can send their decisions back to the requesting Enterprise unit without apprising OCO of the request or decision made.<sup>14</sup>

### **FHFA’s Oversight of the Request and Approval Processes**

FHFA has not centralized information summarizing all requests for conservator approval from the Enterprises. For example, OCO’s tracking spreadsheet is not complete because FHFA offices such as OPAR and OGC do not always apprise OCO of conservatorship approval requests. In addition, although the tracking spreadsheet includes Enterprise requests and FHFA’s resulting recommendations and decisions, OCO may not be aware of actions requiring conservator approval that were not submitted by the Enterprises.<sup>15</sup>

The requesting Enterprise updates the tracking spreadsheet weekly and submits it to OCO, which reviews the spreadsheet and modifies it in turn as necessary.<sup>16</sup> As of May 17, 2012, OCO had received and subsequently tracked (using the tracking spreadsheet) a total of 611 conservatorship action requests from the Enterprises. Requests remain open until a decision is made or the request is withdrawn by the applicable Enterprise. As of May 17, 2012, a total of 583 requests had been closed (this total includes Agency decisions and informational requests concerning actions that did not need conservator approval), see Figure 1 below.<sup>17</sup>

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<sup>14</sup> According to OCO, beginning in 2012, all communication from OPAR is centralized through a dedicated portal and OPAR copies OCO on all decisions. OGC copies OCO on conservatorship related issues, as it deems appropriate.

<sup>15</sup> The OCO tracking spreadsheet also includes actions submitted by the Enterprises that do not require conservatorship approval.

<sup>16</sup> Beginning in 2012, based on the establishment of the “one entry” notification system discussed above, OCO asserts that it receives all approval requests, and the manual process of updating the spreadsheets on a weekly basis has been replaced by an automated system.

<sup>17</sup> The number of approval requests, some of which did not require conservator approval, was compiled from OCO’s tracking spreadsheets and is approximate. The 28 pending conservator approval requests is the difference between the number received and the number closed and outstanding as of May 17, 2012. Also, policy requests, which OCO began tracking in January 2012, were not included in these figures because they were tracked on a separate spreadsheet for policy matters rather than on the conservatorship approval request spreadsheet.



**Figure 1: OCO's Tracked Requests for Conservator Approval**

Fannie Mae			Freddie Mac		
Year	No. Received	Closed	Year	No. Received	Closed
2009	46	26	2009	68	46
2010	94	90	2010	108	104
2011	104	105	2011	74	84
2012 (as of 5/17)	64	69	2012 (as of 5/17)	53	59
Total	308	290	Total	303	293

Since Enterprise requests involving compensation and legal issues can bypass OCO and are not tracked by OPAR and OGC, the tracking spreadsheet does not achieve its purpose of recording, tracking, and monitoring all “requests made to, and actions taken by the FHFA.”<sup>18</sup> But the tracking spreadsheet’s limitations are somewhat mitigated by a group of Agency executives who meet regularly to review Enterprise requests and Agency approvals.

Enterprise requests for conservator approval may be reviewed by FHFA’s Conservatorship Governance Committee (CGC). The CGC commenced operation in mid-2009 and is comprised of senior FHFA executives.<sup>19</sup> The CGC’s purpose is to provide an executive level review of decisions related to the Agency’s role as conservator. For each committee meeting, OCO provides the CGC with the tracking spreadsheet and identifies any entries that may significantly affect the Enterprises or FHFA (e.g., safety and soundness challenges, reputational risk issues, etc.). The CGC provides broad oversight on issues that cut across individual offices and enables FHFA to coordinate on issues that span Agency responsibilities “so that multiple viewpoints can be raised and considered.”<sup>20</sup> The CGC’s recommendations go directly to FHFA’s Acting Director for final decisions. The CGC governance document indicates that the committee will meet at least weekly, and the agenda will include new business, status reports on issues not yet closed, and final recommendations for OCO to FHFA’s Acting Director.

In addition to the CGC meetings, OCO staff indicated that there are other meetings held internally and with the Enterprises that provide the Agency with oversight control of Enterprise

<sup>18</sup> *OCO Status Report Protocol*, p. 1 (October 2010). Note: Figure 1 was compiled using the information contained in the OCO tracking spreadsheets.

<sup>19</sup> This includes the Acting FHFA Director as the Chairman; OCO’s Senior Associate Director as the Vice-Chairman; the Deputy Director of Enterprise Regulation; the Associate Director for the Office of Policy Analysis and Research; the Senior Associate Director for Congressional Affairs and Communications; the General Counsel; the Deputy General Counsel responsible for conservatorship issues; the Deputy Director for Housing, Mission, and Goals; and the Special Advisor to the Director.

<sup>20</sup> “CGC Committee Overview,” *OCO Status Report Protocol*, Exhibit A, p. A-3 (October 2010).

requests for conservator approval. These include meetings between Agency senior management; OCO and FHFA's Acting Director; the Enterprises' boards of directors and FHFA officials; and the Enterprises' Chief Executive Officers and FHFA's Acting Director. According to OCO, these meetings can provide forums for learning about and discussing Enterprise activities that involve conservator approval.

After FHFA informs an Enterprise about its decision concerning a particular request, the Agency does not have policies or procedures to follow up to ensure compliance with the decision. Instead, OCO closes out the particular item in the tracking spreadsheet and informs the Division of Enterprise Regulation (DER) about the decision. In general, DER evaluates the Enterprises' finances and their regulatory compliance through yearly onsite examinations and other periodic visits. However, DER does not have a specific examination program related to the Enterprises' compliance with conservator decisions. If the decisions happen to relate to an examination topic, they may be included in DER's review at its staff's discretion.

In the findings that follow, FHFA-OIG discusses how FHFA can strengthen the system it set up to ensure that the Enterprises seek conservator approval, to determine whether to grant Enterprise requests, and to ascertain whether the Enterprises comply with conservator decisions.

# FINDINGS

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FHFA-OIG finds that:

## **1. FHFA's Non-Delegated Authorities and Procedures Are Outdated and Allow Certain Major Business Decisions to Avoid Conservator Approval**

OCO may not have been involved in a number of major business decisions because they are not specified within the eight categories of non-delegated authorities. For example, OCO was not involved in the review and approval of Fannie Mae's single-family underwriting standards or its High Touch Servicing Program in which, to date, there have been multiple transfers of mortgage servicing rights totaling more than \$1.5 billion. Given the now long duration (i.e., four years) of the conservatorships, OCO should consider reassessing the non-delegated authorities to ensure that FHFA is involved in all of the Enterprises' major business decisions.

### *Single-Family Underwriting Standards*

FHFA-OIG recently issued a report that addresses Fannie Mae's single-family underwriting standards. The report finds that the Agency's oversight of underwriting is limited.<sup>21</sup> It also highlights the importance of underwriting standards: "[o]versight of underwriting standards is significant given that such standards control which loans Fannie Mae buys, and, thus, they comprise the lynchpin of a principal business activity valued at \$605 billion in 2010 and \$427 billion in 2011 (as of October 31, 2011)."<sup>22</sup> As conservator, FHFA has a responsibility to ensure that the Enterprises' underwriting standards appropriately balance credit risk and return. FHFA can further fulfill its conservator responsibility by ensuring sound oversight of underwriting standards through more active involvement and detailed guidance governing its review process.

### *High Touch Servicing Program*

In late 2008, Fannie Mae's High Touch Servicing Program was initiated to help avoid credit losses. The program involves transferring mortgage servicing rights to specialty servicers and, to date, the value of such transfers is approximately \$1.5 billion. The overall program has not been reviewed or approved by FHFA as conservator. Additionally, FHFA did not review or approve the overwhelming majority of transactions (i.e., transactions involving over 700,000 loans with

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<sup>21</sup> See FHFA-OIG, *FHFA's Oversight of Fannie Mae's Single-Family Underwriting Standards*, AUD-2012-003 (March 22, 2012), available at <http://www.fhfaoig.gov/Content/Files/AUD-2012-003.pdf>.

<sup>22</sup> *Id.*

an unpaid balance in excess of \$130 billion),<sup>23</sup> but FHFA was advised of and had “no objection” to one transaction.<sup>24</sup>

Given the magnitude and importance of these business decisions—for which the Enterprises were not required to request conservator approval—FHFA should consider, as part of its recent initiative to reassess the list of non-delegated authorities,<sup>25</sup> whether additional categories of business decisions should be included in the list of non-delegated authorities and therefore expressly require conservatorship approval.

## **2. FHFA’s Procedures Governing the Conservatorship Approval Process Are Not Sufficiently Detailed and They Do Not Require a Single Point of Contact for Approval Requests**

Although FHFA has directed the Enterprises to seek FHFA’s approval for certain kinds of business decisions, it did not establish sufficient internal controls to ensure that the Enterprises comply with the directive. In addition, although FHFA created OCO as the main office administering its conservator responsibilities and made it available to answer the Enterprises’ questions, the Agency did not make OCO the central point of contact for all conservatorship approval requests.

Accordingly, Enterprise requests for approval have been inconsistent. For example, FHFA-OIG determined that Fannie Mae agreed to seven insurance settlements during 2009 and 2010 that resulted in settlement discounts totaling \$306 million. These settlements were in excess of \$50 million each and should have been approved in advance by FHFA—because they constitute non-delegated authorities. By contrast, Freddie Mac settled similar claims but first sought FHFA’s approval. FHFA has not taken adequate steps to ensure that approvals are consistently handled across both Enterprises.

In another example found by FHFA-OIG, the Enterprises were inconsistent with respect to their requests for conservator approval for counterparty risk limit increases (i.e., the maximum credit risk exposure that the Enterprises permit for a particular counterparty). The Agency identified

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<sup>23</sup> See FHFA-OIG, *Evaluation of FHFA’s Oversight of Fannie Mae’s Transfer of Mortgage Servicing Rights from Bank of America to High Touch Servicers*, EVL-2012-008 (September 18, 2012), available at <http://www.fhfaog.gov/Content/Files/EVL-2012-008>.

<sup>24</sup> OCO also reviewed and had “no objection” to a Fannie Mae request to utilize a specialty servicer in October 2009, but this transaction did not involve the transfer of mortgage servicing rights.

<sup>25</sup> In January 2011, OCO assembled a working group to reassess and provide further clarification of FHFA’s expectations regarding the types of business decisions that require FHFA approval. The latest versions of the revised delegations and letter of instruction were produced in March, April, and June of 2012; were circulated among various FHFA offices and the Enterprises for review and comment; and, as of September 2012, have not been formally issued or adopted.



through an examination that Fannie Mae did not request conservator approval for risk limit increases even though risk limit increases are expressly included among the non-delegated authorities. Freddie Mac, by contrast, requested and received approval for risk limit increases from the conservator. Again, FHFA has not taken adequate steps to ensure that approvals in this area are consistently handled.

As a Federal agency, FHFA is subject to internal control standards that help it meet responsibilities and minimize risk associated with its programs and operations. The Government Accountability Office's *Standards for Internal Control in the Federal Government* defines internal control activities as the policies, procedures, techniques, and mechanisms that help ensure an agency's objectives are met.<sup>26</sup> Further, as specified in the Office of Management and Budget's Circular A-123, it is management's responsibility to develop and maintain effective internal controls.<sup>27</sup> As FHFA develops and re-engineers its programs and operations, it should design management structures to help ensure accountability for results, such as ensuring that FHFA and the Enterprises have comprehensive policies and procedures to guide the conservatorship approval process.

*FHFA Has Neither Issued Sufficient Guidance nor Updated Its November 2008 Directives Concerning Conservatorship Approvals*

Although the Enterprises have been in conservatorship for more than four years, FHFA has not updated the non-delegated authorities, issued supplemental directives, or clarified its expectations under the November 2008 letters of instruction.<sup>28</sup> Additionally, based on interviews with the Chief Compliance Officers for each Enterprise, other than the November 2008 letters, the Enterprises have not received adequate guidance with respect to what actions require conservatorship approval.

Moreover, one of the Enterprises commented that, in its opinion, FHFA wants the Enterprise to be broad in its interpretation of what might require conservatorship approval and to err on the side of asking for approvals that may not be needed. FHFA-OIG further found, through discussions with FHFA and Enterprise officials, that if a transaction is deemed to be "ordinary course of business" or qualifies as "loss mitigation," it is generally understood not to require conservatorship approval. However, neither FHFA nor the Enterprises have published any guidance to clarify, explain, or illustrate the meanings of these terms.

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<sup>26</sup> *Standards for Internal Control in the Federal Government*, "Definition and Objectives," p. 4 (November 1999).

<sup>27</sup> OMB Circular A-123, *Management's Responsibility for Internal Control*, "Introduction," p. 4.

<sup>28</sup> See footnote 25. Also, based on discussions with OCO and other key offices involved with reviewing conservatorship action approval requests, FHFA generally provides feedback in response to specific conservatorship action approval requests. Further, in June 2012, OCO issued a Settlement Policy and Settlement Procedural Guide to provide direction, context, and an established process for the Enterprises to pursue settlements with counterparties.

The lack of comprehensive guidance has led to inconsistent interpretations of FHFA's order and letters of instruction. For example, unlike Freddie Mac, Fannie Mae has never sought FHFA approval before increasing counterparty risk limits. In Freddie Mac's case, the Enterprise submits to its board of directors for approval changes in counterparty risk limits on an aggregate basis that cover counterparty risk limits across multiple business units. For instance, in July 2009, Freddie Mac requested an aggregate increase of \$8 billion in total counterparty exposure across eleven counterparties. Following board of director approval, Freddie Mac submitted these actions for FHFA conservator approval.

Freddie Mac's approach of submitting requests for risk limit increases that aggregate counterparty risk limits across the organization appears to satisfy FHFA's rules for conservatorship approval. As of March 2012, FHFA has approved nine Freddie Mac requests for approval of board-level risk limit increases. By contrast, Fannie Mae does not submit counterparty risk limit changes to its board of directors for approval, does not aggregate requests across business units, and does not submit risk limit increase requests to FHFA for conservator approval. FHFA-OIG found that Fannie Mae staff handled 4,543 counterparty risk limit increases totaling \$515 billion between November 25, 2008, and January 27, 2012.<sup>29</sup> None of these increases were presented to FHFA for approval.

Fannie Mae's risk limit increases were identified through a DER targeted examination, which found that Fannie Mae did not obtain its board of directors' or FHFA's approval for increases in exposure limits for mortgage insurers during June 2011. Accordingly, in January 2012, DER issued a deficiency notice to request that the Enterprise seek board and conservator approvals. Furthermore, OCO informed FHFA-OIG that it was not aware of these risk limit increases until DER brought them to its attention.

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<sup>29</sup> Fannie Mae also reduced its counterparty risk limits 2,947 times between November 24, 2008, and January 30, 2012, for a total of \$731 billion. Thus, risk limits in total were not increased during this period. FHFA's letters of instruction to the Enterprises do not require them to seek approval of risk limit decreases.

Notably, many of these risk limit increases are significant: 160 of them were for amounts greater than or equal to \$1 billion. Figure 2, below, lists Fannie Mae’s ten largest risk limit increases.

**Figure 2: Fannie Mae’s Ten Largest Risk Limit Increases (in \$Billions)**

Date	Counterparty	Old Limit	New Limit	Increase
7-May-10	Counterparty 1	\$9.7	\$39.3	\$29.6
8-Aug-11	Counterparty 2	16.7	31.7	15
6-May-10	Counterparty 3	11	22	11
5-Nov-09	Counterparty 4	3.3	14	10.7
5-Nov-09	Counterparty 5	2.4	10.5	8.1
5-Nov-09	Counterparty 6	2.4	10	7.6
18-Dec-08	Counterparty 7	—	7.6	7.6
5-May-10	Counterparty 2	9.3	16.7	7.4
5-May-10	Counterparty 8	7.9	15	7.1
19-June-09	Counterparty 9	9	16	7

Following DER’s issuance of the deficiency notice, OCO took the position that the risk limit increases were not required to be approved by FHFA because Fannie Mae’s board of directors had delegated the authority to approve these risk limits to its Chief Executive Officer. OCO’s explanation, however, appears to be inconsistent with the letters of instruction, which clearly retain for FHFA’s exclusive approval (i.e., do not delegate to the Enterprises) “actions involving ... increase in risk limits.” Additionally, OCO in its own policies and procedures identifies increases in risk limits as an example of a non-delegated action that requires conservator approval. Further, neither the letters of instruction nor OCO’s written procedures state that FHFA’s (i.e., the conservator’s) consideration of any action is contingent upon approval by Fannie Mae’s board of directors.

Notwithstanding its assertions, OCO has begun to work with Fannie Mae’s risk management team to establish and set appropriate board-level counterparty risk limits similar to the governance structure existing at Freddie Mac. When this work is completed, Fannie Mae should be able to increase its counterparty risk limits and seek conservator approval without the significant administrative burden of requesting them on a case-by-case basis.

FHFA has exerted some effort to clarify its original directives. During January 2011, OCO assembled a working group comprised of six senior FHFA executives to reassess and provide further clarification of the letters of instruction regarding the types of business decisions that require FHFA approval. But as of September 2012, the revised letters of instruction have not been formalized.

*Until Recently FHFA Had Not Established Procedures to Centralize the Intake of Conservatorship Approval Requests*

FHFA did not have procedures to establishing a central point of entry for conservatorship approval requests. FHFA-OIG found that conservatorship approval requests were not always routed to OCO, the main office responsible for administering FHFA's conservator responsibilities. For example, conservatorship approval requests involving executive compensation issues were reviewed exclusively by another FHFA office, OPAR, and requests involving legal issues were reviewed by OGC, a different FHFA office. Other FHFA offices, including the Credit Risk Division, the Office of the Chief Accountant, and the Office of Housing and Regulatory Policy, also occasionally received conservatorship action approval requests.

FHFA-OIG also found that, although approval requests received by OCO were routinely tracked, OCO was not always aware of and could not track approval requests received by other FHFA offices. Consequently, OCO was unable to maintain accountability for all conservatorship approval requests submitted to FHFA.

Notably, FHFA-OIG found that FHFA's decentralized process contributed to Fannie Mae engaging in non-delegated actions without requesting or receiving conservatorship approval. For example, Fannie Mae claims that it believed that the seven insurance settlements (i.e., mortgage insurance pool policy commutations) referenced above that resulted in \$306 million in discounts did not require conservatorship approval. On the contrary, under FHFA's delegation of authority, each Enterprise is obliged to seek conservatorship approval for settlements greater than \$50 million. OCO was not aware of the settlements.<sup>30</sup>

By way of background, a mortgage insurance pool policy commutation transaction is a settlement between an insured (e.g., Fannie Mae) and a mortgage insurer in which the mortgage insurer agrees to make a lump sum payment to the insured to terminate all or a portion of its mortgage insurance policy on a pool of insured mortgages. Commutations are typically executed at a discount to the remaining amount of insurance coverage on the mortgage pool, and this benefits the mortgage insurer. From Fannie Mae's perspective, the termination of this type of insurance coverage results in premium savings and the immediate use of funds received from the mortgage insurer. Additionally, Fannie Mae's receipt of an up-front payment, rather than waiting for insurers to make claims payments over time, enables it to mitigate the potential risk of having the insurers either go out of business or making partial payments due to an insurer's declining financial condition. In fact, before the first pool policy commutation reviewed by FHFA-OIG was executed in July 2009, Fannie Mae sent an email to FHFA's Credit Risk

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<sup>30</sup> Although the Agency's Credit Risk Division was aware of the settlements, it was not asked for, nor did it provide, approval for them.



Division indicating that if the deal was consummated it would provide some capital relief to the subject mortgage insurer, which would enable it to continue to write new business.<sup>31</sup>

From July 2009 through June 2010, Fannie Mae executed without FHFA approval seven mortgage insurance pool policy commutations with an estimated remaining amount of insurance in force of \$1.239 billion for a fee of \$933 million. FHFA, in its role as conservator, was therefore not in a position to determine whether the \$306 million settlement discounts effectively preserved and conserved Fannie Mae's assets. For example, because FHFA did not review these transactions, it did not have an opportunity to assess the adequacy of the model(s) and assumptions used by Fannie Mae to determine the amount of insurance risk in force; calculate fair value of the mortgage pool policies and premiums forgone; or analyze and validate the settlement discounts of \$306 million (risk in force minus fee charged). FHFA also lost the opportunity to assess whether certain mortgage insurers were viable sources of future insurance coverage for the Enterprise.

In contrast to Fannie Mae's handling of mortgage insurance pool policy commutations, Freddie Mac submitted to OCO two approval requests related to commutations: the first, for commutations generally; and the second, for a specific commutation.<sup>32</sup> In response to the first request, OCO advised Freddie Mac that it should seek conservator guidance for each individual settlement valued at more than \$50 million. FHFA's Credit Risk Division responded to the second request, but copied OCO, indicating that the second transaction was within Freddie Mac's delegated authority because the settlement amount was less than \$50 million.<sup>33</sup>

In October 2011, Fannie Mae presented FHFA's Credit Risk Division with a proposal for another mortgage insurance pool policy commutation settlement. This proposal identified the seven unapproved settlements discussed above. In November 2011, OCO learned of these unapproved settlements and, through FHFA's OGC, FHFA notified the Enterprises that insurance settlements require Agency consent if they are over \$50 million in value. The directive not only required the Enterprises to inform OCO of proposed settlements, but also served to close a potential loophole by requiring Agency approval for any group of settlements with one party that have an aggregate value of \$50 million or more. Such FHFA directives are

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<sup>31</sup> In some states, if a mortgage insurer does not meet a required minimum policyholders' position or exceeds a maximum permitted risk-to-capital ratio (generally 25 to 1), it may be prohibited from writing new business until its policyholders' position meets the minimum or its risk-to-capital ratio falls below the limit, as applicable.

