

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**

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

**PLAINTIFFS’ PUBLIC, REDACTED MOTION TO REMOVE THE  
“PROTECTED INFORMATION” DESIGNATION  
FROM CERTAIN GRANT THORNTON DOCUMENTS**

*Of counsel:*

Vincent J. Colatristano  
David H. Thompson  
Peter A. Patterson  
Brian W. Barnes  
COOPER & KIRK, PLLC  
1523 New Hampshire Avenue, N.W.  
Washington, D.C. 20036  
(202) 220-9600  
(202) 220-9601 (fax)

Charles J. Cooper  
*Counsel of Record*  
COOPER & KIRK, PLLC  
1523 New Hampshire Avenue, N.W.  
Washington, D.C. 20036  
(202) 220-9600  
(202) 220-9601 (fax)  
ccooper@cooperkirk.com

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Plaintiffs Fairholme Funds, Inc., et al. (“Plaintiffs” or “Fairholme”) respectfully move, pursuant to Paragraphs 17 and 19 of the Protective Order (July 16, 2014), Doc. 73 (“P.O.”), for entry of an order requiring Grant Thornton, LLP, to remove the “Protected Information” designation it has affixed to the attached exhibits it produced in this action. *See* Exhibits A–F (the “Documents”). The information contained in the Documents is not “Protected Information” as defined in the Protective Order—indeed, much of the relevant information contained in at least some of the Documents is essentially identical to information that the Government has publicly filed in related litigation—and keeping this information secret prejudices Plaintiffs, the public, and other courts that will decide legal challenges to which the information is relevant. Such courts deserve to have access to all relevant information. At the very least, this Court should order that redacted versions of the Documents be made public. *See* Exhibits G–L (the “Redacted Documents”). Alternatively, Plaintiffs respectfully move, pursuant to Paragraphs 17 and 18 of the Protective Order, for entry of an order authorizing Plaintiffs to file the Documents under seal in *Fairholme Funds, Inc. v. FHFA*, No. 14-5254 (D.C. Cir.),<sup>1</sup> as well as in any other action challenging the Net Worth Sweep in which Plaintiffs participate either as parties or amici.

### **QUESTIONS PRESENTED**

1. Does the information contained in the Documents meet the definition of “Protected Information” under Paragraph 2 of the Protective Order?

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<sup>1</sup> The D.C. Circuit has consolidated the *Fairholme* appeal with the appeals of other cases challenging the Net Worth Sweep also pending before that court. *See* Order, *Perry Capital LLC v. Lew*, No. 14-5243 (D.C. Cir. Oct. 27, 2014), ECF No. 1519092. The *Fairholme* plaintiffs (consisting of Plaintiffs in this action, minus Continental Western Insurance Company) have been directed to file a consolidated brief with certain plaintiffs from the other appeals, and that brief is due on June 30, 2015. *See* Order, *Perry Capital LLC v. Lew*, No. 14-5243 (D.C. Cir. May 6, 2015), ECF No. 1551023.

2. Does the information contained in the Redacted Documents meet the definition of “Protected Information” under Paragraph 2 of the Protective Order?
3. Alternatively, should this Court authorize Plaintiffs to file the Documents under seal in *Fairholme Funds, Inc. v. FHFA*, No. 14-5254 (D.C. Cir.), and in any other action challenging the Net Worth Sweep in which Plaintiffs participate either as parties or amici?

### **STATEMENT OF THE CASE**

The ongoing discovery in this case is being conducted pursuant to a standard protective order that permits producing parties to “designate as Protected Information any information, document, or material that meets the definition of Protected Information set forth in this Protective Order.” P.O. at 1. The Protective Order defines Protected Information as “proprietary, confidential, trade secret, or market-sensitive information, as well as information that is otherwise protected from public disclosure under applicable law.” *Id.* ¶ 2. The Protective Order permits a producing party to initially designate all information as protected solely in order to expedite production, but only subject to the receiving party’s right to subsequently challenge that designation in accordance with the procedures established under Paragraph 17 of the order. *Id.*

Paragraph 17 makes clear that the receiving party has the right to challenge a producing party’s designation of material as Protected Information. *Id.* ¶ 17; *see also id.* ¶ 19 (“This Protective Order shall be without prejudice to the right of any party to bring before the court at any time the question whether any particular document or information is Protected Information or whether its use otherwise should be restricted.”). The burden of persuasion rests with the moving party. *Id.* ¶ 17.

In February of this year, Fairholme served a third-party subpoena on Grant Thornton

seeking a limited number of documents pertaining to, among other things, Grant Thornton valuations of Fannie and Freddie that may have been provided to the Government, Grant Thornton projections of Fannie’s and Freddie’s profitability, and other documents relating to the Preferred Stock Purchase Agreements (the “PSPAs”) between Treasury and the GSEs. In the course of responding to the subpoena, Grant Thornton consulted with Treasury and provided copies of all responsive documents to Treasury for its review. Pursuant to that subpoena, Grant Thornton has produced a number of records, including the Documents, many of which Grant Thornton prepared pursuant to a contract it had with Treasury. The Documents include:

- Exhibits A (Bates No. GT007406) and B (Bates No. GT007472): these documents (the “Warrant Rights Cover Pages”) are the cover pages of Grant Thornton [REDACTED]  
[REDACTED]  
[REDACTED]
- Exhibit C (Bates No. GT007117) (the “2008 Valuation Chart”): this chart displays [REDACTED]  
[REDACTED]  
[REDACTED]
- Exhibit D (Bates No. GT005322) (the “2011 Assets Document”): this document contains a table displaying [REDACTED]  
[REDACTED] It also has handwritten notes pertaining, among other things, to [REDACTED]  
[REDACTED]
- Exhibits E (Bates No. GT007252–7304) and F (Bates No. GT007328–82): these documents (the “2011 Valuations”) are Grant Thornton [REDACTED]  
[REDACTED] They are largely identical, with each document [REDACTED]  
[REDACTED]

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<sup>2</sup> Because the Warrant Rights Cover Pages are themselves the redacted versions of the full documents of which they are a part, Plaintiffs have not proposed additional redactions to the cover pages. Nonetheless, we include identical versions of them as part of the Redacted Documents (Exhibits G–L) so that we can refer to all Redacted Documents collectively.



[REDACTED]

Grant Thornton designated the Documents (as well as every other document it produced) as Protected Information.<sup>3</sup>

In accordance with the procedures established by the Protective Order, Fairholme’s counsel notified Grant Thornton that it believed the 2011 Freddie Valuation did not contain Protected Information as defined in Paragraph 2 and requested that Grant Thornton de-designate it. *See* Emails between Vincent Colatriano, Counsel for Plaintiffs, and Ellen Randel, Managing Director of Grant Thornton, (Exhibit O). In the event that Grant Thornton refused, Fairholme’s counsel proposed in the same email that Grant Thornton at least agree to de-designate a redacted version of the document as a potential compromise. *Id.*

Grant Thornton responded by asking Plaintiffs to explain why they believed the 2011 Freddie Valuation should be de-designated. *Id.* Fairholme’s counsel provided Plaintiffs’ explanation on May 11. *Id.* Fairholme pointed out, among other things, that much of the information contained in the valuation was already public; in particular, and as discussed in more detail below, most of the critical income projections appearing in the valuation had been replicated in documents that the Government filed as part of the public administrative record in the *Fairholme* case in the District Court for the District of Columbia (“D.D.C.”). *Id.* Grant Thornton responded

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<sup>3</sup> The Protective Order contemplates that a non-Party who produces information in this case may obtain the benefits of the Protective Order by “informing the Court and the parties of its intent to be . . . bound” by the Order. P.O. at 1. Even though, to Plaintiffs’ knowledge, Grant Thornton has not yet formally informed the Court of its intent to be bound by the Protective Order, the parties have honored Grant Thornton’s designation of information it has produced as Protected Information whose use and disclosure is governed by that order.

by refusing to de-designate either the 2011 Freddie Valuation or the redacted version of the document on May 13. *Id.* Grant Thornton provided a cursory justification of its refusal to de-designate the valuation, claiming only that it contained information that had not been publicly released and that it included information that was different from and in addition to the information disclosed in the public Administrative Record. *Id.* And in refusing to de-designate the redacted version of the document, Grant Thornton claimed only that redaction of protected documents was not authorized by the Protective Order; significantly, Grant Thornton did not claim that the redacted version itself contained Protected Information. *Id.*<sup>4</sup>

Subsequently, Fairholme’s counsel sent Grant Thornton two additional requests to de-designate similar documents that Plaintiffs believed did not contain Protected Information. *See* Exhibits P and Q. In each instance, Plaintiffs offered to de-designate redacted versions of the documents at issue. *Id.* Taken together, Plaintiffs’ requests covered all of the Documents that are the subject of this motion. Grant Thornton refused the requests. *Id.* Plaintiffs gave notice that they intended to seek a resolution of all these matters before this Court. *See* Exhibits O–Q.

## ARGUMENT

### **I. GRANT THORNTON HAS IMPROPERLY DESIGNATED THE INFORMATION IN THE DOCUMENTS AS PROTECTED INFORMATION.**

#### **A. The information in the Documents does not come within the terms of the Protective Order’s definition of “Protected Information.”**

The Protective Order was carefully crafted, and its definition of “Protected Information”

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<sup>4</sup> Fairholme’s counsel originally requested de-designation of an incomplete version of the 2011 Freddie Valuation provided by Grant Thornton (Bates No. GT006315–55), but subsequently requested that the complete version of the valuation (Exhibit F) be de-designated, *see* Exhibit P. Grant Thornton refused to de-designate the complete version of the Document—the subject of this motion—and Fairholme gave notice that it intended to seek a resolution of this matter before this Court. *Id.*

is, accordingly, precisely drawn. Although the order permits a party to “*initially* designate all information” produced as Protected Information, P.O. ¶ 2 (emphasis added), such information must, ultimately, fit within Paragraph 2’s definition if it is to remain hidden from the public. The order does not grant a producing party *carte blanche* to designate as protected any information that it might wish to shield from public scrutiny; the mere assertion that certain information is protected will not do. As the Federal Circuit has emphasized, “[p]arties frequently abuse Rule 26(c) by seeking protective orders for material not covered by the rule,” but there must be some “demonstrati[on] that there is good cause for restricting the disclosure of the information at issue.” *In re Violation of Rule 28(D)*, 635 F.3d 1352, 1357, 1358 (Fed. Cir. 2011).

There is no plausible argument that the information contained in the Documents is Protected Information. No law protects it from public disclosure, and none of the information is a trade secret or otherwise proprietary in nature. The Warrant Rights Cover Pages are merely that—cover pages. *See* Exhibits A and B. The 2011 Assets Document and the 2008 Valuation Chart contain outdated financial information (much of which is already public, *see infra* pages 9–10) that cannot in any sense be considered proprietary. *See* Exhibits C and D.

Most of the information in the 2011 Valuations (Exhibits E and F) consists of publicly available financial or other data, descriptions of the PSPA’s features and framework, explanations of the nature and history of the GSEs, descriptions of the features of the conservatorship, and similarly non-proprietary information. As for the valuations themselves, the two documents make clear that

██  
██  
██  
██  
██

[REDACTED]

Exhibit F at 7331; *see also id.* at 7328; Exhibit E at 7255; *see also id.* at 7252. These and other passages, *see, e.g., id.* at 7262–63, Exhibit F at 7338–39, show that the methodology employed in the 2011 Valuations consists primarily of “generally accepted accounting principles,” not proprietary methods of Grant Thornton. At no point do the 2011 Valuations identify any methodology as proprietary. And although Grant Thornton relied on data provided to it by Freddie Mac and Fannie Mae forecasters and made several assumptions in producing its calculations, neither of these unremarkable facts make the information in the 2011 Valuations proprietary. These categories of Protected Information, then, provide no refuge for Grant Thornton.