<sup>32</sup> Additionally, Freddie Mac's requests indicated that Fannie Mae was engaging in similar transactions involving mortgage insurance pool policy commutations, but OCO did not follow up with Fannie Mae to determine the extent of its settlement transactions in this area.

<sup>33</sup> In July 2011, Freddie Mac notified FHFA that the settlement amount for that matter was estimated to be \$15 million, which is below the approval threshold of \$50 million. Later in November 2011, OCO worked with OGC to clarify formally that insurance settlements over \$50 million require FHFA's advance approval.

examples of good internal controls that help the Agency achieve its intent of reserving conservator authority over major business decisions.

*FHFA Should Take a Greater Role to Ensure That the Enterprises Have Put in Place Adequate Policies, Procedures, and Governance Structures Concerning Conservatorship Approvals*

As part of its efforts to review and clarify the November 2008 letters of instruction, FHFA needs to take a more proactive role as conservator to ensure that the Enterprises have put in place sufficient internal controls, including policies and procedures and governance structures, to comply with FHFA's letters of instruction. FHFA's November 2008 Instructions for the Board of Directors (Order No. 2008-0006) acknowledges that the non-delegated authorities are broad and states that the boards should implement appropriate measures to coordinate with FHFA as the regulator and conservator of the Enterprises.

FHFA-OIG found that OCO had not determined whether the Enterprises had implemented policies and procedures for complying with the non-delegated authorities. After FHFA-OIG raised the issue in October 2011, OCO contacted both Enterprises and learned that Freddie Mac had established written policies and procedures related to conservatorship decisions,<sup>34</sup> but Fannie Mae had not. However, FHFA-OIG notes that, to date, OCO has not reviewed the sufficiency of Freddie Mac's policies.

FHFA-OIG believes that FHFA should ensure that Fannie Mae develops a process to confirm compliance with the Agency's approval requirements.<sup>35</sup> As conservator and regulator, FHFA has the responsibility to provide for the Enterprises' safety and soundness and preserve and conserve their assets by taking a more proactive role in developing policies, procedures, and governance processes that are adequate and appropriately structured to secure FHFA's approval of major business decisions.

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<sup>34</sup> On September 13, 2012, OCO provided to FHFA-OIG Fannie Mae's policies and procedures, effective August 1, 2012, for complying with the non-delegated authorities. OCO, however, has not reviewed the sufficiency of those policies and procedures.

<sup>35</sup> FHFA's examiner-in-charge for Fannie Mae concurs in this belief. See Letter from FHFA's Division of Examination and Regulation, *RE: Delegations of Authority to the board of directors of the Federal National Mortgage Association* (FNM-DER-2012-005, January 1, 2012).

### **3. FHFA Has Not Established Criteria or Policies to Ensure Rigorous Review of Enterprise Business Decisions and Has Not Maintained a Central Repository for Documentation Supporting Conservator Decisions**

FHFA-OIG acknowledges that FHFA has devoted significant resources to meeting its conservator mission. In particular, FHFA has established OCO as its main administrative arm for the Enterprises' conservatorships. In turn, OCO has implemented intake, tracking, and decision-making processes for Enterprise requests. FHFA-OIG, however, found that FHFA can improve its oversight by ensuring that it: develops review procedures that include testing and validation of conditions asserted in support of approval requests; centrally tracks and maintains documentation of its decision-making; and educates the Enterprises regarding FHFA's decision-making processes. Without sound and auditable decision-making processes, the Agency may have difficulty justifying conservatorship decisions.

#### *FHFA Sometimes Relies upon Information Provided by the Enterprises Without Independently Verifying It or Performing a Business Case Analysis*

A number of FHFA-OIG published reports show that FHFA sometimes relies on the Enterprises' determinations without independently testing and validating them, thereby giving undue deference to Enterprise decision-making. For example, at the end of 2010, FHFA approved a \$1.35 billion settlement of mortgage repurchase claims that Freddie Mac asserted against Bank of America.<sup>36</sup> In approving the settlement, FHFA relied on Freddie Mac's analysis of the settlement without testing the assumptions underlying the Enterprise's existing loan review process. An FHFA-OIG report found that FHFA did not act timely or test concerns raised by an FHFA senior examiner about limitations in Freddie Mac's existing loan review process for mortgage repurchase claims.<sup>37</sup>

Similarly, in 2009 and 2010, the Enterprises awarded their top six officers over \$35 million in compensation.<sup>38</sup> FHFA reviewed and approved these compensation awards based primarily on the Enterprises' determinations and recommendations. An FHFA-OIG report found that FHFA did not test or validate the means by which the Enterprises calculated their recommended

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<sup>36</sup> The mortgage repurchase settlement, as a settlement of a claim exceeding \$50 million, required pre-approval by the conservator.

<sup>37</sup> See FHFA-OIG, *Evaluation of the Federal Housing Finance Agency's Oversight of Freddie Mac's Repurchase Settlement with Bank of America* (September 27, 2011), available at <http://www.fhfaoig.gov/Content/Files/EVL-2011-006.pdf>. FHFA-OIG also issued a follow-up report on this topic. See FHFA-OIG, *Follow-up on Freddie Mac's Loan Repurchase Process*, EVL-2012-007 (September 13, 2012), available at <http://www.fhfaoig.gov/Content/Files/EVL-2012-007>.

<sup>38</sup> These payments, as compensation decisions relating to personnel at or above the executive vice president level, required pre-approval by the conservator.

compensation levels and did not consider factors that might have resulted in reduced executive compensation costs.<sup>39</sup>

In another example found by FHFA-OIG during the course of this audit, FHFA unduly relied on information provided by Fannie Mae when it issued a “no objection” response to the Enterprise’s request to make an additional investment of between \$55 million and \$70 million in order to protect an existing \$40 million investment.

On May 26, 2010, Fannie Mae forwarded an email request to OCO for approval to purchase a senior mezzanine loan made to a large business entity by another lender, in order to protect an existing \$40 million junior loan to the same entity. The request explained, “... we have the potential to become \$150 million underwater on the senior loan and if someone else buys the senior mezzanine loan, we could have our \$40 million junior mezzanine position foreclosed out from under us, so [there is] a total of about \$190 million of taxpayer money riding on this.” Attached to the email chain was a *Bloomberg* article, which provided additional details about the joint venture. The request was also supported by an internal Fannie Mae memorandum, which recommended that Fannie Mae purchase the \$85 million senior mezzanine loan from another lender for a purchase price of between \$55 million and \$70 million.

On the same day the request was made, OCO informed Fannie Mae it had “no objection” as follows:

We have received your request regarding the purchase of the ... senior mezzanine position. You have represented that the failure to purchase this portion will jeopardize your existing \$40 million junior lien ... You have indicated that your actions are designed to mitigate a potential loss, the proposed actions are in the best interest of Fannie Mae, and are being undertaken in a manner consistent with existing loss mitigation practices.

Given the complex nature of this transaction and the short time in which a decision must be made, it is not possible for us to assess the reasonableness of this proposal. However, based on your representation that the proposed transaction is necessary to mitigate loss, we have no objections to your plans as described.

Fannie Mae subsequently advised FHFA that “shareholders/taxpayers made \$56 million” on the transaction.

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<sup>39</sup> See FHFA-OIG, *Evaluation of the Federal Housing Finance Agency’s Oversight of Fannie Mae’s and Freddie Mac’s Executive Compensation Programs*, (March 31, 2011) available at <http://www.fhfaoig.gov/Content/Files/Exec%20Comp%20DrRpt%2003302011%20final,%20signed.pdf>.



This example suggests that FHFA may be unduly deferring to Enterprise decision-making in cases in which the Enterprises make requests to approve complex transactions at the last minute.<sup>40</sup> Although there may be circumstances when such approval is warranted, FHFA may be in a position to satisfy better its conservatorship responsibilities by imposing deadlines for submission of approval requests so that it has enough time to evaluate complex transactions.

The foregoing suggests that FHFA needs to increase the rigor of its approval process by taking a more active role investigating the underlying facts rather than passively accepting the account thereof supplied by the Enterprises.

*OCO Does Not Centrally Maintain or Track Documentation Supporting Final Conservatorship Decisions*

OCO does not maintain complete records of FHFA's final conservatorship decisions. FHFA-OIG also found that OCO does not centrally maintain detailed documentation to support conservatorship decisions when the documentation supporting a decision has been prepared by an FHFA office other than OCO.

According to OCO, it maintains some of the final decisions for calendar year 2009, the majority of the final decisions for 2010, and all of the final decisions for 2011. These files in many instances, however, do not include the initial Enterprise request or documentation supporting the FHFA analysis that took place in connection with evaluating the request. OCO explained that its revised protocols as of August 2011 do not require OCO to maintain any documentation supporting its analysis of the request. Rather, FHFA's minimum documentation requirements provide merely that the applicable office must compile and maintain the initial request, routing communications, and the final communication and review package. It was further explained that the lead FHFA office (such as OCO, OPAR, or OGC) owns the documentation pertinent to the conservatorship approval requests it reviews. Consequently, FHFA-OIG found inconsistencies with the documentation in OCO's files and that some of OCO's files include only the final decision.

The absence of a central repository for conservatorship approval documents heightens the risk that such documents—the record of the request and FHFA's deliberations surrounding the request—are or may become lost. This issue is compounded by the fact that under FHFA's previous decentralized structure (i.e., prior to December 2011) OCO was not the central clearinghouse for all conservatorship approval requests. The Enterprises would at times send issues directly to other FHFA offices without OCO's knowledge and without entering the data onto OCO's Status Report Tracking Spreadsheet. In addition, OCO did not require these other

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<sup>40</sup> In response to the draft audit report, FHFA noted that Fannie Mae was not required to seek conservatorship approval of the purchase of the senior mezzanine loan.

FHFA offices to maintain separate tracking systems or to report information on conservatorship actions on a routine basis.

FHFA-OIG also confirmed through discussions with OPAR and OGC that these FHFA offices did not maintain separate tracking spreadsheets. As a result, OCO could not readily provide FHFA-OIG with summary data on all approval requests and related dispositions during the 2009-2011 timeframe. Further, FHFA-OIG learned that entries made on the approval request tracking spreadsheets—the primary mechanism used by FHFA to track approval requests—were sometimes made after the fact when OCO learned of a request from another FHFA office or from the Enterprises.

In December 2011, OCO narrowed the number of channels through which conservatorship requests may be submitted and revised its protocols to place responsibility on the lead office for maintaining detailed documentation to support conservatorship decisions. Despite this improvement, FHFA-OIG believes that OCO should be responsible for establishing and maintaining a central repository for all documentation supporting conservatorship decisions. FHFA should also reconsider its decision not to require OCO to compile and maintain documentation supporting FHFA's decisions. This will help FHFA increase the transparency and defensibility of its conservatorship decisions. It will also help ensure that documentation is readily available for external review.

*The Enterprises May Not Sufficiently Understand FHFA's Conservatorship Action Approval Process*

FHFA-OIG also found during the course of this audit that the Enterprises may not sufficiently understand FHFA's decision-making process for their approval requests. For example, Freddie Mac's Chief Compliance Officer believes that there is no definitive structure or method for the conservatorship decision-making process, and she does not have a clear understanding of why certain requests get approved while others are denied. Freddie Mac's Chief Compliance Officer advised that Freddie Mac would like more clarity on what FHFA's decision-making process is and who makes the decisions. The Chief Compliance Officer of Fannie Mae stated that there were times when FHFA and the Enterprise had differences of opinion or different philosophical viewpoints regarding what issues require conservatorship approvals.

**4. FHFA Has Not Established a Formal Process to Follow Up on Significant Conservator Decisions to Ensure the Enterprises Comply with Them**

FHFA-OIG found that once a conservatorship decision is made and communicated to the Enterprises, OCO does not have a formalized process to follow up to ensure that the decision is adhered to. This is true regardless of the dollar value or potential implications of the decision. Instead, OCO forwards conservator decisions to DER to consider—in its discretion—in its

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annual examination cycle. OCO does not believe the responsibility for follow-up on conservatorship decisions rests with its office.

FHFA-OIG tested the effectiveness of this procedure by obtaining a judgmental sample of ten conservatorship approval decisions. Based on the responses from DER, OGC, and the Office of Housing and Regulatory Policy, only two of the ten sampled decisions appear to have been followed up, and even in those two instances the follow-up was not sufficiently documented.

FHFA-OIG also confirmed through interviews with DER and Division of Examination Programs and Support (DEPS) management that there is not a specific examination program in place to review the Enterprises' compliance with conservatorship decisions. DER and DEPS learn of conservatorship approvals and decisions through weekly senior management meetings with OCO and review of the conservatorship approval tracking spreadsheets. According to DEPS management, targeted examinations may include the review of conservatorship directives depending on the topic. If the subject matter of a targeted examination intersects with the topic of a directive, then the examiner will determine if the directive was followed.

FHFA-OIG requested information from DEPS pertaining to specific conservatorship decisions made during 2010 and 2011 that FHFA followed up on pursuant to its examination programs. Although the information provided by DEPS shows that FHFA has performed some conservatorship-related examination work, this work appears to have been performed primarily for specific examinations, rather than ensuring that the Enterprises adhered to conservatorship decisions related to specific approval requests. Further, DEPS acknowledged the need to take a more systematic approach in 2012 to review, prioritize, and follow up on conservatorship directives through examinations. Therefore, OCO, in conjunction with DEPS and DER, should develop a formalized risk-based follow-up plan specifically to review conservatorship decisions.

*FHFA Has Not Ensured that the Enterprises Have a Sound Follow-up Process in Place*

Like FHFA, the Enterprises also do not routinely follow up on conservator decisions to ensure that their component parts that are responsible for implementing the decisions have done so. FHFA-OIG found that the internal audit functions within the Enterprises have not conducted any audits or reviews pertaining to the conservatorship action process or specific conservatorship requests.

For example, Fannie Mae's internal auditors stated that the conservatorship action approval process is FHFA's responsibility and not within the scope of the internal audit function. Fannie Mae's internal audit reviews are primarily focused on the company's risk profile to support Fannie Mae's lines of business. Similarly, Freddie Mac's internal auditors informed FHFA-OIG that they had no knowledge of the conservatorship approval tracking spreadsheets and related processes; therefore, the conservatorship process or any specific transactions that required

conservatorship approval were not included in their audit universe unless they were reviewed incidentally pursuant to a Corporate New Business Initiatives audit.

Additionally, FHFA has not required the Enterprises to develop formal policies and procedures to ensure adherence to FHFA's delegations of authority, including the conservatorship approval process and actions taken with regard to FHFA conservatorship decisions. The Enterprises have taken the non-delegated authorities outlined in the letters of instruction and disseminated them across their respective business units. Each business unit has the responsibility to comply with them but, based on the perception that the conservatorship process does not have an impact on the Enterprises' risk profiles, Fannie Mae and Freddie Mac have not reviewed compliance by their business units.

*An Example of Non-Compliance with an FHFA Conservatorship Decision*

During the course of this audit, FHFA-OIG identified an example of a situation in which an Enterprise did not comply with a conservatorship decision. In August 2010, the Enterprise requested FHFA's approval to pay a termination benefit to one of its employees at the vice president level. Although this action did not require conservator approval, FHFA management reviewed the request, which detailed the amount of the termination benefit (i.e., six months salary) the employee would receive and the benefits the employee would forfeit upon termination (i.e., a \$40,000 retention bonus). FHFA advised the Enterprise that it had "no objection." Months later, FHFA-OIG found that the Enterprise had in fact paid the former vice president twelve months of salary and the \$40,000 retention bonus. The Enterprise did not apprise FHFA of its payments of an additional six months' salary and the retention bonus.

As this example demonstrates, FHFA should consider issuing a directive to the Enterprises prohibiting deviations from its conservatorship decisions and requiring them to monitor actively compliance with those decisions, even in cases like this where prior approval is not necessary and the amount of money at issue is relatively small. FHFA also should independently follow up on such compliance. FHFA will be in a stronger position to express confidence in its conservator achievements by confirming that the Enterprises are complying with its decisions. Verification policies and procedures and regular examinations will also help FHFA monitor the effectiveness of its decision-making and adjust its business case analyses accordingly.



## CONCLUSION

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FHFA's role as conservator of Fannie Mae and Freddie Mac is critical to mitigating instability in the nation's housing finance markets and ensuring that the Enterprises operate safely and soundly. FHFA-OIG's work demonstrates that strengthening control over the Agency's conservatorship approval process will help FHFA achieve its goals and also protect taxpayers from having to provide further financial support.

Towards that end, FHFA-OIG recommends that FHFA: revisit its non-delegated authorities to ensure that significant Enterprise business decisions are sent to the conservator for approval; establish a system capable of ensuring that the Enterprises request approval when it is required; improve how it processes these requests, including intake, tracking, and decision-making; and install a mechanism for confirming that the Enterprises have complied with its decisions.

# RECOMMENDATIONS

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FHFA-OIG recommends that FHFA:

1. Reassess the non-delegated authorities to ensure sufficient FHFA involvement with major business decisions.
2. Evaluate the internal controls established by the Enterprises, including policies and procedures, to ensure they communicate all major business decisions requiring approval to the Agency.
3. Evaluate Fannie Mae's mortgage pool policy commutations to determine whether these transactions were appropriate and in the best interest of the Enterprise and taxpayers. This evaluation should include:
  - a. An assessment of Fannie Mae's methodology used to determine the economic value of the seven mortgage pool policy commutations. This assessment should include a documented review of Fannie Mae's analysis, the adequacy of the model(s) and assumptions used by Fannie Mae to determine the amount of insurance in force, fair value of the mortgage pool policies, premiums forgone, any other factors incorporated into Fannie Mae's analysis, and the accuracy of the information supplied to FHFA; and
  - b. A full accounting and validation of all of the cost components that comprise each settlement discount (risk in force minus fee charged), such as insurance premiums and time value of money applicable to each listed cost component.
4. Develop a methodology and process for conservator review of proposed mortgage pool policy commutations to ensure that there is a documented, sound basis for any pool policy commutations executed in the future.
5. Complete actions to establish a governance structure at Fannie Mae for obtaining conservator approval of counterparty risk limit increases.
6. Establish a clear timetable and deadlines for Enterprise submission of transactions to FHFA for conservatorship approval.
7. Develop criteria for conducting business case analyses and substantiating conservator decisions.
8. Issue a directive to the Enterprises requiring them to notify FHFA of any deviation to any previously reviewed action so that FHFA may consider these changes and revisit its conservatorship decision.

9. Implement a risk-based examination plan to review the Enterprises' execution of and adherence to conservatorship decisions.

## SCOPE AND METHODOLOGY

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This performance audit's objective was to assess FHFA's process for approving non-delegated actions of the Enterprises under conservatorship. Specifically, FHFA-OIG assessed FHFA's procedures for approving activities proposed by the Enterprises and the Agency's actions to ensure that the Enterprises have implemented appropriate measures to comply with its conservator approval requirements.

FHFA-OIG performed its fieldwork for this audit from November 2011 through March 2012. The audit was conducted at FHFA's offices located in Washington, DC. Computer processed information was not used during this audit.

To achieve its objective, FHFA-OIG:

- Reviewed FHFA's and the Enterprises' policies and procedures related to the conservator approval process;
- Assessed FHFA's and the Enterprises' controls to ensure that actions requiring Agency consent received conservator consideration and that the Enterprises complied with conservator decisions;
- Interviewed FHFA and Enterprise officials regarding their views of the approval process and their controls over it, and the transactions FHFA-OIG selected;
- Selected five judgmental samples to test the conservator approval process; selection was based on diversity of subject matters, review processes, FHFA divisions, and potentially significant dollar amounts; and
- Selected ten judgmental samples to test FHFA's follow-up to ensure compliance with conservator decisions; selection was based on those in the original sample that had decisions (three) and those that were readily available on OCO's status report (seven).

FHFA-OIG assessed the internal controls related to its audit objectives. Internal controls are an integral component of an organization's management that provide reasonable assurance that the following objectives are achieved:

- Effectiveness and efficiency of operations;
- Reliability of financial reporting; and
- Compliance with applicable laws and regulations.



Internal controls relate to management's plans, methods, and procedures used to meet its mission, goals, and objectives, and include the processes and procedures for planning, organizing, directing, and controlling program operations as well as the systems for measuring, reporting, and monitoring program performance. Based on the work completed on this performance audit, FHFA-OIG considers its findings on FHFA's approval process for conservatorship actions to be significant deficiencies within the context of the audit objectives.

FHFA-OIG conducted this performance audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that audits be planned and performed to obtain sufficient, appropriate evidence to provide a reasonable basis for FHFA-OIG's findings and conclusions based on the audit objective. FHFA-OIG believes that the evidence obtained provides a reasonable basis for the findings and conclusions included herein, based on the audit objective.

# APPENDIX A

## FHFA's Comments on Findings and Recommendations



### Federal Housing Finance Agency

#### MEMORANDUM

TO: Russell Rau, Deputy Inspector General for Audit, FHFA-OIG

FROM: Jeffrey Spohn, Senior Associate Director, Office of Conservatorship Operations  
Jon Greenlee, Deputy Director, Division of Enterprise Regulation

SUBJECT: FHFA Response – OIG Audit 2011-018, *FHFA's Conservator Approval Process for Fannie Mae and Freddie Mac Business Decisions*

DATE: September 12, 2012

This memorandum transmits the Federal Housing Finance Agency's (FHFA) management response to the recommendations resulting from the evaluation performed by your staff from November 2011 to March 2012. As stated in FHFA-OIG's report, the objective of the audit was to assess FHFA's process for approving non-delegated actions of the Enterprises under conservatorship. We appreciate the intent of this report to help FHFA identify areas to strengthen controls in its conservatorship decision-making for non-delegated matters. We believe that the approach we are taking to govern conservatorship decision-making is effective, and this approach remains appropriate given the size, complexity, and length of the conservatorships.