Nor does the information in the Documents fall within any legitimate conception of “confidential” information. When this Court heard argument on the parties’ competing proposals regarding the definition of Protected Information, it made clear that the mere fact that information had not been previously released to the public did *not* suffice to render such information “confidential.” *See, e.g.,* Transcript of July 16, 2014 Status Conference at 10–11 (Exhibit N). Rather, for information to be considered “confidential” within the meaning of the order, the public release of that information must be likely to cause some type of legally cognizable harm to the producing party or to third parties. *Id.*; *see also In re Violation of Rule 28(D)*, 635 F.3d at 1357–58 (“[T]he party seeking to limit the disclosure of discovery materials must show that specific prejudice or harm will result if no protective order is granted.” (citation and quotation marks omitted)); *Lakeland Partners, LLC v. United States*, 88 Fed. Cl. 124, 133 (2009) (party seeking to limit discovery or seeking other protections under Rule 26(c) “must make a particularized factual

showing of the harm that would be sustained if the court did not grant a protective order”).<sup>5</sup>

Grant Thornton has not offered any reason why the information contained in the Documents meets this standard for protection, and there is none. To be sure, the Documents are internal reports that Grant Thornton would apparently rather not have made public, but that alone does not make them Protected Information. If Grant Thornton is permitted to assert the confidentiality of information based on such criteria, this litigation will be conducted almost entirely in secret, and the public will be deprived of access to vital information about their Government. That is not the purpose of this Court’s Protective Order. Grant Thornton must point to specific harm to a legally cognizable interest in asserting confidentiality, *see In re Violation of Rule 28(D)*, 635 F.3d at 1357–58, and it has not done so.

Nor could it. The information in the Documents is almost exclusively of a historical nature that has no bearing on current market conditions. The Government cannot plausibly maintain, for instance, that the release of *cover pages* would harm a legally cognizable interest that justifies keeping them secret. *See* Exhibits A and B. The 2008 Valuation Chart, by its terms, contains seven-year-old information. *See* Exhibit C. Likewise, the 2011 Assets Document displays information through the first quarter of 2012, along with a handwritten note describing events

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<sup>5</sup> *Cf. Hewlett-Packard Co. v. EMC Corp.*, 330 F. Supp. 2d 1087, 1094 (N.D. Cal. 2004) (courts have classified as “confidential” information that is “of either particular significance or [that] which can be readily identified as either attorney work product or within the scope of the attorney-client privilege.” (alteration in original)). *See also Return Mail, Inc. v. United States*, 107 Fed. Cl. 459, 466 (2012) (reviewing cases in which technical knowledge learned by a previous employee is considered confidential information).



formation to the public, it is implausible that the corresponding data for Freddie Mac is confidential.

Similarly, the 2011 Valuations are filled with public information. The descriptions of the GSEs' organizational structures, the features of the conservatorship, the terms of the PSPAs, the terms of the variable liquidation preference, and the recent financial history of the GSEs are based on public information. *See, e.g., Federal Home Loan Mortgage Corporation (FMCC): Historical Prices*, YAHOO FINANCE, <http://goo.gl/Q5OchT> (last visited May 14, 2015); *House Price Index*, FHFA, <http://goo.gl/KnNdYb> (last visited May 14, 2015); *Perry Capital, LLC v. Lew*, 2014 WL 4829559 (D.D.C. Sept. 30, 2014); Certification of Administrative Record at 1–160, 165–74, 189–200, 2771–72, 2787–88, 2794–96, 2808–10, 2815–20, 2822–33, 4334–41, 4342–57, *Fairholme Funds, Inc. v. FHFA*, No. 1:13-cv-1053-RCL (D.D.C. Dec. 17, 2013);<sup>9</sup> UNITED STATES DEP'T OF THE TREASURY, AGENCY FINANCIAL REPORT: FISCAL YEAR 2011 13–14, 98–102 (2011) (Exhibit R); Press Release, United States Dep't of Treasury, Statement by Secretary Henry M. Paulson, Jr., on Treasury and Federal Housing Finance Agency Action to Protect Financial Markets and Taxpayers (Sept. 7, 2008), <http://goo.gl/G359cg>; Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, 122 Stat. 2654 (2008). All of the 2011 Valuations' footnoted citations are to public sources. *See* Exhibit F at nn.2, 5–8, 10, 12, 14; Exhibit E at nn.2, 5–8, 10, 13, 15. The accounting principles explained in the remainder of the main body of these two documents are, as described above, general principles that are available to the public. *See, e.g.,* Exhibit F at [REDACTED]

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<sup>9</sup> Due to the length of the documents cited from the Administrative Record, Plaintiffs have not included them in an exhibit. We will, of course, gladly submit copies to the Court should it wish to have them.

[REDACTED]

[REDACTED]

See Exhibit E at 7255, 7262–63; *id.* at 7264–65; *id.* at 7266 for corresponding citations for the Fannie Mae valuation.

The 2011 Valuations themselves acknowledge that their Exhibit 2 (*id.* at 7277–78; Exhibit F at 7355–56) [REDACTED]

[REDACTED] *id.* at 7342; Exhibit E at 7266. Likewise, Exhibit 3 (*id.* at 7279; Exhibit F at 7357) is nothing more than calculations based on [REDACTED]

[REDACTED] *id.* at 7342; Exhibit E at 7266. Appendix A is a collection of publicly available financial information, *id.* at 7281–82; Exhibit F at 7359–60, and Appendix B contains the underlying, publicly available data for Exhibit 3, *id.* at 7361–73; Exhibit E at 7283–7295. Appendix C is a compilation of publicly available Treasury Term Rates, *id.* at 7296–7304; Exhibit F at 7374–82.

Indeed, *the Government* publicly disclosed the bulk of Grant Thornton’s net comprehensive income forecasts when it filed the Administrative Record in the district court in *Fairholme*. Page 3837 of the Administrative Record contains a Treasury document acknowledging that “FHFA and Grant Thornton analyses were used to generate the forecast estimates on the subsequent pages,” and the FY2012–FY2023 projections of the GSEs’ “Net Comprehensive Income” track Grant Thornton’s estimates for the same period (once one rounds up or down to the nearest hundred million), *compare* Exhibit M at 3847, 3849 *with* Exhibit E at 7276 and Exhibit F at 7352–53. Since this critical information has already been publicly disclosed, there is no basis for attempting to keep it secret. And since the remaining net comprehensive income forecasts in the



2011 Valuations are presumably based on the same information and apply the same methodology, there is no reason to keep them secret either. *See id.* at 7353–54; Exhibit E at 7276.

In sum, the information contained in the Documents does not fit within the Protective Order’s definition of Protected Information, and much of it is already publicly available. This Court should order the Documents de-designated in their entirety.

**B. Keeping the information contained in the Documents secret prejudices Plaintiffs’ ability to make their case.**

The fact that the Documents contain no Protected Information ends the relevant analysis under the Protective Order. But it is worth noting that Grant Thornton’s refusal to remove its Protected Information designation has had and is continuing to have real-world negative impacts for Fairholme.

Just as keeping the information contained in the Documents from the public makes it impossible to have well-informed democratic deliberation, *see infra* pages 13–15, Grant Thornton’s refusal to de-designate information that does not meet the definition of Protected Information prevents Plaintiffs’ counsel from consulting with outside experts—as well as with their own clients—about this critical information. As this Court is well-aware, the facts of this case are exceedingly complex, requiring a sophisticated understanding of financial markets, government housing policy, the tax code, congressional action, and other specialized areas of policy. But as long as the information contained in the Documents is subject to the Protective Order, Plaintiffs’ counsel are forbidden from sharing that information with scholars, professionals, and clients who could lend their considerable expertise in financial matters to Plaintiffs’ case. P.O. ¶ 4. It is entirely possible that those with more expertise in the relevant subject matter would have important insights as to what this information reveals, insights that might not be obvious to Plaintiffs’

counsel. Indeed, counsel's *own clients* are sophisticated investors who could shed additional light on the information, but Grant Thornton's unjustified designation makes this basic communication impossible. And although the Protective Order permits the sharing of Protected Information with retained experts, P.O. ¶ 4, it would prejudice Plaintiffs if they were forced to expend resources on such experts when the information is not subject to the Protective Order in the first place. Thus, there can be no argument that keeping this information secret is costless to Plaintiffs; Grant Thornton's efforts to subject this information to the Protective Order imposes a real burden on Plaintiffs and prejudices their ability to make their case.

**C. Keeping the information in the Documents hidden from the public contravenes First Amendment principles.**

Keeping the information contained in the Documents from the public not only violates the terms of the Protective Order; it contravenes the First Amendment principles that underlie the public's "right of access . . . to civil trials and to their related proceedings *and records*." *New York Civil Liberties Union v. New York City Transit Auth.*, 684 F.3d 286, 298 (2d Cir. 2012) (emphasis added); *see also Courthouse News Serv. v. Planet*, 750 F.3d 776, 786 (9th Cir. 2014) ("Though the Supreme Court originally recognized the First Amendment right of access in the context of criminal trials, the federal courts of appeals have widely agreed that it extends to civil proceedings *and associated records and documents*." (emphasis added) (citation omitted)). As the First Circuit has said, "[F]irst [A]mendment considerations cannot be ignored in reviewing discovery protective orders." *Anderson v. Cryovac, Inc.*, 805 F.2d 1, 7 (1st Cir. 1986). These First Amendment considerations explain the Federal Circuit's willingness to impose sanctions on parties for withholding more information from the public than necessary. *See In re Violation of Rule 28(D)*, 635 F.3d at 1357–58, 1360–61 (citing *Anderson*, 805 F.2d at 7–8). After all, parties

“are not the only people who have a legitimate interest in the record compiled in a legal proceeding.” *Citizens First Nat’l Bank of Princeton v. Cincinnati Ins. Co.*, 178 F.3d 943, 944 (7th Cir. 1999).

That is especially true in this case, involving as it does the public’s interest in the Government’s “unprecedented” actions. FHFA’s Mot. to Dismiss and, in the Alternative, for Summ. J. at 10, *Fairholme Funds, Inc. v. FHFA*, No. 1:13-cv-1053-RCL (Jan. 17, 2014), Doc. 28. Few issues have so occupied the public mind as the Government’s housing policy in the wake of the 2008 financial crisis. The Government’s actions at issue in this case have been the subject of congressional hearings,<sup>10</sup> think tank discussions,<sup>11</sup> policy papers,<sup>12</sup> and media coverage.<sup>13</sup> Indeed, one of the first think-tank events in the aftermath of the 2014 midterm election focused on the Government’s policy toward the GSEs.<sup>14</sup> All public deliberation, however, has occurred in the absence of critical information such as that which Grant Thornton—without any basis in the Pro-

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<sup>10</sup> See, e.g., *Oversight of Federal Housing Finance Agency: Evaluating FHFA as Regulator and Conservator: Hearing Before the S. Comm. on Banking, Housing, and Urban Affairs*, 113th Cong. (2013) (statement of Edward J. DeMarco, Acting Director of FHFA); *Mortgage Finance Reform: An Examination of the Obama Administration’s Report to Congress: Hearing Before the H. Comm. on Fin. Servs.*, 112th Cong. (2011); *The Future of Housing Finance: A Progress Update on the GSEs: Hearing Before the Subcomm. on Capital Markets, Ins., and Gov’t Sponsored Enters., H. Comm. on Fin. Servs.*, 111th Cong. (2010).

<sup>11</sup> See, e.g., *The election is over: Now what for Fannie and Freddie?*, AMERICAN ENTER. INST. (Nov. 13, 2014) (“*The election is over*”), <http://goo.gl/7iDdVT>; *The Future of Fannie Mae and Freddie Mac*, BROOKINGS (May 13, 2014), <http://goo.gl/IMqUeQ>.

<sup>12</sup> See, e.g., Joe Gyourko, *A New Direction for Housing Policy*, NAT’L AFF., Spring 2015, at 27.

<sup>13</sup> See, e.g., Morgenson, *supra* note 7; Jody Shenn, Margaret Cronin Fisk, and Clea Benson, *Fannie Mae, Freddie Mac Plunge After Court Ruling on Profit*, BLOOMBERGBUSINESS, Oct. 1, 2014, <http://goo.gl/kGmr8q>.

<sup>14</sup> *The election is over*, *supra* note 11.

protective Order—seeks to keep secret. The impoverishment of the debate over these crucial questions of public policy “cannot be ignored,” *Anderson*, 805 F.2d at 7, and this Court should give the public access to the Documents.

**II. AT THE VERY LEAST, THIS COURT SHOULD DE-DESIGNATE THE REDACTED DOCUMENTS.**

**A. The Redacted Documents contain no Protected Information.**

Although Plaintiffs strongly believe that the Documents contain no Protected Information, they nonetheless proposed to Grant Thornton, as a compromise, that the Redacted Documents be de-designated. The redacted 2008 Valuation Chart discloses only [REDACTED] and the redacted 2011 Assets Document removes all handwritten notes save one. *See* Exhibits I and J. The redacted 2011 Valuations omit the entirety of the main body of each document, Exhibits 2–4, and all appendices, leaving only the cover page and the bare minimum of relevant information. *See* Exhibits K and L. Plaintiffs have tried, in good faith, to find a way for the public to gain access to important information about their Government while addressing Grant Thornton’s objections. Yet, Grant Thornton persists in refusing to lift the Protected Information designation from versions of the Documents that clearly lie outside the bounds of the Protective Order. Notably, in refusing to de-designate the Redacted Documents, Grant Thornton did not argue, or even suggest, that the Redacted Documents contain *any* Protected Information. This was no oversight, as there is no justification for keeping this information hidden.