To set the context for the important matters covered by the report, it is important to provide a broad perspective on the agency's approach to the conservatorships. FHFA clearly stated long ago that, after changing the boards, CEOs, and other executives at the start of the conservatorships, it was delegating most business decisions back to the two companies. FHFA views part of its "preserve and conserve" mandate to include preserving the entities as private companies with the capacity and responsibility to make business decisions following normal corporate governance procedures. This requires a careful balance between FHFA being informed of all key decisions and selectively asserting FHFA's right to review or alter decisions, whether delegated or not, and encouraging the companies themselves to make sound decisions in light of broad conservatorship goals. This balancing has existed since the beginning of the conservatorships and will continue.

The letters of instruction referenced in the report are a key guidepost for delineating items that require conservatorship approval. Still, the letters are only one piece of how FHFA has established with each company the communications necessary to consult, formally or informally, on a wide range of business activities, whether delegated or not. While FHFA will soon be updating these letters, by themselves the letters could never be written to cover all possible issues involving such large, complex organizations. Inevitably, judgment will be required and differences of interpretation could reasonably arise. In view of that, FHFA believes that the

letters alone are necessary but insufficient guideposts and daily engagement with company management is essential to the successful execution of FHFA's conservatorship responsibilities.

The Office of Conservatorship Operations (OCO) was set up to coordinate and facilitate communications and decision-making, for delegated and non-delegated matters alike. We believe that FHFA is appropriately involved with each company and its corporate decision-making, as the following should make clear:

- The Acting Director meets at least bi-weekly (and currently weekly) with each CEO to review key business activities and upcoming issues;
- The Acting Director meets with the board of directors at every board meeting to review the state of the conservatorship and review key business issues.
- The Office of Conservatorship Operations
  - Attends every board meeting at each company
  - Attends every weekly management committee meeting at each company
  - Meets with each CEO at least weekly and frequently with many other senior officers of each corporation
- FHFA policy offices support the Acting Director and the Office of Conservatorship Operations by engaging in a detailed way with the two companies on a wide range of business activities, particularly key conservatorship matters such as loss mitigation (e.g., loan modifications and HARP refinances), and on business policy decisions such as the recently announced changes to the companies' representation and warranties framework.
- Specialized issues, such as executive compensation and litigation matters, are the responsibility of particular offices at FHFA and, because of the sensitive nature of these topics, are not managed or controlled in the same way as routine business matters.
- FHFA's Conservatorship Governance Committee, in place since 2009, meets weekly to ensure FHFA executive leaders responsible for these different areas keep each other informed of relevant developments and collaborate in working through challenging conservatorship issues.

In addition, the Division of Enterprise Regulation (DER) exercises FHFA's statutory authority and fulfills the obligation to oversee the Enterprises' safe and sound operation. FHFA's supervision staff does not participate in corporate decision-making or management functions, but maintains a detailed, current understanding of Enterprise business operations and risk management and brings a supervisory perspective to bear in engaging with the Enterprises and FHFA conservatorship staff. FHFA strives to strike a balance so that supervision and conservatorship activities are sufficiently separate to ensure supervisory independence, but Division staff coordinates to an appropriate degree so that there is the benefit of intra-agency collaboration on significant risk matters impacting the Enterprises.

In two companies with \$5 trillion in assets, well over one thousand counterparties, and roughly 12,000 employees, the volume of daily business decisions, big and small, is staggering. Collectively, the activities and engagements just listed keep FHFA informed of key business activities and permit early consultation on emerging issues. What has evolved over these four years of conservatorship is an environment that encourages discussion, analysis, debate, and resolution of issues, many of which are unique and complex.



While FHFA has long had a tracking system for conservatorship decision requests from the Enterprises, we regret that OIG largely has relegated to footnotes the significant changes in that system made last year, some of which directly respond to concerns OIG raises about older practices. That said, as described below, FHFA agrees with many of the recommendations made in the report and will strive to implement them in an effort to strengthen further the agency's tools and processes for ensuring sound business decisions that support the goals of the conservatorships.

Specific recommendations and FHFA management's response are detailed below. For each, the response notes whether responsibility for the particular recommendation rests with the Office of Conservatorship Operations or the Division of Enterprise Regulation.

**OIG Recommendations:**

1. Reassess the non-delegated authorities to ensure sufficient FHFA involvement with major business decisions.

***OCO Response: Agree***

FHFA agrees with the recommendation and has already completed the reassessment of non-delegated authorities. Revised letters of instruction will be issued by December 31, 2012.

It is important to note that the decisions rendered by FHFA as conservator do clarify the November 2008 non-delegated authorities. In many cases the decisions provide clarifying rationale for future reference. A clear example of FHFA using communications or decisions to clarify or interpret the letter of instruction is the communication to both Enterprises in 2011 clarifying that mortgage insurance commutations were considered settlements. Following that November 2011 communication, both Enterprises began submitting these issues to FHFA for approval if the amounts and other conditions of the letter of instruction are triggered.

While concurring with the recommendation, FHFA has a different view than OIG regarding some of the examples cited. In particular, servicing transfers do not require conservator approval per the letters of instruction and FHFA decisions rendered. Using discretionary authority, FHFA has periodically reviewed certain mortgage servicing transfer transactions as conservator. FHFA believes these transactions are long-standing ordinary course business transactions, governed appropriately within the Enterprises, consummated within contract terms with the counterparty, and thus fall within the delegated authorities. FHFA has been well aware of the Enterprises' strategy and continues to support both Enterprises transferring the servicing from poorly performing entities to those with better capabilities. (See also FHFA's response to SUR-2011-023.)

2. Evaluate the internal controls established by the Enterprises, including policies and procedures, to ensure they communicate all major business decisions requiring approval to the Agency.

***DER Response: Agree***

FHFA agrees with the recommendation as we believe it is appropriate to periodically review the Enterprises' compliance processes. FHFA identified the assessment of the Enterprises compliance with directives as one of our key areas of supervisory focus in the 2012 supervisory plan for both Enterprises. While FHFA will do this predominantly through ongoing monitoring by our core team examiners, compliance with specific conservatorship decisions will be reviewed, as applicable, during targeted reviews of selected areas during the second half of 2012. With the completion of the FY 2012 examination cycle, FHFA will consider this recommendation closed.

3. Evaluate Fannie Mae's mortgage pool policy commutations to determine whether these transactions were appropriate and in the best interest of the Enterprises and taxpayers. This evaluation should include:
  - a. An assessment of Fannie Mae's methodology used to determine the economic value of the seven mortgage pool policy commutations. This assessment should include a documented review of Fannie Mae's analysis, the adequacy of the model(s) and assumptions used by Fannie Mae to determine the amount of insurance in force, fair value of the mortgage pool policies, premiums foregone, any other factors incorporated into Fannie Mae's analysis, and the accuracy of the information supplied to FHFA; and
  - b. A full accounting and validation of all of the cost components that comprise each settlement discount (risk in force-fee charged), such as insurance premiums, and time value of money applicable to each listed cost component.

***OCO Response: Partially Agree***

FHFA partially agrees with the recommendation. FHFA has articulated to the Enterprises that all settlements in excess of \$50 million require conservator approval. FHFA also, through an intra-agency working group, engages in ongoing communication of all mortgage insurance related issues. These processes have been in place and ensure FHFA's oversight and conservator approval, as needed, on commutations. Thus, we agree with the concept of monitoring commutation practices and approving these settlements greater than \$50 million.

Regarding the historical transactions, we do not agree that additional work needs to be completed. FHFA clarified for the Enterprises in November 2011 that it considered these types of transactions settlement of claims. Prior to FHFA clarification, both Enterprises considered the transactions within their delegated authority, but each company continued to keep FHFA informed. Questions from the FHFA intra-agency working group arose, alerting OCO and ultimately resulting in FHFA's general counsel interpretation over-riding the Enterprises' interpretations.



FHFA, including OCO and other divisions within FHFA, have supporting documentation and analysis from Fannie Mae on the transactions that occurred prior to FHFA's clarification, have discussed the analysis with Fannie Mae, and determined that no further action is warranted by FHFA. FHFA has reviewed the models and the analysis supporting these transactions and does not disagree with the analysis or facts presented. FHFA believes the settlements were appropriate and in the best interest of Fannie Mae and the taxpayer. Documentation supporting that position has been provided to the OIG. Fannie Mae's models further demonstrate that commuting the policies has resulted in millions more than would have been received if the policies were not commuted. Given this, FHFA has determined it is not the best use of agency resources to more fully document decisions that cannot be reversed, especially since the decision process has since been changed.

4. Develop a methodology and process for conservator review of proposed mortgage pool policy commutations to ensure that there is a documented sound basis for any pool policy communications executed in the future.

***OCO Response: Agree/Completed***

On June 27, 2012, FHFA issued and communicated to the Enterprises a *Settlement Policy* and accompanying *Settlement Procedural Guide*. This document is applicable to mortgage insurance commutations over \$50 million, following the November 2011 decision communicated by FHFA's Office of General Counsel. For commutations less than this amount, FHFA has determined that conservator approval is not required. The intra-agency working group's ongoing communication with the Enterprises regarding all mortgage insurance issues keeps FHFA apprised of transactions and alerts FHFA to changing circumstances.

5. Complete actions to establish a governance structure at Fannie Mae for obtaining conservator approval of counterparty risk limit increases.

***OCO Response: Partially Agree***

As a result of findings from supervisory examinations of business practices at the company, FHFA's conservatorship office is working with Fannie Mae to ensure the board has established risk limits, with FHFA approval, where required. Then, future changes to these board limits will be submitted to FHFA for approval. These changes in practice will also comport the process to the long-standing practices at Freddie Mac. Once Fannie Mae's governance processes surrounding the change are complete, FHFA will opine and consider the item closed.

While FHFA agrees that there was an absence of certain board-approved risk limits at Fannie Mae, we do not agree that a governance process for risk management did not exist or that FHFA or the board were not informed of risk exposures. If Fannie Mae had board limits similar to Freddie Mac's, there may have been up to a dozen or so risk limit changes requiring board and FHFA approval, not the 4,583 risk limit changes noted in the report.

While not germane to the recommendation, it is worth noting here that, for the period covered in the OIG report, risk limit decreases were greater than the increases, most increases were less than \$10 million, and counterparty exposure was reduced significantly during this period.

6. Establish a clear timetable and deadlines for Enterprise submission of transactions to FHFA for conservatorship approval.

***OCO Response: Partially Agree***

FHFA believes that the current draft Conservatorship Decision Protocols, which establish control processes, including appropriate governance for the notification and submission of non-delegated items to FHFA, satisfies the intent of the OIG recommendation. FHFA agrees to finalize the protocols by December 31, 2012. FHFA does not believe that setting specific timelines and deadlines for Enterprise submission of transactions is necessary or that it would enhance the process of sound decision-making. The myriad of decisions and potential decisions that may be sent to FHFA, as conservator, do not fall neatly into one bucket. Rather, some business decisions must occur quickly; others require a more thorough notification and analysis process that can take months.

7. Develop criteria for conducting business case analyses and substantiating conservator decisions.

***OCO Response: Agree/Completed***

OCO has had in place "documentation protocols" since July 2010; these were last updated in April 2012. These protocols show that OCO shall maintain a copy of the "decision record" for conservatorship decisions, and supporting work papers if work is performed by OCO. Consistent with FHFA's general record-keeping requirements, the work of each FHFA office is the responsibility of that office to maintain.

The pending draft Conservatorship Procedures document sets forth what other FHFA offices should send to OCO for recordkeeping. It also states "OCO will retain copies of all conservatorship determination and supporting materials, including approval documentation and recommendation memos, as appropriate." Also, the pending draft procedures have "guidance for recommendation memorandum" and also delineate individual office responsibilities. We have been following this practice for those items that require FHFA approval in advance of the draft procedures being finalized. We anticipate the procedures will be finalized by December 31, 2012.

8. Issue a directive to the Enterprises requiring them to notify FHFA of any deviation to any previously reviewed action so that FHFA may consider these changes and revisit its conservatorship decision.



***OCO Response: Partially Agree***

FHFA will incorporate within its draft Conservatorship Decision Protocols the requirement that material deviations to a previously reviewed action, or new information arising post-decision that would have materially affected the decision-making process, should be brought to FHFA's attention by the Enterprise.

During 2012 FHFA has developed a risk-based process to follow-up on conservatorship decisions, including a review of processes during the supervisory examination cycle. FHFA believes this recent enhancement satisfies the OIG objective and will prove more beneficial at finding and correcting issues, if they exist, than issuing a directive reliant on the Enterprises to convey non-compliance. Also, our supervisory standards have led each Enterprise to ensure that their compliance and/or audit functions oversee their company's fulfillment of all our conservatorship-directed actions.

9. Implement a risk-based examination plan to review the Enterprises' execution and adherence to conservatorship decisions.

***DER Response: Agree***

FHFA agrees that DER's supervisory evaluation of Enterprise risk management should continue to review the Enterprises' processes for tracking and executing directives issued by FHFA as conservator. As noted in the FHFA-OIG report, FHFA has done such reviews in connection with specific examinations.

DER will continue to perform examination work related to conservatorship directives and will have coverage of those issues in the supervisory planning process beginning with the 2012 exam cycle. To ensure that timely execution of directives is effectively reviewed, DER will need to regularly obtain a current, comprehensive list from OCO of outstanding and completed conservatorship directives. OCO is in the process of incorporating directives and other conservatorship decisions into the automated tracking system for ongoing access by other FHFA offices.

As the FHFA-OIG report notes, it is unclear whether the Enterprises routinely follow up on conservator directives to ensure implementation by appropriate business units and review by internal audit. Supervision work by DER will include not only a risk-based review of particular directives, but also a review of the policies, processes and controls in place at the Enterprises that govern compliance with directives issued pursuant to conservator authority. The Enterprises' processes should be comprehensive, consistent, well-documented, and reviewed by internal audit.

## APPENDIX B

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### **FHFA-OIG's Response to FHFA's Comments**

On September 12, 2012, FHFA provided comments to a draft of this report. FHFA agreed with Recommendations 1, 2, 4, 7, and 9, and partially agreed with Recommendations 3, 5, 6, and 8. FHFA-OIG has attached FHFA's full response as Appendix A, and considered it where appropriate in finalizing this report. Appendix C provides a summary of the Agency's response to FHFA-OIG's recommendations and the status of agreed-to corrective actions.

FHFA-OIG considers FHFA's responses to Recommendations 1, 2, 4, 5, and 9 to be sufficient to resolve these recommendations, which will remain open until FHFA-OIG determines that agreed-to corrective actions are completed and responsive to the recommendations. Concerning Recommendation 5, although FHFA partially agrees with this recommendation, it disputes FHFA-OIG's assertion that a governance process for risk management did not exist and that FHFA and the board of directors were not informed of risk exposure increases. FHFA-OIG maintains its position that Fannie Mae's governance structure was not adequate in that it allowed risk limit increases to be executed without conservator approval. In fact, if an examination by DER had not identified the issue of a lack of board of directors and conservator approval for certain counterparty risk limit increases, this flaw in Fannie Mae's corporate governance structure may not have been noted, potentially allowing the Enterprise to continue to execute unapproved risk limit increases. Nonetheless, FHFA-OIG considers OCO's recent actions to establish and implement board level counterparty risk limits at Fannie Mae to be responsive to the recommendation.

Below, FHFA-OIG summarizes its evaluation of FHFA's comments to the four recommendations (i.e., Recommendations 3, 6, 7, and 8) for which FHFA-OIG concludes that the Agency's comments are not responsive and the recommendations unresolved. FHFA-OIG requests that FHFA reconsider its position on these four recommendations and provide additional comments within 30 days of this report.

#### **Recommendation 3**

Although FHFA partially agreed with this recommendation, it disagreed with FHFA-OIG that additional work was needed to validate Fannie Mae's mortgage insurance pool policy commutations. FHFA states that it has reviewed the Enterprise's models and its analysis supporting these transactions and does not disagree with Fannie Mae's analysis or facts presented. Despite FHFA's position, it has been unable to produce documentation to show that it has performed any level of analysis on these transactions beyond merely relying on data provided by Fannie Mae. Accordingly, FHFA-OIG maintains its position that FHFA should



independently assess the methodology underlying the analysis and validate the results of this analysis for the historical transactions. Such analysis will also help FHFA identify any needed improvements in the evaluation of future mortgage insurance pool policy commutations.

Consequently, FHFA-OIG considers FHFA's comments to Recommendation 3 to be nonresponsive and the recommendation unresolved.

### **Recommendation 6**

Although FHFA partially agreed with this recommendation, it does not believe that setting specific timelines and deadlines is necessary or enhances the process of sound decision-making. FHFA also indicates that the myriad of requests for decisions it receives may in some cases require a quick decision or an analysis process that can take months. Although FHFA-OIG appreciates the variety and breadth of requests that OCO receives from the Enterprises, FHFA-OIG believes that establishing overall timetables and deadlines will enable FHFA to evaluate appropriately Enterprise requests without being pressured to rely on Enterprise decision-making to approve requests at the last minute.

Consequently, FHFA-OIG considers FHFA's comments to Recommendation 6 to be nonresponsive and the recommendation unresolved.

### **Recommendation 7**

Although FHFA agreed with this recommendation, its proposed actions to address the recommendation focus on the issue of maintaining copies of decision records and recordkeeping issues rather than developing criteria for conducting business case analyses. FHFA-OIG continues to believe that FHFA needs to develop criteria for conducting business case analyses and substantiating conservator decisions. Such criteria will help ensure that a common set of principles is applied to all conservatorship decisions and that adequate support exists to demonstrate that conservatorship decisions are sound.

Consequently, FHFA-OIG considers FHFA's comments to Recommendation 7 to be nonresponsive and the recommendation unresolved.

### **Recommendation 8**

FHFA partially agreed with this recommendation and will require the Enterprises to bring material deviations to previously reviewed actions or new information arising post-decision that may affect the decision-making process to FHFA's attention through its draft Conservatorship Decision Protocols. Although inclusion of such language in the draft Conservatorship Decision Protocols is a positive step, FHFA-OIG maintains that the protocols are internal procedures governing FHFA's process for approving requests related to non-delegated actions. In FHFA-

OIG's view, procedures governing the Enterprises' reporting deviations from conservator decisions should be separately documented to emphasize the importance of the reporting requirement.

Consequently, FHFA-OIG considers FHFA's comments to Recommendation 8 to be nonresponsive and the recommendation unresolved.

## APPENDIX C

### Summary of Management's Comments on the Recommendations

This table presents FHFA's management response to FHFA-OIG's report and the recommendations' status when the report was issued.

Rec. No.	Corrective Action: Taken or Planned	Expected Completion Date	Monetary Benefits	Resolved <sup>a</sup> Yes or No	Open or Closed <sup>b</sup>
1.	FHFA agrees with the recommendation and has completed the reassessment of non-delegated authorities. The revised letters of instruction will be issued by December 31, 2012.	12/31/12	\$0	Yes	Open
2.	FHFA agrees with the recommendation and has identified the assessment of the Enterprises' compliance with directives as one of its key areas of supervisory focus in the 2012 supervisory plan for both Enterprises. FHFA will consider this recommendation closed with the completion of the FY 2012 examination cycle.	5/30/2013	\$0	Yes	Open
3.	FHFA partially agrees with this recommendation but does not agree that additional work should be completed to assess and validate Fannie Mae's analysis and underlying methodologies used to determine the settlement discounts for the seven mortgage insurance pool policy commutation transactions.	N/A	\$0	No	Open
4.	FHFA agrees with this recommendation and issued a Settlement Policy and accompanying Settlement Procedural Guide on June 27, 2012. FHFA-OIG will evaluate this guide.	6/27/12	\$0	Yes	Open
5.	FHFA partially agrees with this recommendation. OCO is working with Fannie Mae to ensure the board has established risk limits with FHFA approval where required.	12/31/2012	\$0	Yes	Open

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Rec. No.	Corrective Action: Taken or Planned	Expected Completion Date	Monetary Benefits	Resolved <sup>a</sup> Yes or No	Open or Closed <sup>b</sup>
6.	FHFA partially agrees with this recommendation and is going to finalize the Conservatorship Decision Protocols by December 31, 2012. However, FHFA does not believe that setting specific timelines and deadlines for Enterprise submission of approval requests is necessary or enhances the process of sound decision-making.	N/A	\$0	No	Open
7.	Although FHFA agrees with this recommendation, its response does not address FHFA-OIG's recommendation to develop criteria for conducting business case analyses. Instead, FHFA's response addresses the issue of maintaining copies of decision records and recordkeeping issues.	N/A	\$0	No	Open
8.	FHFA partially agrees with this recommendation and will incorporate within its Conservatorship Decision Protocols the requirement that material deviations to a previously reviewed action, or new information arising post-decision that would have materially affected the decision-making process, should be brought to FHFA's attention by the Enterprises. FHFA has also developed a risk-based process to follow up on conservatorship decisions in 2012 and believes that this will be more beneficial at finding and correcting issues than issuing a directive reliant on the Enterprises to convey non-compliance.	N/A	\$0	No	Open
9.	FHFA agrees with this recommendation and confirmed that DER's supervisory evaluation of Enterprise risk management will continue to review and perform examination work relating to the Enterprises' processes for tracking and executing directives issued by FHFA as conservator.	5/30/2013	\$0	Yes	Open



(a) Resolved means: (1) Management concurs with the recommendation and the planned, ongoing, or completed corrective action is consistent with the recommendation; (2) Management does not concur with the recommendation, but alternative action meets the intent of the recommendation; or (3) Management agrees to the FHFA-OIG monetary benefits, a different amount, or no (\$0) amount. Monetary benefits are considered resolved as long as management provides an amount.

(b) Once FHFA-OIG determines that the agreed-upon corrective actions have been completed and are responsive to the recommendations, the recommendations can be closed.

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# **EXHIBIT “4”**

**TO**

**DEFENDANTS’ OPPOSITION TO FHFA’S MOTION TO DISSOLVE THE  
PRELIMINARY INJUNCTION**

# **EXHIBIT “4”**

**TO**

**DEFENDANTS’ OPPOSITION TO FHFA’S MOTION TO DISSOLVE THE  
PRELIMINARY INJUNCTION**





**Oversight by Fannie Mae and  
Freddie Mac of Compliance with  
Forbearance Requirements  
Under the CARES Act and  
Implementing Guidance by  
Mortgage Servicers**

Special Report • OIG-2020-004 • July 27, 2020



OIG-2020-004

July 27, 2020

## Executive Summary

Fannie Mae and Freddie Mac (collectively, the Enterprises) perform an important role in the nation's housing finance system by providing liquidity, stability, and affordability to the mortgage market. The Enterprises purchase single-family mortgages from lenders and either hold these mortgages in their portfolios or package them into mortgage-backed securities that can be sold.

Mortgage servicers perform a variety of tasks on behalf of the Enterprises. These tasks include: collecting payments from homeowners; remitting principal and interest to investors for securitized loans; paying property tax and insurance premiums from escrow funds; and performing collection, loss mitigation, and foreclosure activities with respect to delinquent homeowners under the terms of the Enterprises' selling and servicing guides.

The Federal Housing Finance Agency (FHFA or Agency), as conservator, has delegated to the Enterprises responsibility for managing their relationships with their servicers. Typically, FHFA has the ability to examine the Enterprises' execution of delegated responsibilities through supervisory activities. FHFA, however, lacks statutory authority to supervise activities by mortgage servicers. To meet the critical need for oversight of these counterparties, FHFA issued three advisory bulletins which set forth its supervisory expectations for the Enterprises' oversight of their servicers.

Congress passed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which was signed into law on March 27, 2020, to address some of the economic effects of the COVID-19 pandemic. Section 4022 of the CARES Act provides single-family homeowners, who are experiencing financial hardship due to the COVID-19 pandemic, the right to forbearance for up to 180 days (which can be extended for another 180 days) from making mortgage payments on loans owned or securitized by the Enterprises. An affected homeowner need only attest to the hardship; mortgage servicers are prohibited from seeking documentation to support that attestation.

Forbearance under the CARES Act does not erase what is owed by the homeowner. The homeowner will be required to repay any missed or reduced payments at some point in the future. While the CARES Act does not set forth options to repay the missed payments, FHFA publicly announced that homeowners will not be required to repay the missed payments in a lump sum at the end of the forbearance period. The Enterprises issued similar announcements on their websites.

The Enterprises' mortgage servicers are contractually obligated to advance to the Enterprises regular monthly payments of principal and interest, or only the



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interest, depending on the contract. The Enterprises then advance those payments to security holders. Those obligations continue, even for mortgages in forbearance under the CARES Act. The Enterprises have capped servicer liability for advances at four months, even though forbearances could last up to nearly a year under the CARES Act. After that four-month period, the Enterprises take over the servicers' obligations with respect to advancements of interest and principal.

Servicing a mortgage in forbearance is more labor-intensive, and thus more costly, than servicing a performing mortgage. The potential financial burden associated with servicing mortgages in forbearance is significant and creates a risk that some servicers may not follow the mandates in the CARES Act and implementing guidance. For example, a servicer might seek to secure a lump sum repayment from a homeowner who obtained forbearance of monthly payments under the CARES Act.

We undertook this review to provide information about oversight by the Enterprises over mortgage servicers' compliance with Section 4022 of the CARES Act and implementing guidance. We learned from the Enterprises that neither views its responsibilities to include testing whether its servicers comply with legal and regulatory requirements. According to the Enterprises, their long-standing business relationships with mortgage servicers, the servicers' familiarity with the Enterprises' servicing requirements, and their continual contact with servicers give them confidence that servicers are well-informed of their legal and contractual obligations under the CARES Act and implementing guidance. The Enterprises rely on representations and warranties made by each servicer that it complies with applicable law and regulations. A breach of these representations and warranties can lead an Enterprise to invoke contractual remedies. In addition, each Enterprise reported to us that it obtains an annual certification from each servicer that it complies with applicable law and regulations. FHFA advised us that it considered this oversight acceptable.

National surveys conducted by one Enterprise suggest a significant number of homeowners are not aware of the option of mortgage forbearance, and media reports state that some servicers may have provided inaccurate advice to homeowners about repayment options. Because mortgage servicers are the primary point of contact for homeowners experiencing COVID-19 related financial hardship, we reviewed the information provided by a sample of 20 large servicers, 20 medium servicers, and 20 small servicers on their websites. We found incomplete and/or unclear information about forbearance and repayment on 14 of the 20 websites of the large servicers and generally limited to no information on forbearance and repayment on the remaining 40

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websites. In a few cases, information on some servicers' websites appeared to contradict the CARES Act requirements or FHFA and Enterprise guidance. For example, two of the small servicer websites instruct homeowners that they must provide proof of unemployment and other documentation to obtain mortgage forbearance; another servicer website maintains that all missed payments must be repaid in a lump sum at the end of the forbearance period.

Congress granted homeowners with Fannie Mae and Freddie Mac mortgages a legal right to forbearance upon an attestation of financial hardship from COVID-19, and FHFA has announced that lump sum repayment is not required once forbearance ends. We observe, from the information provided to us by the Enterprises, that neither Enterprise has collected data sufficient to permit an assessment of whether servicers are complying with the CARES Act and implementing guidance. The Enterprises reported to us that they have not asked any servicer to demonstrate compliance with the CARES Act and implementing guidance. Based on our survey of 60 websites hosted by servicers, we could not determine whether homeowners were provided with accurate and complete information about forbearance.

We provided FHFA an opportunity to respond to a draft of this report. In its management response, which is included as an appendix to this report, FHFA shared our concern that servicers may not be adequately informing homeowners that forbearance is available to them.

This report was prepared by Jon Anders, Program Analyst, and Angela Choy, Assistant Inspector General for Evaluations. We appreciate the cooperation of FHFA and Enterprise staff, as well as the assistance of all those who contributed to the preparation of this report.

This report has been distributed to Congress, the Office of Management and Budget, and others and will be posted on our website, [www.fhfaig.gov](http://www.fhfaig.gov), and [www.oversight.gov](http://www.oversight.gov).

Kyle D. Roberts  
Deputy Inspector General for Evaluations

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## ABBREVIATIONS .....

CARES Act	Coronavirus Aid, Relief, and Economic Security Act
CFPB	Consumer Financial Protection Bureau
Enterprises	Fannie Mae and Freddie Mac
FHFA or Agency	Federal Housing Financial Agency
HUD	U.S. Department of Housing and Urban Development

## BACKGROUND .....

### **The Role of the Enterprises and Their Mortgage Servicers in Single-Family Housing Finance**

The Enterprises perform an important role in the nation’s housing finance system by providing liquidity, stability, and affordability to the mortgage market. The Enterprises purchase single-family mortgages from lenders and either hold these mortgages in their portfolios or package them into mortgage-backed securities.

Servicers collect payments from homeowners, remit principal and interest to investors for securitized loans, remit property tax and insurance premiums from escrow funds, and perform collection, loss mitigation, and foreclosure activities with respect to delinquent homeowners under the terms of the Enterprises’ respective selling and servicing guides. Even where a homeowner is late in his/her mortgage payments, the servicer is not excused from making scheduled principal and/or interest payments to investors and its other obligations. According to FHFA, “the business relationships between the Enterprises and [mortgage servicers] are a fundamental component of the Enterprises’ delegated business models.”<sup>1</sup>

### **As Conservator, FHFA Has Delegated Authority to the Enterprises to Manage Their Relationships with Mortgage Servicers**

After it placed the Enterprises into conservatorship and reconstituted their boards of directors, FHFA, as conservator, established a delegated approach to managing the Enterprises’ operations, which it believes is the most efficient way to manage their conservatorships. FHFA has delegated to the board of each Enterprise a significant portion of day-to-day management and risk controls, and its regulations authorize the boards to delegate execution of day-to-day operations to Enterprise employees. Management of the relationship with mortgage servicers is a responsibility delegated by FHFA to the Enterprises.<sup>2</sup>

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<sup>1</sup> See FHFA, Advisory Bulletin 2014-07, *Oversight of Single-Family Seller/Servicer Relationships*, at 1 (Dec. 1, 2014).

<sup>2</sup> This delegation is subject to certain exceptions, such as changes to requirements, policies, frameworks, standards, or policies aligned across both Enterprises pursuant to FHFA’s direction.

## **FHFA Lacks Statutory Authority to Examine the Enterprises' Servicers; It Has Communicated to the Enterprises Its Expectations of Their Oversight of Their Servicers**

FHFA recognizes that, for its delegated governance model to succeed, the Enterprises must fulfill their delegated responsibilities. Typically, FHFA has the ability to examine the Enterprises' execution of delegated responsibilities through supervisory activities.

However, FHFA lacks statutory authority to examine mortgage servicers.<sup>3</sup> To meet the critical need for oversight of these counterparties, FHFA issued three advisory bulletins that communicate its supervisory expectations for Enterprise oversight of seller/servicers.

These bulletins are:

- Advisory Bulletin 2013-01, *Contingency Planning for High-Risk or High-Volume Counterparties*. FHFA articulated its expectations that the Enterprises manage their exposure to counterparty credit risk by establishing risk management practices that include monitoring and updating the condition and risk profile of their counterparties, tracking emerging events that may affect counterparty condition and risk profile, and reducing exposure when a counterparty's financial condition is deteriorating.
- Advisory Bulletin 2014-07, *Oversight of Single-Family Seller/Servicer Relationships*. FHFA announced its expectation that each Enterprise would establish a framework and policy for seller/servicer oversight. As part of that framework, the Agency instructed each Enterprise to evaluate financial, operational, legal, compliance, and reputation risks associated with single-family seller/servicers, to take appropriate action to mitigate those risks or reduce the Enterprises' exposure, and to conduct risk-based ongoing monitoring of seller/servicers.
- Advisory Bulletin 2018-08, *Oversight of Third-Party Provider Relationships*. FHFA set forth its supervisory expectation that the Enterprises monitor their relationships with third parties and, among other things, to "consider whether the third-party provider is . . . [c]omplying with applicable legal and regulatory requirements, including documenting such compliance when necessary."

## **Homeowners Experiencing COVID-19 Related Financial Hardships Have a Right to Receive Forbearance on Mortgage Payments Under the CARES Act**

Congress passed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which was signed into law on March 27, 2020, in an effort to address some of the economic

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<sup>3</sup> FHFA requested this authority in its annual report to Congress. FHFA, *2019 FHFA Report to Congress*, at 15 (June 15, 2020) (online at [www.fhfa.gov/AboutUs/Reports/Pages/Annual-Report-to-Congress-2019.aspx](http://www.fhfa.gov/AboutUs/Reports/Pages/Annual-Report-to-Congress-2019.aspx)).

effects from the COVID-19 pandemic.<sup>4</sup> Section 4022 of the CARES Act, among other things, gives single-family homeowners experiencing financial hardship due to the COVID-19 pandemic the right to forbearance from making mortgage payments on loans owned or securitized by Fannie Mae and Freddie Mac, regardless of delinquency status.<sup>5</sup> Section 4022(b)(1) sets forth the process to be used by a homeowner seeking forbearance for financial hardship due to COVID-19: (1) submission of a request to the homeowner’s servicer, and (2) affirmation that the homeowner is experiencing a financial hardship during the COVID-19 emergency. Upon receipt of such a request by a homeowner and attestation of financial hardship, Section 4022(c)(1) directs that the servicer “shall” grant the request without obtaining any additional documentation. The statute explicitly provides that during the period of forbearance “no fees, penalties, or interest (beyond the amounts scheduled or calculated as if the borrower made all contractual payments on time and in full under the terms of the mortgage contract)” can be assessed on the borrower. Under Section 4022(b)(2) of the CARES Act, forbearance “shall be granted for up to 180 days, and shall be extended for an additional 180 days upon request by the borrower . . .”

FHFA and the Enterprises have provided the public with information about forbearance on their websites. FHFA’s COVID-19 information page states that, “If your ability to pay your mortgage is impacted, and your loan is owned by Fannie Mae or Freddie Mac . . . you may be eligible to delay making your monthly mortgage payments for a temporary period . . .”<sup>6</sup> The website also provides information about end-of-forbearance repayment options. Fannie Mae’s website, “Here to Help,” contains fact sheets, videos, and other resources for homeowners.<sup>7</sup> Among other things, the website explains forbearance and repayment options after forbearance. Freddie Mac operates a consumer website, “MyHome by Freddie Mac,”

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<sup>4</sup> In response to the spread of COVID-19 in the United States, President Trump issued a declaration on March 13, 2020, that the outbreak constituted a national emergency. The COVID-19 emergency, and federal and state responses to the emergency to protect health and safety, have had wide-ranging effects on the national economy, the housing finance industry, and on homeowners.

<sup>5</sup> Section 4022(b)(1). Section 4022 is part of Title IV, Subtitle A of the CARES Act, the Coronavirus Economic Stabilization Act of 2020. The CARES Act provides forbearance for up to one year to qualifying residential mortgage borrowers with “federally backed mortgage loans.” This term is defined in the Act to include residential mortgage loans purchased by Fannie Mae and Freddie Mac. For the purposes of this report, we refer to such borrowers as “homeowners.”

<sup>6</sup> FHFA, COVID-19 Information and Resources (June 17, 2020) (online at [www.fhfa.gov/Homeownersbuyer/MortgageAssistance/Pages/Coronavirus-Assistance-Information.aspx](http://www.fhfa.gov/Homeownersbuyer/MortgageAssistance/Pages/Coronavirus-Assistance-Information.aspx)). FHFA also launched a joint housing assistance website with the Consumer Financial Protection Bureau (CFPB) and the U.S. Department of Housing and Urban Development (HUD). See CFPB, FHFA, and HUD, Mortgage and housing assistance during the coronavirus national emergency (updated July 1, 2020) (online at <http://cfpb.gov/housing>). This website provides information on CARES Act mortgage relief, look-up tools to help homeowners determine if their mortgage is federally backed, and resources for additional help.

<sup>7</sup> Fannie Mae, Here to Help (accessed June 26, 2020) (online at [www.fanniemae.com/heretohelp/kyo/index.html](http://www.fanniemae.com/heretohelp/kyo/index.html)).



that provides information for consumers affected by the pandemic,<sup>8</sup> including a blog post that explains that a homeowner with a mortgage owned by Freddie Mac or covered by the CARES Act is not required to provide documentation to prove financial hardship when applying for forbearance.

### **More than a Million Homeowners Whose Mortgages Are Owned or Securitized by the Enterprises Have Obtained Forbearance Under the CARES Act, but Many Others Are Unaware of Their Right to Forbearance**

Millions of homeowners have obtained forbearance under the CARES Act. According to a July 12, 2020, estimate by the Mortgage Bankers Association, almost 3.9 million homeowners, representing 7.8% of servicers' portfolio volume, are in forbearance.<sup>9</sup> The Mortgage Bankers Association reported that the share of Fannie Mae and Freddie Mac loans in forbearance was 5.64% of servicers' Enterprise portfolio volume. The mortgage software and analytics firm Black Knight estimated that 1,643,000 Enterprise loans were in forbearance as of July 14, 2020, representing \$346 billion in unpaid principal balance.<sup>10</sup>

Notwithstanding the millions of homeowners who have sought and obtained forbearance, many others appear to be unaware of this option. FHFA and the Enterprises explain, on their public websites, that single-family homeowners with financial hardship due to the COVID-19 pandemic may be eligible for forbearance, and media have reported the availability of COVID-19 forbearance.<sup>11</sup> However, responses to two recent Fannie Mae surveys reflect that many homeowners are not aware of their forbearance options. In April 2020, Fannie Mae began a weekly survey of consumers' financial and housing experiences during the COVID-19 pandemic. It also added related questions to its existing monthly National Housing Survey. In its May 2020 monthly National Housing Survey, Fannie Mae asked homeowners whether they were familiar with any programs that allow homeowners facing financial

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<sup>8</sup> Freddie Mac, Extending help to homeowners impacted by COVID-19 (accessed June 26, 2020) (online at <https://myhome.freddie.mac.com/getting-help/relief-for-homeowners.html>).

<sup>9</sup> Press Release, Mortgage Bankers Association: Share of Mortgage Loans in Forbearance Decreases for Fifth Straight Week to 7.8% (July 20, 2020) (online at [www.mba.org/2020-press-releases/july/share-of-mortgage-loans-in-forbearance-decreases-for-fifth-straight-week-to-780](http://www.mba.org/2020-press-releases/july/share-of-mortgage-loans-in-forbearance-decreases-for-fifth-straight-week-to-780)).

<sup>10</sup> Black Knight, Loans in forbearance decline for third consecutive week to lowest rate since May at 4.12M (July 17, 2020) (online at [www.blackknightinc.com/blog-posts/loans-in-forbearance-decline-for-third-consecutive-week-to-lowest-rate-since-may-at-4-12m/](http://www.blackknightinc.com/blog-posts/loans-in-forbearance-decline-for-third-consecutive-week-to-lowest-rate-since-may-at-4-12m/)).

<sup>11</sup> See, e.g., Chris Arnold, *U.S. Orders Up To A Yearlong Break On Mortgage Payments*, National Public Radio (Mar. 19, 2020) (online at [www.npr.org/2020/03/19/818343720/homeowners-hurt-financially-by-the-coronavirus-may-get-a-mortgage-break-](http://www.npr.org/2020/03/19/818343720/homeowners-hurt-financially-by-the-coronavirus-may-get-a-mortgage-break-)) and Alex Gailey, *Know Your Rights When It Comes to Mortgage Forbearance*, NextAdvisor (June 19, 2020) (online at <https://time.com/nextadvisor/mortgages/mortgage-forbearance-options/>).

hardship due to the coronavirus to lower or delay their mortgage payments.<sup>12</sup> Approximately 50% of homeowners responding to the monthly survey were not familiar with such programs. A May 15, 2020, weekly survey seeking to gauge borrower knowledge of forbearance options produced the same result.

### **FHFA and the Enterprises Have Announced that Lump Sum Payments Will Not Be Required When the Forbearance Period Ends**

Forbearance under the CARES Act does not erase what is owed by the homeowner. The homeowner will be required to repay any missed or reduced payments at some point in the future. However, the CARES Act does not set forth options to repay the missed payments.

On April 27, 2020, FHFA announced that homeowners who obtain CARES Act forbearance would not be required to make a lump sum repayment of their total missed payments at the end of the forbearance period. The Agency reported to us that it did so after learning from media reports of confusion and “misinformation” regarding whether homeowners would be required to make such lump sum repayments.

That same day, each Enterprise issued similar announcements on its website (accessible from FHFA’s digital announcement through a link).<sup>13</sup> Fannie Mae’s announcement states: “...the homeowner will be provided several options from their mortgage servicer for making up the missed payments, and **will not be required** to pay everything back all at once.”; and “We **do not** require a homeowner to repay missed payments all at once at the end of a forbearance plan, unless they choose to do so.” (emphasis in original) Freddie Mac’s announcement is comparable: “Simply put, if you are a homeowner seeking forbearance and Freddie Mac owns your loan, you are never required to make up missed payments in a lump sum.”<sup>14</sup>

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<sup>12</sup> The National Housing Survey is a monthly telephone survey that polls a nationally representative sample of 1,000 consumers about owning and renting a home, purchase and rental prices, household finances, and overall confidence in the economy.

<sup>13</sup> Subsequently, on May 26, 2020, both Enterprises issued press releases announcing online resources for homeowners should they experience a financial hardship due to COVID-19. *See, supra*, notes 7 and 8. Fannie Mae’s website includes a fact sheet titled, “You don’t have to repay the forbearance amount all at once upon completion of your forbearance plan: Get the facts.” A blog post on Freddie Mac’s website, “Understanding Forbearance During COVID-19,” states “You are never required to pay back your forbearance in a lump sum.”

<sup>14</sup> The Enterprises also provided sample scripts for mortgage servicers to follow with respect to forbearance plans and lump sum payments. The scripts explain to homeowners that “[f]orbearance is when we allow you to temporarily reduce your mortgage payment or suspend or pause making your mortgage payment for a period of time.” The scripts add: “**Forbearance does not mean your payments are forgiven.** You will still be required to pay back the missed payments eventually, but **you won’t have to repay it all at once—after your forbearance ends unless you are able to do so.**” (emphasis in original) *See* Fannie Mae, COVID-19 Forbearance Script for Servicer Use with Homeowners (online at <https://singlefamily.fanniemae.com/servicing/covid-19-forbearance-script-servicer-use-homeowners>) (updated May 29, 2020) and Freddie Mac, COVID-19 Script for Servicer Use with Homeowners (updated May 28,

Homeowners with Fannie Mae or Freddie Mac mortgages have multiple options for making up missed payments from the forbearance period.<sup>15</sup> Homeowners may repay the forbearance amount all at once in full or establish a short-term repayment plan of up to a year, or longer if approved by the Enterprises. Other options may include, for example, a payment deferral, whereby the amount of their missed payments is moved to the end of the loan term, or a loan modification. Under a loan modification, the original terms of the loan may be changed to reduce monthly payments through a reduction in the interest rate, extension of the loan up to 40 years, and/or principal forbearance.

## **The Enterprises Have Limited Servicers' Financial Liability for Mortgages in Forbearance**

As discussed earlier, a homeowner who obtains mortgage forbearance under the CARES Act is treated as if he/she made all contractual payments on time and in full under the terms of the mortgage contract, even though mortgage payments are suspended or reduced during forbearance. The CARES Act, however, does not provide parallel forbearance for servicers.