The information in the redacted versions of the 2008 Valuation Chart and the 2011 Assets Document is several years old and cannot plausibly be deemed confidential, particularly since

much of it is already public. Furthermore, as recounted above, the Government has already publicly disclosed the net comprehensive income estimates contained in the redacted 2011 Valuations for FY2011–FY2023. *Compare* Exhibit M at 3847, 3849 *with* Exhibit K at 7276 and Exhibit L at 7352–53. There can be no contention, therefore, that such information is confidential, as it has already been made public, and since the estimates for the remaining years are simply extensions of the same kind of analysis, there is no serious argument that those estimates are confidential either. *See id.* at 7353–54; Exhibit K at 7276. Similarly, we already know that the information in the 2011 Valuations will not have any impact on current market conditions because the Government *has already disclosed* the net comprehensive income forecasts for the 2012–23 period—and no one contends that this caused economic disruption. The forecasts contained in the redacted 2011 Valuations other than the net comprehensive income estimates are outdated and will have no effect on current economic conditions. Finally, Grant Thornton has provided no reason for believing that the information in the Redacted Documents is proprietary. *See supra* pages 6–7.

Thus, even if there were any doubt that the Documents contain Protected Information, there can be none with regard to the Redacted Documents, since much of the information in them has already been made public and all of the information is outdated and non-proprietary. At the very least, then, this Court should de-designate the Redacted Documents for public access.

**B. The Protective Order permits the de-designation of partially redacted information under Paragraphs 17 and 19.**

It appears that Grant Thornton has taken the position that if a party wishes to de-designate information that has not been submitted as part of a filing in this Court, either the entire document must be de-designated or it must remain protected. In other words, Grant Thornton denies

that the Protective Order permits Plaintiffs' proposal: the de-designation of partially redacted information pursuant to Paragraphs 17 and 19. Rather, Grant Thornton apparently believes that Paragraph 11 is the exclusive method of de-designating partially redacted information.

There is no basis for Grant Thornton's interpretation of the Protective Order. Paragraph 11 is a standard provision of protective orders and merely creates a process to ensure that filings in this Court are made accessible to the public in redacted form. That purpose is consistent with the public's First Amendment right of access to court filings. *See In re Violation of Rule 28(D)*, 635 F.3d at 1356 ("There is a strong presumption in favor of a common law right of public access to court proceedings.").

What Paragraph 11 does *not* do is provide the *exclusive* means of de-designating partially redacted information. Nothing in Paragraph 11 purports to foreclose de-designating partially redacted information under Paragraphs 17 and 19, and nothing in the rest of the Protective Order does either. Indeed, the Protective Order repeatedly distinguishes between *information* and *documents*, and it makes clear that its purpose is to safeguard information. *See, e.g.*, P.O. ¶ 2 (stating that "Protected Information may be *contained in . . . any document*" (emphasis added)). Clearly, then, the order contemplates that information "contained in . . . any document" can be de-designated. Paragraph 19 expressly provides that a party may "question whether any particular document *or information* is Protected Information" (emphasis added); it does not put parties to the choice of either de-designating an entire document or keeping it secret. The text and purpose of the order contradict Grant Thornton's interpretation, and, if this Court determines that the Documents contain Protected Information, it should at least de-designate the Redacted Documents.

**III. ALTERNATIVELY, THIS COURT SHOULD AUTHORIZE PLAINTIFFS TO FILE THE DOCUMENTS IN THE *FAIRHOLME* D.C. CIRCUIT LITIGATION AND IN ANY OTHER ACTION CHALLENGING THE NET WORTH SWEEP IN WHICH PLAINTIFFS PARTICIPATE EITHER AS PARTIES OR AMICI.**

Should this Court conclude (wrongly, we respectfully submit) that even the Redacted Documents contain Protected Information under the terms of the Protective Order, Plaintiffs request that the Court at least permit the filing of the Documents under seal in the *Fairholme* D.C. Circuit litigation, as well as in any other action challenging the Net Worth Sweep in which Plaintiffs participate either as parties or amici. This alternative course of action is specifically provided for in the Protective Order. *See* P.O. ¶ 18. The opening briefs in the *Fairholme* appeal are due on June 30, 2015. *See supra* note 1. The Documents contain information that is plainly relevant to the D.C. Circuit’s decision and to the decisions of other courts that will decide similar challenges. These courts deserve to have access to this information when making their decisions.

For instance, we know that the net comprehensive income forecasts included in the 2011 Valuations are relevant to the D.C. Circuit litigation because *the Government itself* submitted some of these forecasts to the D.D.C. as part of the Administrative Record. *See* Exhibit M at 3847, 3849. All that Plaintiffs request, then, is that the D.C. Circuit have access to the full picture of Grant Thornton’s net comprehensive income forecasts contained in the Documents—in particular, the cover pages that show the date of these projections, September 2011. The record before the D.C. Circuit suggests that these were “June 2012” projections. *Id.* at 3833, 3847, 3849. It is thus imperative that the D.C. Circuit have access to the 2011 Valuations so that its decision is not based on a false factual premise. To withhold this information from the D.C. Circuit would be to permit the Government to selectively disclose pertinent information to that court, violating the principle that courts must “protect the integrity of the judicial process” and “prevent improper

use of judicial machinery.” *New Hampshire v. Maine*, 532 U.S. 742, 749, 750 (2001) (quotation marks omitted).

Any concerns about sensitive information can be accommodated in the same way they were accommodated in this case: by filing the information under seal and placing the litigants under the terms of the Protective Order. As the Tenth Circuit said in a similar context, “[A]ny legitimate interest the defendants have in continued secrecy as against the public at large can be accommodated by placing [third-party litigants] under the restrictions on use and disclosure contained in the original protective order.” *United Nuclear Corp. v. Cranford Ins. Co.*, 905 F.2d 1424, 1428 (10th Cir. 1990); *cf. Olympic Ref. Co. v. Carter*, 332 F.2d 260, 264–66 (9th Cir. 1964) (permitting the modification of protective orders to allow third-party litigants to take advantage of discovered information).