For mortgages bought or guaranteed by the Enterprises, mortgage servicers are required under their contractual servicing agreements to advance to the Enterprises the originally scheduled, regular monthly payments of principal and interest, or only the interest depending on the servicer's contract with the Enterprise.<sup>16</sup> The Enterprises then advance those payments to security holders. Those monthly payments are required, notwithstanding any forbearance provided to homeowners under the CARES Act,<sup>17</sup> and such forbearance can remain in place

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2020) (online at [https://sf.freddiemac.com/content/\\_assets/resources/pdf/covid-19\\_forbearance-servicer-script.pdf](https://sf.freddiemac.com/content/_assets/resources/pdf/covid-19_forbearance-servicer-script.pdf)).

<sup>15</sup> The Enterprises have issued updated guidance to their servicers on the repayment options that are available to homeowners under the Enterprises' respective servicing guides. See Fannie Mae, Lender Letter (LL-2020-02), *Impact of COVID-19 on Servicing* (July 15, 2020) (online at <https://singlefamily.fanniemae.com/media/document/pdf/lender-letter-ll-2020-02-impact-covid-19-servicing>); Fannie Mae, Lender Letter (LL-2020-07), *COVID-19 Payment Deferral* (July 15, 2020) (online at <https://singlefamily.fanniemae.com/media/document/pdf/lender-letter-ll-2020-07-covid-19-payment-deferral>), and Freddie Mac, Bulletin 2020-15, *Freddie Mac COVID-19 Payment Deferral* (May 13, 2020) (online at <https://guide.freddiemac.com/app/guide/bulletin/2020-15>).

<sup>16</sup> Freddie Mac requires its servicers to remit scheduled interest payments; Fannie Mae may require advances of scheduled principal payments and interest payments, depending on the terms of the servicer's contractual agreement with Fannie Mae.

<sup>17</sup> David Stevens, former head of the Federal Housing Administration, described this requirement as a "destructive incentive" that would encourage servicers to "try to scare people or at a minimum tell them that they're going to repay that in a balloon[.]" See Paul Kiernan, *Getting a Mortgage-Payment Break Isn't the Boon Many Expected*, Wall Street Journal (Apr. 23, 2020) (online at [www.wsj.com/articles/getting-a-mortgage-payment-break-isnt-the-boon-many-expected-11587634200](https://www.wsj.com/articles/getting-a-mortgage-payment-break-isnt-the-boon-many-expected-11587634200)).

for up to 360 days. As a result, the mortgage servicer initially must fund the advances and then seek reimbursement.

On April 21, 2020, FHFA announced that servicers would have to advance principal and/or interest for only four months of the forbearance period, which aligned the Enterprises' policies. After that four-month period, FHFA instructed that the Enterprises would take over the servicers' obligations with respect to advancements of interest and principal. The Enterprises capped servicer liability for advances at four months, even though forbearances could last up to nearly a year under the CARES Act.

Servicing a loan in forbearance is more labor-intensive than servicing a performing loan and, accordingly, is more costly. Servicers must work directly with homeowners before the end of the forbearance period to review the homeowners' options with respect to how they will repay the monthly payments missed during forbearance; issue consumer communications required by the Consumer Financial Protection Bureau's mortgage servicing rules;<sup>18</sup> and, if needed, revise the applicable loan agreements to reflect new repayment terms at the end of the forbearance period (for example, loan modification agreements and repayment plans).

There are differing views on servicers' financial capacity to meet their obligations. In recent Congressional testimony, the FHFA Director focused specifically on servicers' ability to make principal and interest payments on Enterprise mortgages during the first four months of forbearance and reported that FHFA analyses determined that servicers will have sufficient capacity to advance principal and interest payments. However, the Urban Institute estimated, in May 2020, that the potential financial burden on servicers for mortgages in forbearance ranges from \$33.2 billion and \$117.8 billion, based on its analysis of three hypothetical scenarios using different combinations of forbearance rates and months of forbearance.<sup>19</sup> It observed that, during forbearance, servicers must advance principal and interest, or only interest depending on the servicer's contract with the Enterprise, for the first 120 days and make other payments, such as property insurance and property taxes, for the entire period. After forbearance ends, servicers must advance property taxes, insurance, and mortgage insurance premiums until the loan is modified or foreclosed upon. According to the Urban

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<sup>18</sup> Regulation X, promulgated by the CFPB, establishes mortgage servicing requirements for all servicers. Regulation X, among other things, requires servicers to provide homeowners with several different loss mitigation notices when a homeowner seeks forbearance or other short-term loss mitigation options. Servicers must provide the loss mitigation notices required by Regulation X to homeowners with CARES Act forbearances.

<sup>19</sup> Laurie Goodman, et al., *The Mortgage Market Has Caught the Virus*, Urban Institute (May 14, 2020) (online at [www.urban.org/research/publication/mortgage-market-has-caught-virus](http://www.urban.org/research/publication/mortgage-market-has-caught-virus)). These estimates include advance payments for Fannie Mae, Freddie Mac, Federal Housing Administration mortgages, as well as those securitized in private-label securities and held in bank portfolios.

Institute: “Under any scenario, the advances servicers are required to make to investors will be an overwhelming lift” for many servicers.

## OBSERVATIONS .....

### **The Enterprises Have Issued CARES Act Guidance to Their Servicers but Have Not Required Them to Expressly Inform Homeowners of Their Forbearance-Related Rights**

Both Enterprises have issued guidance to their servicers reinforcing the directive in the CARES Act that homeowners seeking forbearance must only provide an attestation of a financial hardship caused by the COVID-19 emergency.<sup>20</sup> However, this guidance does not require servicers to expressly inform homeowners that they have a legal right under the CARES Act to immediate forbearance without documentation, provided they submit the required attestation. Similarly, the Enterprises, which have issued sample scripts on their websites that explain FHFA’s prohibition on lump sum repayments, do not require servicers to use the scripts.

### **The Servicers’ Obligation to Advance Funds During Periods of Forbearance and the Additional Costs to Service Mortgages in Forbearance Creates a Risk that Some Servicers May Not Follow Provisions of the CARES Act and Implementing Guidance**

As explained earlier, the CARES Act authorizes forbearance for up to nearly a year for homeowners. Servicing a loan in forbearance is more labor-intensive than servicing a performing loan and, accordingly, is more costly. Servicers are obligated to advance principal and interest, or only interest depending on the servicer’s contract with the Enterprise, for the first 120 days, as well as to make other payments, including property insurance and property taxes for the entire forbearance period. Although FHFA projects that mortgage servicers have sufficient capacity to advance principal and interest on Enterprise loans in forbearance, the Urban Institute describes the potential financial burden on servicers for mortgages in forbearance as “an overwhelming lift.”

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<sup>20</sup> See Fannie Mae, Lender Letter (LL-2020-02), *Impact of COVID-19 on Servicing* (July 15, 2020) (online at <https://singlefamily.fanniemae.com/media/document/pdf/lender-letter-ll-2020-02-impact-covid-19-servicing>); Freddie Mac Seller/Servicer Guide, Section 9203.13(a), *Requirements for a forbearance plan* (Dec. 1, 2018) (online at [https://guide.freddiemac.com/app/guide/content/a\\_id/1001217](https://guide.freddiemac.com/app/guide/content/a_id/1001217)); and Freddie Mac, Bulletin 2020-10, *Temporary Servicing Guidance Related to COVID-19* (Apr. 8, 2020) (online at <https://guide.freddiemac.com/app/guide/bulletin/2020-10>).



In our view, that potential financial burden creates the risk that some mortgage servicers may not follow the mandates in the CARES Act and implementing guidance.<sup>21</sup>

### **The Enterprises Rely on Their Servicers' Representations that They Comply with the CARES Act and Implementing Guidance and Do Not Test the Servicers' Representations**

The three advisory bulletins issued by FHFA on the Enterprises' oversight of their servicers do not prescribe the mechanisms to be used by the Enterprises for such oversight. In its most recent bulletin on this issue, AB 2018-08, FHFA explained that, in connection with the Enterprises' efforts to monitor relationships with third parties, the Enterprises "consider whether the third party is complying with applicable legal and regulatory requirements, including documenting such compliance when necessary."

The Enterprises reported to us that they do not view their responsibilities to include testing whether their servicers comply with legal and regulatory requirements. According to the Enterprises, their long-standing business relationships with servicers, the servicers' familiarity with seller/servicer guide requirements, and their continual contact with servicers gives them confidence that the servicers are well-informed of their legal and contractual obligations under the CARES Act and FHFA and Enterprise guidance.<sup>22</sup> Both Enterprises explained that they rely on each servicer's representations and warranties that it complies with applicable law and regulations. A breach of these representations and warranties can lead an Enterprise to invoke contractual remedies, such as repurchase of the loan. In addition, each Enterprise reported to us that it obtains an annual certification from each servicer that it complies with

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<sup>21</sup> Anecdotes in media reports provide some support to this observation. See, e.g., Michelle Singletary, *Mortgage relief was offered, but at a high price*, Washington Post (May 18, 2020) (online at [www.washingtonpost.com/business/2020/05/18/mortgage-relief-was-offered-high-price/](http://www.washingtonpost.com/business/2020/05/18/mortgage-relief-was-offered-high-price/)); Anna Bahney, *Confused about delaying your mortgage payments? You're not alone*, CNN Business (May 2, 2020) (online at [www.cnn.com/2020/05/02/success/mortgage-forgiveness-may-coronavirus/index.html](http://www.cnn.com/2020/05/02/success/mortgage-forgiveness-may-coronavirus/index.html)); Kristen Mosbrucker, *Homeowners left to 'scramble' to make balloon payments, mortgage modifications amid coronavirus*, The Advocate (May 6, 2020) (online at [www.theadvocate.com/baton\\_rouge/news/coronavirus/article\\_fdf73a4e-83f3-11ea-86c5-f32db8207d34.html](http://www.theadvocate.com/baton_rouge/news/coronavirus/article_fdf73a4e-83f3-11ea-86c5-f32db8207d34.html)). We recognize that these reports do not make clear whether such inaccurate information from the servicers: (1) was provided with respect to Enterprise mortgages; and (2) took place after the April 27, 2020, guidance from FHFA, reaffirmed by the Enterprises, that lump sum payments were not required.

<sup>22</sup> For example, a representative of one Enterprise advised that the Enterprise conducts weekly calls with its smaller servicers to afford them the opportunity to seek clarifications and raise questions regarding the Enterprises' respective servicing guidance. According to that Enterprise, it has issued several servicing policy updates in 2020 in response to feedback from servicers, including questions relating to the impact of the CARES Act. Representatives of the other Enterprise informed us that its customer management teams are assigned to over 1,100 single-family seller/servicers and these teams have responded to COVID-19 forbearance-related questions.

applicable law and regulations.<sup>23</sup> FHFA reported to us that the Agency considers the Enterprises' current practices to be "acceptable" at this time.

## **Our Sampling Shows Servicers' Public-Facing Websites Do Not Consistently Inform Homeowners of Their Rights Under the CARES Act and Implementing Guidance on Lump Sum Payments**

Mortgage servicers are the first point of contact for homeowners experiencing COVID-19 related financial hardship. We sought to assess the accuracy and thoroughness of information about CARES Act forbearance and repayment options on servicer websites by sampling 20 websites hosted by large servicers, 20 websites hosted by medium servicers, and 20 websites hosted by small servicers.<sup>24</sup>

We found incomplete and/or unclear information about forbearance and repayment on 14 of the 20 websites of the largest servicers.<sup>25</sup> Specifically, we determined that:

- Ten websites do not explain that homeowners can obtain forbearance of mortgage payments due to COVID-19 hardship without providing documentation.
- Ten websites identify lump sum payment as an option at the end of forbearance, but do not explain that homeowners will not be required to make up missed payments in a lump sum. For example, one of these ten sites reports that the total amount of payments suspended during the forbearance period will become due and payable at the end of the forbearance period if the homeowner does not seek further assistance.
- Five websites do not state that homeowners can obtain forbearance for up to 360 days.

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<sup>23</sup> The Enterprises require their servicers to certify their compliance with applicable laws within 90 days of the servicers' fiscal year-end. According to Freddie Mac, most servicers end their fiscal year on December 31. As such, the Enterprises would not receive certification of most servicers' compliance with the CARES Act until after the expiration of Section 4022.

<sup>24</sup> We conducted this review of servicer websites between June 21 and June 30, 2020. Our sample included only servicers that serviced single-family mortgage loans on behalf of both Enterprises. (The servicers may also service loans on behalf of other investors in addition to the Enterprises.) We divided the servicers into the large, medium, and small categories based on the amount of unpaid principal balance in their Enterprise servicing portfolios, as of March 31, 2020.

<sup>25</sup> We assessed the servicer websites to determine whether the following four questions were answered: (1) Does the website state explicitly that documentation of hardship is not required?; (2) Does the website state explicitly that borrowers will not be required to make up missed payments in a lump sum?; (3) Does the website state explicitly that borrowers can obtain forbearance for 180 days with an extension of 180 more days?; and (4) Does the website state explicitly that borrowers will not incur penalties, fees, or additional interest during the forbearance period?

- Six websites state that no penalties, fees, or additional interest would be charged during the period of forbearance; seven websites state that no late fees would be applied; five websites mention two of the three would not be charged; and two websites provide no information on this topic.

Most of the large servicers maintain online portals to assist homeowners in obtaining forbearance. Without account information, however, we were not able to access the portals and could not assess information available through them.

The 40 websites hosted by medium and small servicers generally provided limited to no information about forbearance under the CARES Act and repayment options.<sup>26</sup> Instead, many of the sites advise consumers to contact them for assistance, which we were unable to do because we lacked a customer account number.

In several cases, information on some of these servicers' websites appeared to contradict the CARES Act requirement that servicers shall grant homeowner forbearance requests without obtaining any additional documentation and FHFA and Enterprise guidance against servicers requiring lump sum repayments. For example, two of the small servicer websites instruct homeowners that they must provide proof of unemployment and other documentation of hardship in order to obtain mortgage forbearance. A medium-sized servicer website advised that "ALL payments missed during forbearance will be due the month following the forbearance. (ex: if missing 3 months payment, then ALL 3 payments PLUS the 4th month payment will be due at ONCE.)" (emphasis in original)

## CONCLUSION.....

Congress granted homeowners with Fannie Mae and Freddie Mac mortgages a legal right to forbearance upon an attestation of financial hardship from COVID-19, and FHFA has announced that lump sum repayment is not required once forbearance ends. While we recognize that the websites maintained by FHFA and the Enterprises provide fulsome information about forbearance available under the CARES Act and payment options after forbearance ends, the results of recent surveys by Fannie Mae show that some homeowners are not aware of their forbearance rights and options under the CARES Act and implementing

<sup>26</sup> Of the 20 websites hosted by medium servicers, only one provided substantive information on COVID-19 forbearances. Two other websites for medium servicers linked to the text of the CARES Act and four others linked to forbearance information provided on CFPB's, the Enterprises', FHFA's, and/or HUD's websites. Our review of small servicer websites had similar results. Two small servicer websites provided substantive information about COVID-19 forbearance and eight other websites linked to forbearance information provided by the CFPB, the Enterprises, and/or HUD. Three small servicers' websites embedded or linked directly to a CFPB video that explains homeowners' rights under Section 4022 of the CARES Act.

guidance. The potential financial burden on servicers for mortgages in forbearance is significant and, in our view, creates the risk that some mortgage servicers may not follow the mandates in the CARES Act and implementing guidance.

We observe, from the information provided to us by the Enterprises, that neither Enterprise has collected data sufficient to permit an assessment of whether servicers are complying with the CARES Act and implementing guidance. The Enterprises reported to us that they have not asked any servicer to demonstrate compliance with the CARES Act and implementing guidance. Based on our survey of 60 websites hosted by servicers, we found incomplete and/or unclear information about forbearance and repayment on 14 of the 20 websites of the largest servicers and generally limited to no information on forbearance and repayment on the remaining 40 websites.

## APPENDIX: FHFA MANAGEMENT RESPONSE.....



CONTROLLED

### Federal Housing Finance Agency

#### MEMORANDUM

TO: Kyle Roberts, Deputy Inspector General for Evaluations

FROM: Sandra Thompson, Deputy Director, Division of Housing Mission and Goals

SUBJECT: Draft Report: *Oversight by Fannie Mae and Freddie Mac of Compliance with Forbearance Requirements Under the CARES Act and Implementing Guidance by Mortgage Servicers*

DATE: July 22, 2020

SANDRA THOMPSON  
Digitally signed by SANDRA THOMPSON  
Date: 2020.07.22 13:47:18 -0400

Thank you for the opportunity to respond to the Office of Inspector General's (OIG) draft report, *Oversight by Fannie Mae and Freddie Mac of Compliance with Forbearance Requirements Under the CARES Act and Implementing Guidance by Mortgage Servicers* (Report). The Report focuses on whether servicers are complying with the CARES Act's single-family forbearance provisions and the implementing guidance issued by Fannie Mae and Freddie Mac (the Enterprises). The Report makes several observations, but no recommendations for FHFA. FHFA shares the concerns in the Report that servicers may not be adequately informing borrowers that forbearance is available and will bring these issues to the Enterprises' attention so that they can contact these servicers directly.

FHFA took decisive action, starting before the coronavirus pandemic had been declared a national emergency, to support the market and American families who should not have to worry about losing their homes during a global health crisis. Prior to the enactment of the CARES Act on March 27, 2020, FHFA announced the Enterprises would make forbearance available for up to 12 months for homeowners struggling to pay their mortgage due to a COVID-related financial hardship.<sup>1</sup> Although these forbearance policies broadly aligned with the CARES Act, the Enterprises subsequently updated their guidance to better conform with the requirements set forth in the new law. Section 4022 also instituted a 60-day foreclosure moratorium for federally-backed single-family mortgages, which expired on May 17, 2020. FHFA has since extended this

<sup>1</sup> <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Suspends-Foreclosures-and-Evictions-for-Enterprise-Backed-Mortgages.aspx>





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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

FEDERAL NATIONAL MORTGAGE  
ASSOCIATION,

Plaintiff,

vs.

WESTLAND LIBERTY VILLAGE, LLC, a  
Nevada limited liability company; and  
WESTLAND VILLAGE SQUARE, LLC, a  
Nevada limited liability company,

Defendants.

AND ALL RELATED CLAIMS

CASE NO.: A-20-819412-B

DEPT. NO.: XIII

**FEDERAL HOUSING FINANCE AGENCY'S  
REPLY IN SUPPORT OF MOTION TO  
DISSOLVE THE PRELIMINARY  
INJUNCTION**

1 **INTRODUCTION**

2 FHFA’s organic statute mandates that “[e]xcept as provided in this section or at the  
3 request of the [FHFA] Director, no court may take any action to restrain or affect the exercise of  
4 powers or functions of the Agency as a conservator or a receiver.” 12 U.S.C. § 4617(f). The  
5 U.S. Constitution makes that simple, one-sentence provision “the supreme law of the land,” and  
6 expressly binds “the judges in every state” to apply it. U.S. Const., Art. VI. The U.S. Supreme  
7 Court unanimously upheld Section 4617(f)’s supremacy in *Collins v. Yellen*, 141 S. Ct. 1761  
8 (2021). There can be no doubt that dissolution of the Preliminary Injunction is required.

9 The preliminary injunction this Court’s predecessor entered directly restrains and affects  
10 the Conservator’s statutory powers to, among other things, “operate” Fannie Mae, “collect all  
11 obligations and money due” Fannie Mae, and “preserve and conserve” Fannie Mae’s assets. 12  
12 U.S.C. § 4617(b). This unlawful restraint includes, among other things, precluding Fannie Mae  
13 from undertaking ordinary loan-administration and default-resolution actions regarding the loans  
14 at issue.

15 Defendants offer a hodge-podge of implausible arguments to have the Court ignore the  
16 straightforward mandate Congress enacted, to disregard the Court’s constitutional duty to apply  
17 the statute as written, or both. The Court should reject Defendants’ invitation to override  
18 Congress, the Supreme Court, and the Constitution, and should instead apply Section 4617(f) at  
19 face value. The preliminary injunction is void under Section 4617(f), and the Court should  
20 therefore dissolve it.

21 **ARGUMENT**

22 In *Collins*, the Supreme Court confirmed that Section 4617(f) “sharply circumscribe[s]  
23 judicial review of any action that FHFA takes as a conservator or receiver.” 141 S. Ct. at 1775.  
24 Unless otherwise specified in the statute or requested by the director, Section 4617(f) “prohibits  
25 relief” where FHFA’s powers or functions fall “within the scope of the Agency’s authority as a  
26 conservator.” *Id.* at 1776. Courts therefore need not determine “whether the FHFA made the  
27 best or even a particularly good, business decision” when assessing whether Section 4617(f)  
28

1 applies, *see id.* at 1778; they need only decide whether a judicial restraint would constrain or  
2 affect FHFA’s lawful authority. Defendants’ arguments against applying Section 4617(f) to bar  
3 the preliminary injunction here lack merit.

4 **I. No Exception to Section 4617(f)’s Straightforward Application Governs Here**

5 Section 4617(f) is a straightforward statute. It removes judicial jurisdiction over actions  
6 that restrain or affect the Conservator’s exercise of its statutory powers. The statute includes one  
7 express exception to the general prohibition on court action—where injunctive relief is entered  
8 “at the request of the Director”—and courts have implied a second where FHFA acts outside its  
9 conservatorship or receivership authority. Neither applies here. Defendants attempt to create  
10 additional exceptions by distorting facts and ignoring the Supreme Court’s clear embrace of  
11 Section 4617(f)’s supremacy when they state that acts not strictly necessary to maintain solvency  
12 or cases where the Conservator has not yet acted affirmatively fall outside of Section 4617(f).  
13 Defendants are woefully mistaken. There are only two recognized exceptions, neither of which  
14 is implicated here. Section 4617(f) prevents this Court from restraining conservatorship powers  
15 and functions in all circumstances relevant here. The preliminary injunction is therefore void  
16 under Section 4617(f), and the Court should dissolve it.