The Redacted Documents should be made public, but, failing that, the unredacted Documents should at least be made available to other courts under seal.

### **CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request, pursuant to Paragraphs 17 and 19 of the Protective Order, that the Court enter an order requiring Grant Thornton to remove the “Protected Information” designation from the Documents. If the Court does not believe such relief is appropriate, Plaintiffs respectfully request that the Court order the “Protected Information” designation removed from the Redacted Documents. Alternatively, Plaintiffs respectfully request, pursuant to Paragraph 18 of the Protective Order, that this Court authorize the filing of the Documents under seal in the *Fairholme* D.C. Circuit litigation, as well as in any other action challenging the Net Worth Sweep in which Plaintiffs participate either as parties or amici.



Date: June 18, 2015

Respectfully submitted,

*Of counsel:*

Vincent J. Colatriano  
David H. Thompson  
Peter A. Patterson  
Brian W. Barnes  
COOPER & KIRK, PLLC  
1523 New Hampshire Avenue, N.W.  
Washington, D.C. 20036  
(202) 220-9600  
(202) 220-9601 (fax)

s/ Charles J. Cooper  
Charles J. Cooper  
*Counsel of Record*  
COOPER & KIRK, PLLC  
1523 New Hampshire Avenue, N.W.  
Washington, D.C. 20036  
(202) 220-9600  
(202) 220-9601 (fax)  
ccooper@cooperkirk.com

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing was served upon all counsel of record on this 18th day of June, 2015, via the Court's Electronic Case Filing system, and upon Grant Thornton's counsel by First Class USPS mail:

Ellen Randel  
Managing Director  
Grant Thornton LLP  
333 John Carlyle  
Suite 500  
Alexandria, VA 22314  
ellen.randel@us.gt.com

s/ Charles J. Cooper  
Charles J. Cooper

# APPENDIX

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**REDACTED**

**EXHIBIT B**  
**REDACTED**

**EXHIBIT C**  
**REDACTED**

**EXHIBIT D**  
**REDACTED**



**EXHIBIT E**  
**REDACTED**

# APPENDIX

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# APPENDIX

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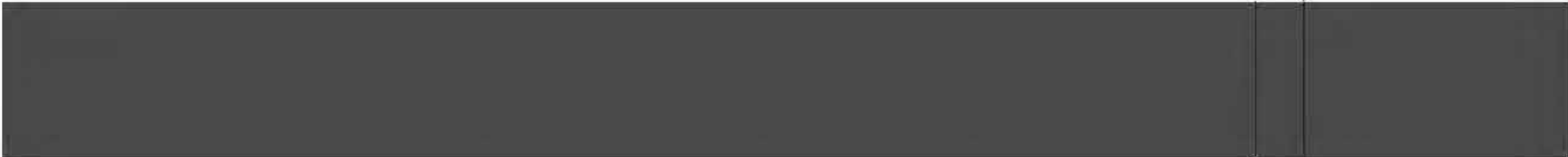
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**EXHIBIT L**  
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# EXHIBIT M



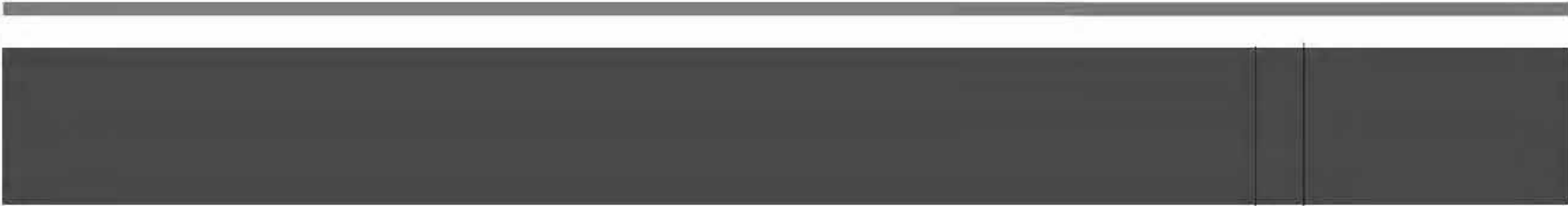
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# GSE Preferred Stock Purchase Agreements (PSPA) Overview and Key Considerations

Sensitive and Pre-Decisional

June 13, 2012



## Primary GSE Financial Forecast Assumptions

Sensitive / Pre-Decisional

- As conservator, FHFA evaluated the GSEs financial future by performing sensitivity analyses, commonly referred to as the “stress tests.”
  - The sensitivity analyses included a base and downside case and were projected out to year 2014.
  - The sensitivity analyses were based on assumptions about GSE operations, loan performance, macroeconomic and financial market conditions, and house prices.
- Treasury also evaluated the financial prospects of the GSEs.
  - Grant Thornton was engaged as an independent, third-party consultant to perform a valuation of the entities for the Treasury Financial Report and OMB budget estimation figures.
  - Grant Thornton developed their own forecasts based, in part, on the forecasts prepared by each GSE based on a consistent set of assumptions provided by FHFA.
  - The Grant Thornton models were projected out until each GSE depleted its PSPA capacity.
- Both the FHFA and Grant Thornton analyses were used to generate the forecast estimates on the subsequent pages.

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# Fannie Mae Base Case PSPA Forecast

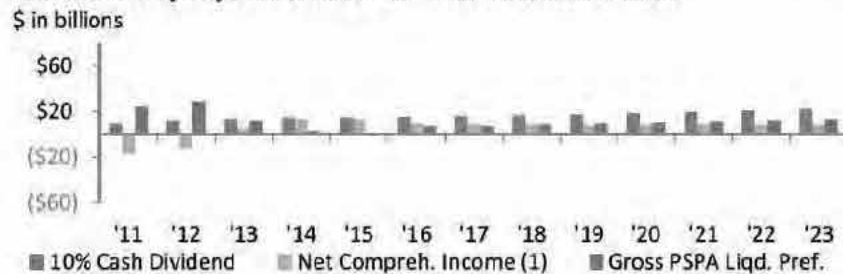
Sensitive / Pre-Decisional

Projections: \$ in billions	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017	FY2018	FY2019	FY2020	FY2021	FY2022	FY2023
Net Comprehensive Income (Loss) <sup>1</sup>	(\$13.1)	\$5.4	\$13.1	\$13.5	\$9.1	\$8.5	\$8.0	\$7.9	\$8.5	\$8.4	\$8.1	\$8.0
Total Gross PSPA Draw	\$28.7	\$11.4	\$2.9	\$1.2	\$7.0	\$7.1	\$8.2	\$9.4	\$9.8	\$10.7	\$12.1	\$13.5
Total Dividend Paid	(\$11.8)	(\$14.0)	(\$14.8)	(\$15.0)	(\$15.2)	(\$15.9)	(\$16.6)	(\$17.5)	(\$18.4)	(\$19.4)	(\$20.6)	(\$21.8)
Total PSPA Draw Net of PSPA Dividends	\$16.9	(\$2.6)	(\$11.9)	(\$13.8)	(\$8.2)	(\$8.8)	(\$8.4)	(\$8.1)	(\$8.6)	(\$8.7)	(\$8.5)	(\$8.3)
Projected End of Period Net Worth <sup>2</sup>	(\$6.2)	(\$3.4)	(\$2.2)	(\$2.5)	(\$1.6)	(\$1.9)	(\$2.3)	(\$2.4)	(\$2.5)	(\$2.9)	(\$3.3)	(\$3.6)
Percent of Dividends Funded by PSPA Draws	100%	81%	20%	8%	46%	45%	49%	54%	53%	55%	59%	62%
Dollar Amt. of Dividends Funded by Earnings	\$0.0	\$2.6	\$11.9	\$13.8	\$8.2	\$8.8	\$8.4	\$8.1	\$8.6	\$8.7	\$8.5	\$8.3
Cumulative Cash Dividends Funded by Earnings	\$0.0	\$2.6	\$14.5	\$28.3	\$36.5	\$45.3	\$53.7	\$61.7	\$70.4	\$79.1	\$87.6	\$95.9
Cumulative Net Return To Taxpayers By FY2023 <sup>3</sup>	-	-	-	-	-	-	-	-	-	-	-	\$92.4
Beginning PSPA Liquidation Preference	\$112.6	\$141.3	\$152.7	\$155.6	\$156.8	\$163.8	\$170.9	\$179.1	\$188.5	\$198.3	\$209.0	\$221.1
Total Gross Liquidation Preference	\$28.7	\$11.4	\$2.9	\$1.2	\$7.0	\$7.1	\$8.2	\$9.4	\$9.8	\$10.7	\$12.1	\$13.5
Cumulative Gross Liquidation Preference	\$141.3	\$152.7	\$155.6	\$156.8	\$163.8	\$170.9	\$179.1	\$188.5	\$198.3	\$209.0	\$221.1	\$234.6
Remaining PSPA Funding Capacity	\$125.0	\$120.8 <sup>4</sup>	\$117.9	\$116.7	\$109.7	\$102.6	\$94.4	\$85.0	\$75.2	\$64.5	\$52.4	\$38.9
Cumulative Net PSPA Investment <sup>5</sup>	\$112.3	\$109.7	\$97.7	\$84.0	\$75.8	\$67.0	\$58.6	\$50.5	\$41.9	\$33.2	\$24.7	\$16.4

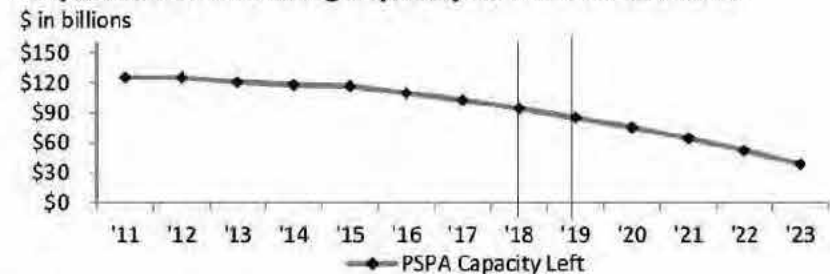
TREASURY-3047

A138

Per annum projected PSPA draws and dividends



Projected PSPA funding capacity as a result of draws



(1) Net comprehensive income is defined as the sum of economic net interest margin, fees and other income less a provision for credit losses, administrative expenses and other non-interest expenses.  
 (2) Negative every year because of a one quarter timing delay in payment of PSPA draw requests. Calculated as the sum of net comprehensive income and total gross PSPA draws less total dividends paid.  
 (3) The cumulative net return to taxpayers by FY2023 represents the sum of the cumulative cash dividends funded by earnings as of FY2023 and the projected end of period net worth in FY2023.  
 (4) Remaining PSPA funding capacity reduced by draws that occur after January 1, 2013. Potential PSPA draws in 4Q 2012 appear as FY2013 but do not reduce PSPA capacity.  
 (5) The cumulative net PSPA investment decreases by the dollar amount of dividends funded by earnings paid to the U.S. Department of the Treasury.