17 **A. Section 4617(f)’s Express Exception Does Not Apply Because Neither FHFA**  
18 **Nor Fannie Mae Requested the Injunctive Relief Granted to Defendants**

19 Section 4617(f) has one express exception to the prohibition on judicial actions that  
20 “restrain or affect the exercise of powers or functions of the Agency as a conservator or a  
21 receiver”—such relief may be granted if it is made “at the request of the Director.” 12 U.S.C.  
22 § 4617(f). Defendants argue that this exception applies because “a substantial portion of the  
23 Order is simply the denial of Fannie Mae’s own request for judicial relief that sought  
24 appointment of a receiver.” *See Opp.* at 18. But FHFA has not asked the Court to revisit that  
25 portion of the Order, nor has it asked the Court provide any related injunctive relief—FHFA asks  
26 the Court to void the preliminary injunction prohibiting Fannie Mae and FHFA from taking  
27 certain actions against any Westland entities.

28 Defendants nevertheless mistakenly contend that the preliminary injunction was made “at

1 the request of the Director,” supposedly because it is “related to [Fannie Mae’s] request for  
2 appointment of a receiver.” *Id.* That argument fails. Fannie Mae did not request the relief  
3 granted in the preliminary injunction. Not only did Defendants request the injunction, they  
4 greatly expanded the content and prohibitions of what was eventually included in the written  
5 order after the October 13, 2020 hearing, without ever having raised such additional content in  
6 briefing or at oral argument.<sup>1</sup> The injunction therefore cannot, as a matter of law, be exempt  
7 from Section 4617(f)’s prohibition on judicial constraints on the Conservator’s powers or  
8 functions. Defendants next creatively claim that in seeking to appoint a receiver, Fannie Mae  
9 “waived its ability to object that this Court did not have jurisdiction or the ability to enter an  
10 order denying its own request.” *Opp.* at 18-19. In Defendants’ view, once Fannie Mae petitions  
11 a court for relief, it has “requested” whatever injunctive relief the court might impose should it  
12 grant the opposing party’s countermotion. In Defendants’ view, then, FHFA should be deemed  
13 to have *requested* relief that it (through Fannie Mae) actively *opposed*. Defendants cite no  
14 authority supporting that Orwellian position, and there is none. The phrase “at the request of the  
15 Director” means that “any action to restrain or affect the exercise of powers or functions of  
16 [FHFA],” must be something the Director asks for. *See Request, Merriam-Webster.com*,  
17 <https://www.merriam-webster.com/dictionary/request> (last visited July 18, 2021) (a request is  
18 “the act or an instance of asking for something”). And this Court’s duty is to apply the statute as  
19 enacted; it cannot adopt a meaning that diverges so dramatically from the text.

20 Defendants’ interpretation is also senseless from a policy perspective. If FHFA or an  
21 Enterprise could waive Section 4617(f) simply by seeking judicial relief, the exception would  
22 swallow the rule, thwarting Congress’s intent to “sharply circumscribe[] judicial review” of  
23 FHFA’s conservatorship activities, *Collins*, 141 S. Ct. at 1775, and “bar[] judicial interference  
24 with [FHFA’s] statutorily authorized role as conservator,” *Roberts v. FHFA*, 889 F.3d 397, 402  
25 (7th Cir. 2018).

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27 <sup>1</sup> *Opp. to Pls.’ Appl. for Appointment of Receiver on Order Shortening Time; Countermt.*  
28 *for TRO and/or Prelim. Inj.; Mem. of Points & Auth. at 18-29* (filed Aug. 31, 2020).

1           **B.       Section 4617(f) Applies to Breach of Contract Claims**

2           Section 4617(f) also has an implied limitation: It does not bar judicial restraint where  
3 FHFA exceeds the scope of its statutory authority. *See Collins*, 141 S. Ct. at 1776 (citing cases).  
4 Defendants contend that the implied limitation applies here because the preliminary injunction  
5 “prohibit[ed] Fannie Mae and related entities from violating [Defendants’] contract rights,” and  
6 FHFA supposedly has no “statutory authority as conservator to breach contracts.” *Opp.* at 15.

7           That is wrong. Like any other party, Fannie Mae always had the right and power to  
8 breach contracts (which it did not do in this matter) and thereby become liable for an award of  
9 damages. As a matter of hornbook law, “[v]irtually *every* contract operates, not as a guarantee of  
10 particular future conduct, but as an assumption of liability in the event of nonperformance.”  
11 *United States v. Winstar Corp.*, 518 U.S. 839, 919 (1996) (Scalia, J., concurring); *see Freeman &*  
12 *Mills, Inc. v. Belcher Oil Co.*, 900 P.2d 669, 682 (Cal. 1995) (quoting Justice Holmes: the “duty  
13 to keep a contract at common law means a predication that you must pay damages if you do not  
14 keep it—and nothing else”). Under HERA, FHFA acquired that authority when it succeeded to  
15 all of Fannie Mae’s “rights, titles, powers, and privileges,” 12 U.S.C. § 4617(b)(2)(A), and  
16 nothing in HERA suggests that Congress intended to disempower the Conservator from  
17 exercising all of Fannie Mae’s pre-existing powers. Indeed, FHFA as Conservator has specific  
18 statutory authority to “operate” Fannie Mae and “conduct [its] business.” *See* 12 U.S.C. §  
19 4617(b)(2)(D); *Collins*, 141 S. Ct. at 1776 (FHFA has “expansive authority in its role as a  
20 conservator,” including the ability “to take control of the [Enterprises’] assets and operations,  
21 conduct business on [their] behalf, and transfer or sell any of [their] assets or liabilities”).

22           Defendants posit that *Sharpe v. FDIC*, 126 F.3d 1147 (9th Cir. 2014) precludes Section  
23 4617(f)’s application in contract cases. Specifically, Defendants contend that under *Sharpe*,  
24 “FHFA exceeds its conservatorship authority when it breaches contracts” without following  
25 HERA’s procedure for repudiating them. *Opp.* at 15-16 (citing 12 U.S.C. § 4617(d)). But  
26 *Sharpe* holds only that a receiver cannot force a contract counterparty into an administrative  
27 claims process and thereby deprive the counterparty of a fully compensatory monetary award.  
28 As such, *Sharpe* does not apply to conservators—the administrative process at issue operates



1 only in receivership, not conservatorship. *See* 12 U.S.C. §§ 1821(d)(3)-(5). But even if *Sharpe*  
2 were extended to conservators, it would not apply here, because FHFA is not forcing Defendants  
3 into any administrative claims process and FHFA does not seek to undermine Defendants'  
4 claims, which still remain to be adjudicated.

5 In *Sharpe*, the FDIC as receiver sought to avoid liability for the amount the bank in  
6 receivership had promised to pay under a settlement agreement the plaintiffs had fully  
7 performed. That agreement specified that the bank would pay plaintiffs \$510,000, and the bank  
8 had tendered cashiers' checks in that amount before being placed into receivership. Upon  
9 appointment as receiver, FDIC stopped payment. It then construed the obligation as a "claim"  
10 subject to a receivership-specific administrative claims process, and "allowed" only \$480,000—  
11 mostly in the form of a "receiver's certificate" that did not guarantee full payment. *Id.* at 1151.  
12 The Ninth Circuit therefore reasoned that the "FDIC forced the Sharpes into the administrative  
13 claims process through which the Sharpes have received what might be construed as a partial  
14 damages award," and held that the receiver is not "free to breach any pre-receivership contract,  
15 keep the benefit of the bargain, *and then escape the consequences by hiding behind the*  
16 *[administrative] claims process.*" *Id.* at 1154-1157 (emphasis added). The Ninth Circuit has  
17 since explained that *Sharpe* "is not controlling outside of its limited context" and stands for the  
18 limited proposition that "the FDIC may not breach a contract *and then compel the other party ...*  
19 *to accept a receiver's certificate, as the result of the FDIC's claims process,* rather than the  
20 'benefit of the bargain' provided for in the contract itself." *Meritage Homes of Nev., Inc. v.*  
21 *FDIC*, 753 F.3d 819, 825 (9th Cir. 2014) (emphasis added) (citations omitted).

22 Here—unlike in *Sharpe*—there is no allegation or plausible suggestion that FHFA is  
23 seeking to force Defendants to present their counterclaim administratively rather than to this  
24 Court, or to limit the availability of full expectancy damages. Nor could there be: Because there  
25 is no receivership in place, the FHFA administrative claims process analogous to the process  
26 described in *Sharpe* is not at issue here. *See* 12 U.S.C. §§ 1821(d)(3)-(5), 4617(b)(3)-(5)  
27 (conferring power on FDIC and FHFA receivers, but not conservators, to "determine claims").  
28 And while Defendants correctly observe that the Conservator has the statutory power to

1 repudiate contracts in a way that could eliminate otherwise-available contract damages such as  
2 lost profits, *see* Opp. at 15-16 (citing 12 U.S.C. § 4617(d)), FHFA did not exercise that power  
3 here, and the time in which it could have done so has long since passed. Thus, even if Westland  
4 could establish contract liability, the Conservator could not “force[]” Defendants “into [any]  
5 administrative claims process through which [they could] receive[] what might be construed as a  
6 partial damages award,” and Section 4617(f) would not bar a fully compensatory monetary  
7 judgment against Fannie Mae under Nevada contract law. As a result, *Sharpe* does not apply.

8 Defendants argue that *Bank of Manhattan, N.A. v. FDIC*, 778 F.3d 1133 (9th Cir. 2015),  
9 supports their broad reading of *Sharpe*, under which receivers (and, by some imaginary  
10 extension, conservators) lack statutory authority to breach contracts generally. That is wrong. In  
11 *Bank of Manhattan*, the Ninth Circuit took care to note that *Sharpe* “does not permit the FDIC to  
12 breach pre-receivership contracts *without consequence*,” does not “authorize[] the *unrestrained*  
13 breach of contract,” and “does not permit the FDIC to *avoid liability* for the breach of pre-  
14 receivership contracts.” 778 F.3d at 1137 (emphases added). Thus, *Bank of Manhattan*  
15 recognizes that *Sharpe* applies only where a receiver seeks to avoid liability for a full expectancy  
16 remedy, not in every action involving a contract claim.

17 Nor has the Nevada Supreme Court endorsed Defendants’ reading of *Sharpe*. Defendants  
18 observe that the Nevada Supreme Court “favorably cited” *Sharpe*, Opp. at 15-16, but fail to note  
19 that the court relied on *Sharpe* for a different proposition: that FDIC “steps into the shoes” of a  
20 failed financial institution unless it elects to repudiate the bank’s contracts under FIRREA’s  
21 special mechanism. *CML-NV Grand Day, LLC v. Grand Day, LLC*, 134 Nev. 925, 2018 WL  
22 6016683 (Nov. 15, 2018) (unpublished disposition) (discussing 12 U.S.C. § 1821(e)). No party  
23 disputes that FHFA stepped in Fannie Mae’s shoes here. In so doing, FHFA as Conservator  
24 acquired Fannie Mae’s power relating to contracts. Section 4617(f) prevents courts from  
25 enjoining that power, despite Defendants’ request that this Court do so.

26 Defendants’ other *Sharpe*-related arguments exaggerate the conclusions the Nevada  
27 Supreme Court would have to reach in order to dissolve the injunction. A ruling in FHFA’s  
28 favor will not require the Court to find that HERA preempts Nevada contract law, Opp. at 16, as

1 damages remain available. But to whatever extent the preclusion of injunctive relief might be  
2 deemed to preempt any state-law doctrine, that is the precise purpose and effect of Section  
3 4617(f). Nor is there danger that interpreting HERA to prohibit the preliminary injunction will  
4 run afoul of the Takings Clause. *See id.* Defendants retain the right to receive compensatory  
5 damages should they establish breach and the other elements of contract liability, and therefore  
6 will receive just compensation through this action.

7 Defendants' attempts to distinguish cases FHFA cited in support of its arguments that any  
8 alleged breach of contract here would be within FHFA's conservatorship authority are equally  
9 unpersuasive. *See Opp.* at 17. The fact that *Perry Cap. LLC v. Mnuchin*, 864 F.3d 591, 605  
10 (D.C. Cir. 2017), *Roberts v. FHFA*, 889 F.3d 397, 403 (7th Cir. 2018), and the other decisions  
11 Defendants single out did not involve alleged breaches of contract, does not undermine their  
12 holdings that courts cannot restrain or affect the Conservator from exercising its powers. *See*  
13 *Mot.* at 4, 8-9. Defendants also claim that *Jacobs v. FHFA*, Civ. No. 15-708-GMS, 2017 WL  
14 5664769 (D. Del. Nov. 27, 2017), supports distinguishing *Sharpe* from other cases that involve  
15 statutory claims rather than breach-of-contract claims. *Opp.* at 17. But *Jacobs* actually supports  
16 FHFA's argument; the court there rejected the argument that Section 4617(f) incorporates state-  
17 law restrictions, holding that it was "contrary to well-established case law that equitable relief  
18 will be denied, 'even where the conservator acts in violation of other statutory schemes.'" *Id.* at  
19 \*4 (alteration omitted) (quoting *Gross v. Bell Sav. Bank PA SA*, 974 F.2d 403, 407 (3d Cir.  
20 1992)).

21 Federal appellate decisions applying the substantively identical provision in Section  
22 1821(j) confirm that Section 4617(f) does apply to state-law contract claims. For example, in  
23 *Volges v. RTC*, the court rejected the notion of an "implicit limitation" in Section 1821(j) "that  
24 would give courts equitable jurisdiction to compel the RTC to honor a third party's rights as  
25 against RTC under state contract law." 32 F.3d 50, 52 (2d Cir. 1994) ("[t]he fact that the sale  
26 might violate [plaintiff's] state law contract rights does not alter the calculus ... [and] render  
27 [Section 1821(j)] inapplicable"). Similarly, in *RPM Invs. Inc. v. RTC*, the court held that  
28 ordering specific performance of a contract would impermissibly "restrain or affect" the RTC in

1 exercise of its statutory powers, explaining that “allegations that the RTC breached a contract  
2 does not affect our holding.” 75 F.3d 618, 621 (11th Cir. 1996). And in *Gross*, the court held  
3 that “RTC was acting within its legitimate authority in withholding [plaintiffs’] deposits” and  
4 therefore injunctive relief would be “inappropriate” under Section 1821(j). 974 F.2d at 408.

5 Defendants unsuccessfully attempt to distinguish three of the many cases so holding—  
6 *Volges*, *RPM*, and *Mile High Banks v. FDIC*, No. 11-cv-01417-WJM-MJW, 2011 WL 2174004,  
7 at \*4 (D. Colo., June 2, 2011)—on the basis that they “turn[] on a separate statutory provision  
8 that authorizes the FDIC to transfer the assets of a failed bank during receivership.” See *Opp.* at  
9 16-17 (citing 12 U.S.C. § 1821(d)(2)(G)). In none of those cases did the outcome “turn” on that  
10 statutory provision; rather, it was cited in discussion of whether the RTC or FDIC acted within  
11 the bounds of its authority. See *Volges*, 32 F.3d at 52; *RPM*, 75 F.3d at 621; *Mile High Banks*,  
12 2011 WL 2174004, at \*4. Those cases thus reinforce the point that Section 4617(f) applies  
13 unless FHFA acts outside the bounds of its authority. See *Collins*, 141 S. Ct. at 1776. If, as  
14 Defendants contend, conservators and receivers lacked statutory power over contracts, these  
15 cases would have come out differently.

16 **C. Section 4617(f) Is Not Limited To Actions “Necessary” To Maintain Solvency**

17 Defendants argue that *Collins v. Yellen* “mark[s] a significant change in the law” because  
18 it holds that Section 4617(f) can apply only if the Conservator’s actions are “necessary to put the  
19 regulated entity in a sound and solvent condition.” *Opp.* 19 (quoting 141 S. Ct. 1761, 1776  
20 (2021)). Defendants overread an isolated snippet from a background discussion characterizing  
21 the Conservator’s “mission” as “rehabilitation.” 141 S. Ct. at 1776. Nowhere in *Collins* does the  
22 Supreme Court indicate any intent to upend what even Defendants acknowledge had been a  
23 settled point of law: that Section 4617(f) applies “where FHFA exercise[s] its ‘powers or  
24 functions’ ‘as a conservator or a receiver.’” *Id.* To the contrary, the Court “agree[d] with th[e]  
25 consensus” reflected in, among other decisions, the cases Defendants claim the Court rejected—  
26 *Roberts v. FHFA*, 889 F.3d 397 (7th Cir. 2018), *Robinson v. FHFA* 875 F.3d 220 (6th Cir. 2017),  
27 and *Perry Capital LLC v. Mnuchin*, 864 F.3d 591 (D.C. Cir. 2017). Compare *Opp.* at 19 with  
28 *Collins* at 1776 (both citing *Robinson*, *Roberts*, and *Perry Capital*).

1 Indeed, Defendants’ argument conflicts with *Collins*, which holds that in assessing  
2 whether Section 4617(f) applies, “[i]t is not necessary for [the Court] to decide ... whether  
3 FHFA made the best, or even a particularly good, business decision when it [took the challenged  
4 action.] Instead, we conclude only that under the terms of [HERA], the FHFA did not exceed its  
5 authority as a conservator, and therefore [Section 4617(f)’s] anti-injunction clause” applies. 141  
6 S. Ct. at 1778. The Supreme Court never analyzed whether the challenged action was  
7 “necessary” to rehabilitate Fannie Mae and Freddie Mac, yet applied Section 4617(f) anyway.<sup>2</sup>  
8 If the Supreme Court had meant to impose a “significant change” on the law by adding a  
9 requirement of necessity to the Section 4617(f) analysis, it surely would have analyzed whether  
10 that requirement has been satisfied in the case before it. The fact that it did not confirms that  
11 Defendants’ interpretation of the case is not correct.

12 Nor would Defendants’ proposed necessity requirement be sensible in any event. Given  
13 Fannie Mae’s massive mortgage portfolio, it is inevitable that the Conservator’s authority to  
14 operate Fannie Mae will encompass actions and decisions “not remotely material to the financial  
15 condition of Fannie Mae” and therefore not “necessary” to ensure Fannie Mae’s solvency. *See*  
16 *Opp.* at 19. Yet under Defendants’ reading, each act and decision that is not “necessary” to  
17 rehabilitating Fannie Mae is unauthorized, improper, and potentially void. That is wrong.  
18 HERA grants the Conservator “expansive authority” to make business decisions with respect to  
19 the Enterprises—big or small—and Section 4617(f) applies to them all. *See* 141 S. Ct. at 1776.

20 **D. Section 4617(f)’s Application Is Not Contingent on FHFA’s Affirmative**  
21 **Exercise of Its Conservatorship Powers**

22 Defendants argue that Section 4617(f) only precludes courts from restraining or affecting  
23 FHFA’s powers or functions if FHFA has acted affirmatively, and “nothing in the record  
24 indicates that FHFA has taken any affirmative action in this matter.” *Opp.* at 21. That is wrong.

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25 <sup>2</sup> The Supreme Court’s acknowledgement that Section 4617(f)’s application does not turn  
26 on whether the Conservator’s actions or business decisions are “particularly good,” *Collins*, 141  
27 S. Ct. at 1778, confirms that Defendants cannot substitute their judgment for that of the  
28 Conservator in assessing how best to manage “Fannie Mae’s long-term financial condition” or its  
relationship with Defendants. *See Opp.* at 20-21.



1 Defendants' argument that 4617(f) applies only if the Conservator has already taken  
2 some affirmative action conflicts with the many decisions holding that Section 4617(f) and the  
3 substantively identical Section 1821(j) bar declaratory relief addressing anticipated future acts of  
4 a conservator or receiver. *See, e.g., Nat'l Tr. for Historic Pres. v. FDIC*, 21 F.3d 469, 473 (D.C.  
5 Cir. 1994) (Wald, J., concurring) (§ 1821(j) bars declaration that anticipated transaction would  
6 violate statute). Indeed, the statute's prohibitive language—"no court may take any action"—  
7 requires no affirmative act. It is unqualified and absolute, as *Collins* confirms. 141 S. Ct. at  
8 1776. And "[i]f the plain meaning of a statute is clear on its face, then [a court] will not go  
9 beyond the language of the statute to determine its meaning." *Beazer Homes Nev., Inc. v. Eighth*  
10 *Jud. Dist. Ct. ex rel. Cty. of Clark*, 120 Nev. 575, 579-80 (2004) (internal quotation marks  
11 omitted); *accord Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992) (courts presume  
12 that "a legislature says in a statute what it means and means in a statute what it says there"). The  
13 Court should not usurp Congress's prerogative to define the statute's scope by reading a  
14 requirement of a prior affirmative act into the statute.

15 Defendants' cases do not support the imposition of an affirmative action prerequisite on  
16 Section 4617(f)'s application. Defendants point to language from *Roberts* indicating that FHFA  
17 "must have acted pursuant to its 'powers or functions'" for Section 4617(f) "to bar judicial  
18 relief." Opp. at 21 (alterations and internal quotation marks omitted) (quoting *Roberts v. FHFA*,  
19 889 F.3d 397, 402 (7th Cir. 2018)). But the *Roberts* court framed its Section 4617(f) analysis to  
20 depend on whether FHFA "acted a) pursuant to its 'powers or functions' and b) 'as a conservator  
21 or receiver,'" 889 F.3d at 402, because it was adjudicating whether the plaintiff in that case was  
22 entitled to declaratory and injunctive relief with respect to a *past* action that FHFA *had already*  
23 *taken*. The crux of the analysis was not temporal, but rather whether the action was taken  
24 pursuant to FHFA's conservatorship powers. The only reason the court used the past tense was  
25 because the "action" under review had already occurred.

26 The other decision Defendants rely on—*Suero*, *see* Opp. at 21—similarly challenged an  
27 action Freddie Mac had *already* taken, namely, its refusal to sell the plaintiffs' foreclosed home  
28 to a particular lender. In fact, the *Suero* court rejected Defendants' argument that FHFA must

1 have taken “affirmative action” or issued a directive to Freddie Mac, holding instead that “the  
2 application of [Section 4617(f)] is not confined to situations in which FHFA engages in  
3 affirmative acts by issuing specific directives or statements ....” *Suero v. Freddie Mac*, 123 F.  
4 Supp. 3d 162, 171 (D. Mass. 2015). The court applied Section 4617(f) after finding that FHFA  
5 “exercised its statutory power as a Conservator,” even though it “may not have ‘acted’ by issuing  
6 a formal statement or directive relative to the sales of the foreclosed homes.” *Id.* *Roberts* and  
7 *Suero* do not undermine Congress’s clear directive that courts cannot “restrain or affect the  
8 exercise of powers and functions of the Agency as a conservator or receiver” even if those  
9 powers have not yet been exercised. *See* 12 U.S.C. § 4617(f).<sup>3</sup>

10 Defendants wishfully point to FHFA’s delegation of functions relating to “normal  
11 business activities and day-to-day operations” to Fannie Mae as evidence that FHFA has not  
12 exercised its conservatorship powers here. Opp. at 21; Opp. Ex. 3 (SA02035). But FHFA’s  
13 delegation of the day-to-day business operations to Fannie Mae does not—and cannot—abrogate  
14 Section 4617(f)’s protections. So long as the “powers or functions of the Agency as a  
15 conservator” are in play, a court cannot constrain them. In any event, FHFA as Conservator  
16 always has the ultimate control of Fannie Mae’s operations. *See Suero*, 123 F. Supp. 3d at 173;  
17 Opp. Ex. 3 (FHFA “retains the right to review and reverse any delegated actions”). FHFA also  
18 “retains broad authority to review any activity or transaction at any time,” including actions “that  
19 fall outside the eight non-delegated areas.” Opp. Ex. 3. It has not—and legally cannot—  
20 relinquish Conservator responsibilities by delegating them. Finally, Fannie Mae’s preservation  
21 of its assets promotes “[FHFA’s] statutory mission as a protective conservator,” and “[t]hat is  
22 enough to preclude judicial intervention.” *Suero*, 123 F. Supp. 3d. at 174.

23 In a footnote, Defendants attempt to distinguish cases holding that Section 4617(f) and  
24 Section 1821(j) preclude courts from granting injunctive relief against parties other than the  
25 conservator/receiver or the entity in conservatorship/receivership, which by definition do not  
26

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27 <sup>3</sup> Even if the Court concludes that Section 4617(f) contains an implied affirmative action  
28 requirement, FHFA has exercised its powers and functions as Conservator in defending Fannie  
Mae’s need to preserve and conserve its assets in this case.

1 involve direct restraint on the conservator's or receiver's active exercise of a power. *See* Opp. at  
2 21 n.47. Defendants note that each of those cases involved transactions in which "the  
3 conservator or receiver itself was an active participant." *Id.* That is no different from this case:  
4 FHFA intervened in this case after the court entered Defendants' overbroad injunction purporting  
5 to constrain not only Fannie Mae's future business activities as to any Westland entity (not just  
6 the two LLCs in default) but also specifically enjoined FHFA as Conservator from the same  
7 actions. This is similar to what the FDIC did in *Colonial Bank*, where its substituted in as a  
8 defendant following the issuance of a TRO against the financial institution under its receivership.  
9 *See Bank of Am. Nat'l Ass'n v. Colonial Bank*, 604 F.3d 1239 (11th Cir. 2010). Moreover,  
10 regardless of which parties were active participants in these cases, there can be no denying that  
11 in each, the court precluded injunctive relief from being imposed on parties other than the  
12 conservator or receiver, holding that such relief would indirectly constrain the conservator or  
13 receiver in question. *See, e.g., Furgatch v. Resol. Tr. Corp.*, No. CIV. 93-20304 SW, 1993 WL  
14 149084, at \*2 (N.D. Cal. Apr. 30, 1993) (rejecting effort to enjoin conservatee and the trustee  
15 conducting a foreclosure sale because "enjoining these parties indirectly enjoins RTC, which a  
16 district court has no power to do" under Section 1821(j)). Defendants have no response for why  
17 the Court should not do the same here.

18 **II. Defendants Provide No Persuasive Reason for the Court to Refrain from Applying**  
19 **Section 4617(f) and Dissolving the Preliminary Injunction**

20 **A. Dissolving the Preliminary Injunction Would Preserve the Status Quo**  
21 **Because the Preliminary Injunction Is Void.**

22 Defendants seek to avoid Section 4617(f)'s plain language by claiming that the Court  
23 lacks jurisdiction to apply it while the preliminary injunction is the subject of an interlocutory  
24 appeal and motion for writ of prohibition before the Nevada Supreme Court. *See* Opp. at 11-13.  
25 If the subject of this motion were the resolution of a routine legal question, that argument might  
26 have some persuasive force. But the injunction is *not* normal: it was void *ab initio* because it  
27 purported to constrain the exercise of conservatorship functions, an exercise of judicial authority  
28 that Congress expressly placed outside any court's jurisdiction. This Court should not allow this

1 void order to stand, and none of the doctrines Defendants rely upon provide any legitimate  
2 justification to do so.

3 District courts are empowered to dissolve or modify an injunction while an interlocutory  
4 appeal is pending under certain circumstances. *See* Mot. at 12-13. Defendants make no effort to  
5 distinguish the case law FHFA cited in support of this point, and in fact admit courts may modify  
6 an injunction to preserve the status quo. *See* Opp. at 11 (citing *Prudential Real Estate Affiliates,*  
7 *Inc. v. PPR Realty, Inc.*, 204 F.3d 867, 880 (9th Cir. 2000)). Modification or dissolution of the  
8 Injunction would preserve the status quo in this case. The operative federal law governing the  
9 parties precludes courts from enjoining the Conservator’s exercise of its powers, meaning that  
10 the injunction has never had legal effect. Dissolving the injunction would prevent Defendants  
11 from upending that status quo by acting under an invalid order while the appeal is pending.

12 The cases Defendants cite are inapposite. *Mack-Manley*, concerns district courts’  
13 entitlement to modify custody arrangements under an inapplicable (and since-repealed) statute.  
14 *Mack-Manley v. Manley*, 122 Nev. 849, 855-56 (2006). While *Mack-Manley* does briefly cite  
15 general principles of appellate jurisdiction, it does not consider any of the particular exceptions  
16 for modifying a void injunction that apply here. *Rust* similarly articulates general principles of  
17 jurisdiction, applying them to vastly different facts concerning the effect of a premature notice of  
18 appeal; accordingly, it does not discuss interlocutory appeals at all, much less one concerning a  
19 void preliminary injunction. *Rust v. Clark Cty. Sch. Dist.*, 103 Nev. 686, 688 (1987).

20 Defendants are incorrect to claim that Section 4617(f) is not jurisdictional. No one could  
21 doubt that Section 4617(f) “sharply circumscribe[s] judicial review of any action that the FHFA  
22 takes as a conservator.” *Collins*, 141 S. Ct. at 1776. And limitations on judicial review are  
23 quintessentially jurisdictional. *See Kucana v. Holder*, 558 U.S. 233, 245 (2010) (describing  
24 statute enumerating “[m]atters not subject to judicial review” as identifying matters “the federal  
25 courts lack jurisdiction to review”); *Barbosa v. U.S. Dep’t of Homeland Security*, 916 F.3d 1068,  
26 1074 (D.C. Cir. 2019) (a statutory “preclusion of judicial review ... is a jurisdictional limitation  
27 on judicial power”). “[J]urisdictional statutes speak about jurisdiction, or more generally  
28 phrased, about a court’s powers.” *United States v. Kwai Fun Wong*, 575 U.S. 402, 411 n.4

1 (2015). As a limitation on judicial authority, Section 4617(f) has a jurisdictional effect. *See*  
2 Mot. at 10-12.

3 The authorities Defendants cite as requiring a “clear statement” in statutes limiting  
4 jurisdiction, Opp. at 12, describe interpretive principles that are irrelevant here. In both *Reed*  
5 *Elsevier, Inc. v. Muchnick*, 559 U.S. 154 (2010), and *Sebelius v. Auburn Regional Med. Ctr.*, 568  
6 U.S. 145 (2013), the Court was considering whether certain claim-specific statutory requirements  
7 delimited subject-matter jurisdiction over a particular claim; neither addressed a statute that  
8 categorically removed a court’s jurisdiction to enter particular relief. *Reed Elsevier*, 559 U.S. at  
9 158 (considering whether statutory requirement “deprives federal courts of subject-matter  
10 jurisdiction to adjudicate infringement claims involving unregistered works”); *Auburn Regional*,  
11 559 U.S. at 148-49 (considering whether statutory deadline precluded an administrative appeal,  
12 notwithstanding a regulation allowing for extensions upon good cause). Whether a statute must  
13 be “clearly labeled jurisdictional” in order to limit court’s subject matter jurisdiction over entire  
14 claims is irrelevant here, as no one challenges the district court’s subject matter jurisdiction over  
15 any claim. Defendants cite no authority—and FHFA is aware of none—imposing a “clear  
16 statement” requirement on statutes limiting courts’ jurisdiction to grant specific forms of relief  
17 regardless of the underlying claim. To the contrary, well after *Reed Elsevier* and *Auburn*  
18 *Regional*, the U.S. Supreme Court issued a decision confirming that the Tax Injunction Act—  
19 which makes no direct reference to jurisdiction but instead, like Section 4617(f), limits the relief  
20 courts may grant—is a “jurisdictional statute.” *Direct Marketing Ass’n v. Brohl*, 575 U.S. 1, 12,  
21 14 (2015). And accordingly, courts have often characterized both Section 4617(f) and the  
22 similar Section 1821(j) as a limitation on jurisdiction, *see* Mot. at 10-11, including in cases  
23 issued after *Reed Elsevier* and *Auburn Regional*.<sup>4</sup>

24  
25 <sup>4</sup> *See, e.g., Jacobs v. FHFA*, 2017 WL 5664769 (D. Del. Nov. 27, 2017) (dismissing claims  
26 for injunctive relief for lack of jurisdiction under section 4617(f), and describing section 4617(f)  
27 and section 1821(j) as “nearly identical jurisdictional bar[s]”), *aff’d*, 908 F.3d 884, 889 (3d Cir.  
28 2018) (describing the district court decision it affirms as addressing “jurisdiction”); *Bulluck v.*  
*Newtek Small Business Finance, Inc.*, 2017 WL 8186594 (N.D. Ga. Sept. 19, 2017) (under  
section 1821(j), “the Court does not have jurisdiction to grant the requests for injunctive relief”);  
*Koppenhoefer v. FDIC*, 2014 WL 4748490 (C.D. Ill. Sept. 24, 2014) (under section 1821(j), “this  
Court lacked jurisdiction to award the particular type of relief [plaintiff] seeks”); *Dittmer*



1 Finally, Defendants oppose FHFA’s alternative request for an indicative ruling as  
2 inefficient. Opp. at 12-13. But Defendants’ arguments are based on speculative guesses as to  
3 how the Nevada Supreme Court will handle the matters before it. Defendants assume that Court  
4 would remand the action, and argue that “ping-ponging” would result. *Id.* at 13. The Nevada  
5 Supreme Court is surely well aware of the inefficiency of the judicial “ping-ponging”  
6 Defendants assume it would reflexively impose; it seems far more likely that the Supreme Court  
7 would take this Court’s views into account in resolving the appeal on the merits, rather than  
8 ordering a remand that would, as Defendants note, almost certainly result in a new appeal  
9 presenting the same issues. But even if the Supreme Court did remand the case with instructions  
10 that this Court dissolve the injunction, that would hardly be disastrous. Only one merits brief—  
11 Fannie Mae’s—has been filed, so it is unlikely that either the Supreme Court or Defendants have  
12 expended much if any effort that could not be easily and efficiently redeployed in a new appeal  
13 of an order dissolving the injunction.

14 **B. Defendants’ Focus on Timeliness Is Misplaced**

15 Defendants try to avoid Section 4617(f) by claiming that FHFA’s Motion is untimely.  
16 Opp. at 14-15. But jurisdictional defects can be raised at any time. *See Clark Cty. Deputy*  
17 *Marshals Ass’n v. Clark Cty.*, 134 Nev. 924 n.1 (2018); *Att’ys Tr. v. Videotape Computer Prod.,*  
18 *Inc.*, 93 F.3d 593, 595 (9th Cir. 1996). Accordingly, the timeframe provided by local rule for a  
19 motion for reconsideration has no bearing on the argument here. *See* Opp. at 14.

20 Even if the bar were not jurisdictional, Defendants’ arguments would be misplaced.  
21 They ignore that there was no opportunity for FHFA or Fannie Mae to brief Section 4617(f) prior  
22 to the Injunction being entered, because the extensive injunctive relief the Court ordered was  
23 first raised by Defendants in their submission of a proposed order following the hearing on  
24 Fannie Mae’s motion for appointment of a receiver. Neither Defendants’ briefing nor their  
25 argument before the hearing detailed the type of relief the Court would later adopt. FHFA  
26 sought to intervene in this case once it was aware of the invalid injunction. Accordingly, while

27 

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*Properties, L.P. v. FDIC*, 708 F.3d 1011, 1020 (8th Cir. 2013) (discussing “anti-injunction  
28 jurisdictional bar of [Section] 1821(j)”).

1 the law has not changed since the Injunction was entered, FHFA's Motion is the first time the  
2 Court has had an opportunity to review the jurisdictional defects of the injunction Defendants  
3 requested. For this reason, also, the limitations of a motion for reconsideration are inappropriate  
4 here: the extensive injunctive relief Defendants secured was not the subject of any prior motion  
5 practice.

6 The cases Defendants cite are not to the contrary. *See* Opp. at 14. Each presumes that  
7 the parties already had the opportunity to argue the merits of the injunctive relief under  
8 consideration, and none concern a jurisdictional challenge. For example, in *United States ex rel.*  
9 *FTC v. Bus. Recovery Servs., LLC*, 488 Fed. App'x 188, 189-90 (9th Cir. 2012), the court held  
10 that the defendant telemarketer could and should have raised a potential regulatory exemption  
11 before the preliminary injunction had been entered. There was no jurisdictional challenge and,  
12 unlike here, no allegation that the injunction included relief that was not the subject of briefing or  
13 argument. Similarly, in *Unforgettable Coatings*, the defendant's motion to dissolve did not raise  
14 a jurisdictional challenge. *See Scalia v. Unforgettable Coatings, Inc.*, No. 2:20-cv-00510-KJD-  
15 DJA, 2021 WL 1226529, at \*2 (D. Nev. Mar. 31, 2021). But when the defendant raised a new  
16 argument not possible before, as it was able to offer new evidence, the court partially granted the  
17 motion. *Id.*

18 Even if the parties had a prior opportunity to brief the merits of the wide-ranging  
19 injunctive relief Defendants obtained, the Court would still be entitled to revisit the injunction  
20 order now. District courts are entitled to revisit or reconsider an interlocutory order at any time  
21 before the entry of final judgment. *See* NRCP 54(b); *see also Kawamura v. Boyd Gaming Corp.*,  
22 No. 2:13-cv-203-JCM-GWF, 2014 WL 584760, at \*4 (D. Nev. Feb. 12, 2014) (applying same  
23 rule under Federal Rules of Civil Procedure). As the issues presented in this Motion are purely  
24 legal and discovery has barely begun, Defendants would suffer no prejudice by the Court's  
25 consideration of the injunction at this time.

### 26 **III. Dissolution of the Injunction Would Not Be Inequitable**

27 Defendants appeal to equity, arguing that applying Section 4617(f) according to its terms  
28 "would cause Westland severe irreparable harm and would be extraordinarily inequitable." Opp.

1 at 22 (bolding removed and capitalization changed). Defendants identify no authority that would  
2 allow such considerations to override the “broad and all-encompassing language” Congress  
3 enacted in Section 4617(f). *See Pyramid Constr. Co., Inc. v. Wind River Petroleum, Inc.*, 866 F.  
4 Supp 513, 518 (D. Utah 1994) (applying Section 1821(j)). To the contrary, “the statute bar[s] a  
5 court” from enjoining the conservator or receiver “in virtually all circumstances.” *Nat’l Tr. for*  
6 *Historic Pres.*, 21 F.3d at 472 (Wald, J., concurring) (applying Section 1821(j)).

7 But even assuming equitable considerations could be taken into account—an odd  
8 assumption to make in the context of applying a statute that bars equitable relief—Defendants’  
9 argument on the equities is not supported by law or by facts. Defendants invoke the chestnut that  
10 “real property and its attributes are considered unique, and the loss of real property rights  
11 generally results in irreparable harm.” *Opp.* at 22. But the lead cases they cite—*Dixon v.*  
12 *Thatcher*, 103 Nev. 414 (1987), and *Sundance Land Corp. v. Cmty. First Fed. Sav. & Loan*  
13 *Ass’n*, 840 F.2d 653 (9th Cir. 1988)—highlight the gulf between this case and that doctrine. In  
14 *Dixon*, a husband and wife “had built a log house which they use as their home” and sought to  
15 enjoin an allegedly wrongful foreclosure. 103 Nev. at 416. Similarly, *Sundance* involved an  
16 attempt to foreclose on “a fruit orchard located in the state of Washington.” 840 F.2d at 655-56.

17 Here, by contrast, Defendants own and operate for-profit multi-family residential  
18 apartment communities including dozens of complexes in and around Las Vegas.<sup>5</sup> Any analogy  
19 between properties owned by Westland Real Estate Group, self-described as “a successful and  
20 profitable business” using a “tried-and-tested comprehensive management strategy,” and a log-  
21 cabin homestead or a fruit orchard is distant and strained.<sup>6</sup> Defendants tout themselves as  
22 owners of “over 65 Multi-Family Residential Communities” acquired for their financial  
23 attributes as “underperforming buildings,” not for any unique, property-specific qualities.<sup>7</sup> A  
24 more analogous case is *Lydo Enterprises, Inc. v. City of Las Vegas*, 745 F.2d 1211 (9th Cir.  
25 1984), in which the enactment of an allegedly unconstitutional zoning ordinance meant

26 <sup>5</sup> *See Apartments, Las Vegas*, [www.westlandapartments.com/](http://www.westlandapartments.com/) (last accessed July 27, 2021).

27 <sup>6</sup> *Who We Are*, [www.westlandrealestategroup.com/philosophy](http://www.westlandrealestategroup.com/philosophy) (last accessed July 27, 2021).

28 <sup>7</sup> *Apartments*, [www.westlandrealestategroup.com/apartments](http://www.westlandrealestategroup.com/apartments) (last accessed July 27, 2021).

1 plaintiff's "business would be closed immediately at its present location" but could reopen  
2 elsewhere. *Id.* at 1213. In vacating an injunction against enforcement, the Ninth Circuit  
3 reasoned that while the plaintiff would face some "hardship," it was "purely economic in  
4 nature," and "[p]urely monetary injuries are not normally considered irreparable." *Id.*

5 Defendants also rely on *Sobol v. Capital Mgmt. Consultants, Inc.*, 102 Nev. 444 (1986), a  
6 case involving a dispute about a business name, for the proposition that "reputational and  
7 business harms ... cannot be adequately remedied later through a monetary judgment." *Opp.* at  
8 23. But in *Sobol*, the Nevada Supreme Court reasoned that the "public confusion" created by a  
9 competitor's use of a virtually identical name would risk "irreparable damage," while enjoining  
10 the competitor would "damage neither party." *Id.* at 446. This case does not involve a trade-  
11 name issue or any potential "public confusion" between Defendants and any competitor. And  
12 Defendants themselves argue that the primary harm they stand to suffer is the loss of "rapidly  
13 improving monthly income," *Opp.* at 24—a monetary injury for which damages would provide  
14 complete compensation. Nor has the injunction been harmless to FHFA and Fannie Mae: It not  
15 only precludes ordinary loan-administration activities relating to the two properties in default,  
16 but also grants unidentified third parties valuable rights as to any Westland entity and to the  
17 Westland portfolio, which includes 14,000 units across its multifamily, retail and manufactured  
18 housing divisions.<sup>8</sup> No other Fannie Mae counterparty has those same court-imposed  
19 advantages.

## 20 CONCLUSION

21 The preliminary injunction is void under Section 4617(f). The Court should either  
22 dissolve the injunction or stay or suspend it and issue an indicative ruling stating that the Court  
23 would grant FHFA's motion to dissolve the injunction if the Nevada Supreme Court remands for  
24 that purpose.

25  
26  
27  
28 <sup>8</sup> *Who We Are*, [www.westlandrealestategroup.com/philosophy](http://www.westlandrealestategroup.com/philosophy) (last accessed July 27, 2021).

1 DATED this 27th day of July 2021.

2  
3 FENNEMORE CRAIG, P.C.

4 /s/ Leslie Bryan Hart

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13 /s/ Michael A.F. Johnson

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20 *Attorneys for Intervenor Counter-Defendant*  
21 *Federal Housing Finance Agency in its*  
22 *Capacity as Conservator for Federal*  
23 *National Mortgage Association*  
24  
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**AFFIRMATION**  
**Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated this 27th day of July, 2021.

FENNEMORE CRAIG, P.C.

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Housing Finance Agency*

**CERTIFICATE OF MAILING**

The undersigned, an employee of Fennemore Craig PC, hereby certifies that on the 27th day of July, 2021, she caused a copy of the **FEDERAL HOUSING FINANCE AGENCY'S REPLY IN SUPPORT OF MOTION TO DISSOLVE THE PRELIMINARY INJUNCTION** to be transmitted by electronic service to all interested parties listed below, through the Court's **E-Service** system:

John Benedict Law Offices of John Benedict 2190 E. Pebble Road, Suite 260 Las Vegas, NV 89123 john@benedictlaw.com <i>Attorneys for Defendants/Counterclaimants/Third Party Plaintiffs Westland Liberty Village, LLC &amp; Westland Village Square LLC</i>	Nathan G. Kanute, Esq. David L. Edelblute, Esq. Snell & Wilmer LLP 3883 Howard Hughes Parkway, Suite 110 Las Vegas, NV 89169 nkanute@swlaw.com  <i>Attorneys for Plaintiff Federal National Mortgage Association</i>
Joseph G. Went, Esq. Lars K. Evensen, Esq. Sydney R. Gambee, Esq. Holland & Hart LLP 9555 Hillwood Drive, 2nd Floor Las Vegas, NV 89134 jgwent@hollandhart.com <i>Attorneys for Third Party Defendants Grandbridge Real Estate Capital, LLC</i>	John W. Hofsaess, Esq. Westland Real Estate Group 520 W. Willow Street Long Beach, CA 90806 john.H@westlandreg.com <i>Attorneys for Defendants/Counterclaimants/Third Party Plaintiffs Westland Liberty Village, LLC &amp; Westland Village Square LLC</i>

/s/ Debbie Sorensen  
An Employee of Fennemore Craig PC

A-20-819412-B

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Business Court Matters**

**COURT MINUTES**

**August 10, 2021**

---

A-20-819412-B      Federal National Mortgage, Plaintiff(s)  
vs.  
Westland Liberty Village, LLC, Defendant(s)

---

**August 10, 2021      7:15 AM      Minute Order**

**HEARD BY:** Denton, Mark R.

**COURTROOM:** Chambers

**COURT CLERK:** Madalyn Kearney

**JOURNAL ENTRIES**

HAVING further reviewed and considered the parties' filings pertaining to Intervenor "Federal Housing Finance Agency's Motion to Dissolve the Preliminary Injunction" and Joinder thereto by Plaintiff Federal National Mortgage Association, heard and taken under advisement on August 2, 2021, and being fully advised in the premises, and being unpersuaded by Defendants' contention that the pending appeal divests this Court of jurisdiction to entertain the Motion, but being also unpersuaded that dissolution of the subject preliminary injunction is warranted in that the injunction was issued after extensive development of the issues in this Court and is now the subject of extensive litigation on the pending appeal, the Court DENIES the Motion and Joinder. Counsel for Defendants is directed to submit a proposed order consistent with this ruling following provision of the same to opposing counsel for signification of approval/disapproval.

IT IS SO ORDERED.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Madalyn Kearney, to all registered parties for Odyssey File & Serve. /mk 8/10/21

PRINT DATE: 08/10/2021

Page 1 of 1

Minutes Date: August 10, 2021

**ORDER**

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*Attorneys for Defendants/Counterclaimants/ Third Party Plaintiffs  
Westland Liberty Village, LLC & Westland Village Square LLC*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

FEDERAL NATIONAL MORTGAGE ASSOCIATION,	CASE NO. A-20-819412-B
---	------------------------

Plaintiff,

DEPT NO. XIII

vs.

WESTLAND LIBERTY VILLAGE, LLC, a  
Nevada Limited Liability Company; and  
WESTLAND VILLAGE SQUARE, LLC, a  
Nevada Limited Liability Company,

Defendants.

AND ALL RELATED ACTIONS

1                   **ORDER DENYING INTERVENOR FEDERAL HOUSING FINANCE AGENCY’S**  
2                   **MOTION TO DISSOLVE THE PRELIMINARY INJUNCTION AND JOINDER THERETO**  
3                   **BY PLAINTIFF FEDERAL NATIONAL MORTGAGE ASSOCIATION**

4                   On August 2, 2021, Intervenor Federal Housing Finance Agency’s Motion to Dissolve the  
5 Preliminary Injunction (the “Motion”) and Plaintiff Federal National Mortgage Association’s Joinder  
6 thereto (the “Joinder”) came before the Court for hearing via Bluejeans. Intervenor Federal Housing  
7 Finance Agency (“Intervenor”) was represented by Leslie Bryan Hart, Esq. and Michael A.F. Johnson,  
8 Esq., Plaintiff Federal National Mortgage Association (“Plaintiff”) was represented by Nathan G.  
9 Kanute, Esq., and Defendants Westland Liberty Village, LLC, and Westland Village Square, LLC  
10 (“Defendants”) were represented by Brian Barnes, Esq. and John Benedict, Esq. After considering the  
11 Motion, the Joinder, the Opposition, and the Reply, the exhibits and declarations attached thereto, the  
12 other pleadings and papers on file with the Court, and the oral argument of counsel, the Court denies the  
13 Motion and Joinder for the reasons set forth herein.

14                   1.       After substantial briefing and oral argument, on November 24, 2020, this Court entered  
15 the Order Granting Defendants’ Motion for Preliminary Injunction and Denying Application for  
16 Appointment of Receiver. The preliminary injunction is the subject of an appeal by Plaintiff pending  
17 before the Nevada Supreme Court

18                   2.       Intervenor generally premises its Motion and requested relief therein on the premise that  
19 the injunction should be dissolved as *void ab initio* because this Court lacked jurisdiction to grant it  
20 under 12 U.S.C. § 4617(f), which provides that “no court may take any action to restrain or affect the  
21 exercise of powers or functions of the Agency as a conservator.” Intervenor and Plaintiff argue that the  
22 Order Granting Defendants’ Motion for Preliminary Injunction and Denying Application for  
23 Appointment of Receiver restrains or affects the exercise of the Intervenor’s powers and functions as  
24 conservator of Plaintiff.

25                   3.       In their Opposition, Defendants generally argue that the Motion should be procedurally  
26 denied as the appeal divests this Court of jurisdiction over the preliminary injunction. Defendants further  
27 argue that should this Court decide that it does possess jurisdiction to decide the Motion on its merits,  
28 that Intervenor’s and Plaintiff’s arguments in the Motion and Joinder, respectively, fail in that 12 U.S.C.  
§ 4617(f) does not apply to the issues present in this case between the Parties, and that such statute only



1 applies when Intervenor takes action that is necessary to put Fannie Mae in a sound and solvent  
2 condition, which is not applicable in this action.

3 4. While the Court is “unpersuaded by Defendants’ contention that the pending appeal”  
4 before the Nevada Supreme Court “divests this Court of jurisdiction to entertain the Motion,” the Court  
5 is “also unpersuaded that the dissolution of the subject preliminary injunction is warranted in that the  
6 injunction was issued after extensive development of the issues in this Court and is now the subject of  
7 extensive litigation on the pending appeal.”

8 BASED ON THE FOREGOING, IT IS HEREBY ADJUDGED, DECREED AND ORDERED  
9 that Intervenor Federal Housing Finance Agency’s Motion to Dissolve the Preliminary Injunction and  
10 Plaintiff Federal National Mortgage Association’s Joinder thereto are DENIED.

11 IT IS SO ORDERED.

Dated this 17th day of September, 2021

12  
13 

14 ABG

15 089 AFD A034 5B67  
16 Mark R. Denton  
17 District Court Judge

18 Respectfully Submitted By:

19 **LAW OFFICES OF JOHN BENEDICT**

20 By: /s/ John Benedict  
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25 *Attorneys for Defendants/Counterclaimants/  
26 Third Party Plaintiffs*

27 //

28 //

1 *Approved as to Form and Content:*

2 **SNELL & WILMER L.L.P.**

3 By: **MAY SUBMIT COMPETING ORDER**

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8 *Attorneys for Plaintiff*

9 *Approved as to Form and Content:*

10 **FENNEMORE CRAIG, P.C.**

11 By: **MAY SUBMIT COMPETING ORDER**

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22 *Attorneys for Federal Housing Finance Agency*

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Federal National Mortgage,  
7 Plaintiff(s)

CASE NO: A-20-819412-B

8 vs.

DEPT. NO. Department 13

9 Westland Liberty Village, LLC,  
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12  
13 This automated certificate of service was generated by the Eighth Judicial District  
14 Court. The foregoing Order Denying Motion was served via the court's electronic eFile  
15 system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 9/17/2021

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**NEO**

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Nevada Bar No. 005581

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**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

FEDERAL NATIONAL MORTGAGE  
ASSOCIATION,

Plaintiff,

vs.

WESTLAND LIBERTY VILLAGE, LLC, a  
Nevada Limited Liability Company; and  
WESTLAND VILLAGE SQUARE, LLC, a  
Nevada Limited Liability Company,

Defendants.

AND ALL RELATED ACTIONS.

CASE NO. A-20-819412-B

DEPT NO. XIII

**NOTICE OF ENTRY OF ORDER  
DENYING INTERVENOR FEDERAL  
HOUSING FINANCE AGENCY'S  
MOTION TO DISSOLVE THE  
PRELIMINARY INJUNCTION AND  
JOINDER THERETO BY PLAINTIFF  
FEDERAL NATIONAL MORTGAGE  
ASSOCIATION**



1 PLEASE TAKE NOTICE that an **ORDER DENYING INTERVENOR FEDERAL**  
2 **HOUSING FINANCE AGENCY’S MOTION TO DISSOLVE THE PRELIMINARY**  
3 **INJUNCTION AND JOINDER THERETO BY PLAINTIFF FEDERAL NATIONAL**  
4 **MORTGAGE ASSOCIATION** was entered in the above-entitled matter on September 17, 2021. A  
5 true and correct copy is attached hereto as **Exhibit “1”**.

6 DATED this 22nd day of September 2021.

7 **LAW OFFICES OF JOHN BENEDICT**

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14 *Party Plaintiffs Westland Liberty Village, LLC,*  
15 *Westland Village Square LLC, et al.*  
16  
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on September 22, 2021, a copy of the foregoing **NOTICE OF ENTRY OF**  
3 **ORDER DENYING INTERVENOR FEDERAL HOUSING FINANCE AGENCY'S MOTION TO**  
4 **DISSOLVE THE PRELIMINARY INJUNCTION AND JOINDER THERETO BY PLAINTIFF**  
5 **FEDERAL NATIONAL MORTGAGE ASSOCIATION** was served on the parties listed below via  
6 electronic service through Odyssey to the following:

7 Robert Olson, Esq., Nathan G. Kanute, Esq. and/or David L. Edelblute, Esq.  
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24 */s/ Tyler Dufrene*  
25 \_\_\_\_\_  
26 An Employee of the Law Offices of John Benedict  
27  
28

Exhibit “1”

Exhibit “1”

**ORDER**

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Westland Liberty Village, LLC & Westland Village Square LLC*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

FEDERAL NATIONAL MORTGAGE ASSOCIATION,	CASE NO. A-20-819412-B
---	------------------------

Plaintiff,

DEPT NO. XIII

vs.

WESTLAND LIBERTY VILLAGE, LLC, a  
Nevada Limited Liability Company; and  
WESTLAND VILLAGE SQUARE, LLC, a  
Nevada Limited Liability Company,

Defendants.

AND ALL RELATED ACTIONS

1                   **ORDER DENYING INTERVENOR FEDERAL HOUSING FINANCE AGENCY’S**  
2                   **MOTION TO DISSOLVE THE PRELIMINARY INJUNCTION AND JOINDER THERETO**  
3                   **BY PLAINTIFF FEDERAL NATIONAL MORTGAGE ASSOCIATION**

4                   On August 2, 2021, Intervenor Federal Housing Finance Agency’s Motion to Dissolve the  
5 Preliminary Injunction (the “Motion”) and Plaintiff Federal National Mortgage Association’s Joinder  
6 thereto (the “Joinder”) came before the Court for hearing via Bluejeans. Intervenor Federal Housing  
7 Finance Agency (“Intervenor”) was represented by Leslie Bryan Hart, Esq. and Michael A.F. Johnson,  
8 Esq., Plaintiff Federal National Mortgage Association (“Plaintiff”) was represented by Nathan G.  
9 Kanute, Esq., and Defendants Westland Liberty Village, LLC, and Westland Village Square, LLC  
10 (“Defendants”) were represented by Brian Barnes, Esq. and John Benedict, Esq. After considering the  
11 Motion, the Joinder, the Opposition, and the Reply, the exhibits and declarations attached thereto, the  
12 other pleadings and papers on file with the Court, and the oral argument of counsel, the Court denies the  
13 Motion and Joinder for the reasons set forth herein.

14                   1.       After substantial briefing and oral argument, on November 24, 2020, this Court entered  
15 the Order Granting Defendants’ Motion for Preliminary Injunction and Denying Application for  
16 Appointment of Receiver. The preliminary injunction is the subject of an appeal by Plaintiff pending  
17 before the Nevada Supreme Court

18                   2.       Intervenor generally premises its Motion and requested relief therein on the premise that  
19 the injunction should be dissolved as *void ab initio* because this Court lacked jurisdiction to grant it  
20 under 12 U.S.C. § 4617(f), which provides that “no court may take any action to restrain or affect the  
21 exercise of powers or functions of the Agency as a conservator.” Intervenor and Plaintiff argue that the  
22 Order Granting Defendants’ Motion for Preliminary Injunction and Denying Application for  
23 Appointment of Receiver restrains or affects the exercise of the Intervenor’s powers and functions as  
24 conservator of Plaintiff.

25                   3.       In their Opposition, Defendants generally argue that the Motion should be procedurally  
26 denied as the appeal divests this Court of jurisdiction over the preliminary injunction. Defendants further  
27 argue that should this Court decide that it does possess jurisdiction to decide the Motion on its merits,  
28 that Intervenor’s and Plaintiff’s arguments in the Motion and Joinder, respectively, fail in that 12 U.S.C.  
§ 4617(f) does not apply to the issues present in this case between the Parties, and that such statute only



1 applies when Intervenor takes action that is necessary to put Fannie Mae in a sound and solvent  
2 condition, which is not applicable in this action.

3 4. While the Court is “unpersuaded by Defendants’ contention that the pending appeal”  
4 before the Nevada Supreme Court “divests this Court of jurisdiction to entertain the Motion,” the Court  
5 is “also unpersuaded that the dissolution of the subject preliminary injunction is warranted in that the  
6 injunction was issued after extensive development of the issues in this Court and is now the subject of  
7 extensive litigation on the pending appeal.”

8 BASED ON THE FOREGOING, IT IS HEREBY ADJUDGED, DECREED AND ORDERED  
9 that Intervenor Federal Housing Finance Agency’s Motion to Dissolve the Preliminary Injunction and  
10 Plaintiff Federal National Mortgage Association’s Joinder thereto are DENIED.

11 IT IS SO ORDERED.

Dated this 17th day of September, 2021

12  
13 

14 ABG

15 089 AFD A034 5B67  
16 Mark R. Denton  
17 District Court Judge

18 Respectfully Submitted By:

19 **LAW OFFICES OF JOHN BENEDICT**

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27 //

28 //

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11 By: **MAY SUBMIT COMPETING ORDER**

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1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Federal National Mortgage,  
7 Plaintiff(s)

CASE NO: A-20-819412-B

8 vs.

DEPT. NO. Department 13

9 Westland Liberty Village, LLC,  
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12  
13 This automated certificate of service was generated by the Eighth Judicial District  
14 Court. The foregoing Order Denying Motion was served via the court's electronic eFile  
15 system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 9/17/2021

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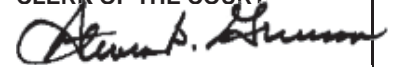
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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

FEDERAL NATIONAL MORTGAGE  
ASSOCIATION,

Plaintiff,

vs.

WESTLAND LIBERTY VILLAGE, LLC, a  
Nevada limited liability company; and  
WESTLAND VILLAGE SQUARE, LLC, a  
Nevada limited liability company,

Defendants.

CASE NO.: A-20-819412-B

DEPT. NO.: XIII

**NOTICE OF APPEAL**

AND ALL RELATED CLAIMS

NOTICE is hereby given that Federal Housing Finance Agency, in its capacity as Conservator for the Federal National Mortgage Association and as an intervenor in the above-named action, and Plaintiff Federal National Mortgage Association hereby appeal to the Supreme Court of Nevada from the Order Denying Intervenor Federal Housing Finance Agency's Motion to Dissolve the



1 Preliminary Injunction and Joinder Thereto by Plaintiff Federal National Mortgage Association,  
2 entered on September 17, 2021, and for which a Notice of Entry of Order was filed on September  
3 22, 2021.

4 DATED: October 21, 2021.

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Federal Housing Finance Agency in its  
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Mortgage Association*

**CERTIFICATE OF SERVICE**

The undersigned, an employee of Fennemore Craig PC, hereby certifies that on the 24th day of October 21, 2021, he caused a copy of the a true and correct copy of the **NOTICE OF APPEAL**, to be transmitted by electronic service to all interested parties listed below, through the Court's **E-Service** system:

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/s/ Claudio Lerma  
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Conservator for the Federal National Mortgage Association*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

FEDERAL NATIONAL MORTGAGE  
ASSOCIATION,

Plaintiff,

vs.

WESTLAND LIBERTY VILLAGE, LLC, a  
Nevada limited liability company; and  
WESTLAND VILLAGE SQUARE, LLC, a  
Nevada limited liability company,

Defendants.

CASE NO.: A-20-819412-B

DEPT. NO.: XIII

**CASE APPEAL STATEMENT**

AND ALL RELATED CLAIMS

**1. APPELLANTS FILING THIS CASE APPEAL STATEMENT:**

Federal Housing Finance Agency and Federal National Mortgage Association,  
Appellants.

- 1       **2.       JUDGE ISSUING THE JUDGMENT OR ORDER APPEALED FROM:**
- 2               The Honorable Mark Denton
- 3
- 4       **3.       ALL PARTIES TO THE PROCEEDING IN THE DISTRICT COURT:**
- 5               • Plaintiff/Counter-Defendant: Federal National Mortgage Association
- 6               • Plaintiff Intervenor: Federal Housing Finance Agency
- 7               • Defendants/Counter-Claimants/Third Party Plaintiffs: Westland Liberty Village, LLC
- 8               • Third Party Defendant: Grandbridge Real Estate Capital LLC
- 9       **4.       ALL PARTIES TO THE APPEAL:**
- 10              • Appellants: Federal Housing Finance Agency and Federal National Mortgage
- 11              • Respondents: Westland Liberty Village, LLC and Westland Village Square, LLC
- 12
- 13       **5.       NAME OF COUNSEL AND WHOM THEY REPRESENT:**
- 14       Counsel for Appellant, Federal Housing Finance Agency:
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26 **6. WHETHER APPELLANTS WERE REPRESENTED BY APPOINTED OR**  
27 **RETAINED COUNSEL IN THE DISTRICT COURT:**

28 Federal Housing Finance Agency and Federal National Mortgage Association were represented by retained counsel in the Eighth Judicial District Court action.

7. **RETAINED COUNSEL ON APPEAL:**

Federal Housing Finance Agency is represented by retained counsel, the law firms of Fennemore Craig P.C. and Arnold & Porter Kaye Scholer LLP on appeal:

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John D. Tennert, III  
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13 Federal National Mortgage Association is represented by retained counsel, the law firm of  
14 Snell & Wilmer L.L.P. on appeal:

15 Kelly H. Dove  
16 Nevada Bar No. 10569  
17 SNELL & WILMER L.L.P.  
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21 **8. WHETHER APPELLANT WAS GRANTED LEAVE TO PROCEED IN FORMA**  
22 **PAUPERIS, AND THE DATE OF ENTRY OF THE DISTRICT COURT ORDER**  
23 **GRANTING SUCH LEAVE:**

24 Appellants have not moved for leave to file an appeal in forma pauperis.

25 **9. INDICATE THE DATE THE PROCEEDINGS COMMENCED IN THE**  
26 **DISTRICT COURT:**

27 This case commenced in the district court on August 12, 2020 with Federal National  
28 Mortgage Association filing a Complaint.

**10. BRIEF DESCRIPTION OF THE NATURE OF THE ACTION AND RESULT:**

Federal National Mortgage Association brought suit on August 12, 2020 against Respondents seeking the appointment of a receiver. In response, Respondents filed an opposition and countermotion for a temporary restraining order and preliminary injunction. On November 20, 2020, the district court granted Respondents' request for injunctive relief. The district court granted Federal Housing Finance Agency's motion to intervene on June 11, 2021. Federal Housing Finance Agency filed a motion to dissolve the injunction on June 14, 2021. Federal

1 National Mortgage Association joined that motion. On September 22, 2021, the district court  
2 denied that motion to dissolve.

3  
4 **11. PREVIOUS APPEAL OR WRIT PROCEEDING:**

5 Federal National Mortgage Association previously filed an appeal of the district court's order  
6 that, among other things, granted Respondents' request for injunctive relief. That appeal is pending  
7 before this Court as Case No. 82174. Federal Housing Finance Agency previously filed a petition for  
8 a writ of prohibition, seeking dissolution of the preliminary injunction. That petition is pending  
9 before this Court as Case No. 82666. Appellants respectfully suggest that this appeal be stayed  
10 pending the resolution of one or both of those previously filed appellate actions.

11  
12 **12. CHILD CUSTODY:**

13 This appeal does not involve child custody or visitation.

14  
15 **13. POSSIBILITY OF SETTLEMENT:**

16 Settlement is possible.

17 DATED: October 21, 2021.

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By: /s/ John D. Tennert

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