# Freddie Mac Base Case PSPA Forecast

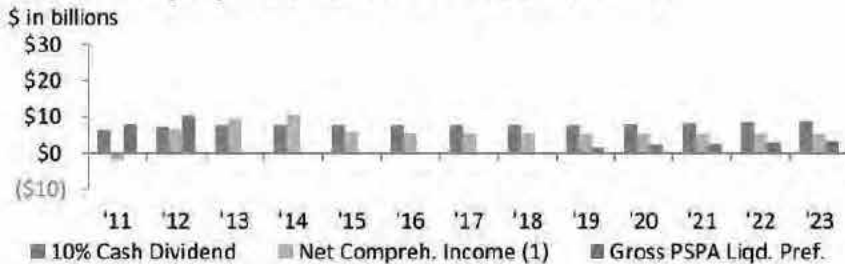
Sensitive / Pre-Decisional

Projections: \$ in billions	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017	FY2018	FY2019	FY2020	FY2021	FY2022	FY2023
Net Comprehensive Income (Loss) <sup>1</sup>	\$6.7	\$9.5	\$10.6	\$6.0	\$5.5	\$5.5	\$5.6	\$5.3	\$5.5	\$5.4	\$5.4	\$5.4
Total Gross PSPA Draw	\$10.5	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$1.5	\$2.5	\$2.6	\$3.0	\$3.3
Total Dividend Paid	(\$7.3)	(\$7.7)	(\$7.7)	(\$7.7)	(\$7.7)	(\$7.7)	(\$7.7)	(\$7.7)	(\$7.9)	(\$8.2)	(\$8.4)	(\$8.7)
Total PSPA Draw Net of PSPA Dividends	\$3.2	(\$7.7)	(\$7.7)	(\$7.7)	(\$7.7)	(\$7.7)	(\$7.7)	(\$6.2)	(\$5.4)	(\$5.6)	(\$5.4)	(\$5.4)
Projected End of Period Net Worth <sup>2</sup>	\$3.5	\$5.3	\$8.2	\$6.6	\$4.4	\$2.3	\$0.2	(\$0.7)	(\$0.6)	(\$0.7)	(\$0.8)	(\$0.8)
Percent of Dividends Funded by PSPA Draws	100%	0%	0%	0%	0%	0%	0%	19%	32%	32%	36%	38%
Dollar Amt. of Dividends Funded by Earnings	\$0.0	\$7.7	\$7.7	\$7.7	\$7.7	\$7.7	\$7.7	\$6.2	\$5.4	\$5.6	\$5.4	\$5.4
Cumulative Cash Dividends Funded by Earnings	\$0.0	\$7.7	\$15.3	\$23.0	\$30.7	\$38.3	\$46.0	\$52.2	\$57.6	\$63.2	\$68.6	\$74.0
Cumulative Net Return To Taxpayers By FY2023 <sup>3</sup>	-	-	-	-	-	-	-	-	-	-	-	\$73.2
Beginning PSPA Liquidation Preference	\$72.2	\$82.7	\$82.7	\$82.7	\$82.7	\$82.7	\$82.7	\$82.7	\$84.2	\$86.7	\$89.3	\$92.3
Total Gross Liquidation Preference	\$10.5	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$1.5	\$2.5	\$2.6	\$3.0	\$3.3
Cumulative Gross Liquidation Preference	\$82.7	\$82.7	\$82.7	\$82.7	\$82.7	\$82.7	\$82.7	\$84.2	\$86.7	\$89.3	\$92.3	\$95.6
Remaining PSPA Funding Capacity	\$150.0	\$150.0 <sup>4</sup>	\$150.0	\$150.0	\$150.0	\$150.0	\$150.0	\$148.5	\$146.0	\$143.4	\$140.4	\$137.1
Cumulative Net PSPA Investment <sup>5</sup>	\$60.5	\$52.8	\$45.2	\$37.5	\$29.8	\$22.2	\$14.5	\$8.3	\$2.9	(\$2.7)	(\$8.1)	(\$13.5)

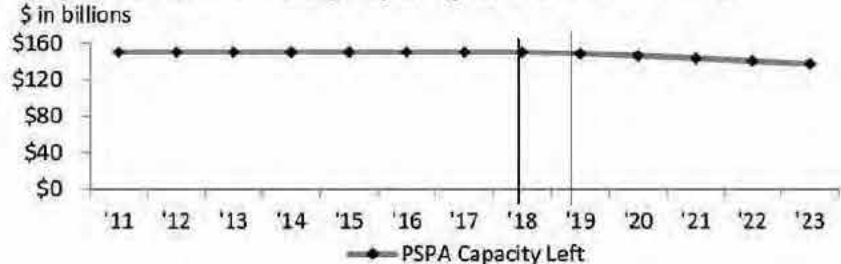
TREASURY-3049

A139

Per annum projected PSPA draws and dividends



Projected PSPA funding capacity as a result of draws



(1) Net comprehensive income is defined as the sum of economic net interest margin, fees and other income less a provision for credit losses, administrative expenses and other non-interest expenses.  
 (2) Negative in some years because of a one quarter timing delay in payment of PSPA draw requests. Calculated as the sum of net comprehensive income and total gross PSPA draws less total dividends paid.  
 (3) The cumulative net return to taxpayers by FY2023 represents the sum of the cumulative cash dividends funded by earnings as of FY2023 and the projected end of period net worth in FY2023.  
 (4) Remaining PSPA funding capacity reduced by draws that occur after January 1, 2013. Potential PSPA draws in 4Q 2012 appear as FY2013 but do not reduce PSPA capacity.  
 (5) The cumulative net PSPA investment decreases by the dollar amount of dividends funded by earnings paid to the U.S. Department of the Treasury.

# EXHIBIT N

1 UNITED STATES COURT OF FEDERAL CLAIMS

2

3

4 FAIRHOLME FUNDS, INC., ET AL., )

5 Plaintiffs, ) Case No.

6 vs. ) 13-465C

7 THE UNITED STATES OF AMERICA, )

8 Defendant. )

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Courtroom 4

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Howard T. Markey National Courts Building

14

717 Madison Place, N.W.

15

Washington, D.C.

16

Wednesday, July 16, 2014

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2:00 p.m.

18

Status Conference

19

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BEFORE: THE HONORABLE MARGARET M. SWEENEY

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24

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Elizabeth M. Farrell, CERT, Digital Transcriber

Fairholme Funds, Inc., et al. v. USA

7/16/2014

1           Our proposed definition in our proposed paragraph 2  
2 fully satisfies the relevant principles underlying Rule 26C  
3 and fully protects any interest a producing party may have in  
4 protecting against the disclosure of information that is  
5 legitimately viewed as sensitive. We have defined protected  
6 information to include proprietary, trade secret or market-  
7 sensitive information, as well as other information that is  
8 otherwise protected from disclosure under applicable law.  
9 That standard, we would submit, is consistent with the  
10 language of the rules and the case law.

11           And by including the term "market-sensitive  
12 information," the proposal will protect any information whose  
13 disclosure would have the types of market distorting or  
14 economic effects that the Government has warned about in its  
15 separate pending motion for protective order regarding  
16 materials related to the conservatorships. And, in fact, we  
17 took the term "market-sensitive information" from the  
18 Government's own proposal. We had originally proposed  
19 something like competitively-sensitive information. The  
20 Government responded by proposing "market-sensitive" and  
21 we've adopted that. We think that makes sense in the context  
22 of this case.

23           THE COURT: But you did not agree with the word  
24 "confidential."

25           MR. COLATRIANO: The word "confidential" was added

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Fairholme Funds, Inc., et al. v. USA

11  
7/16/2014

1 very late in the game. It was back on Friday afternoon, by  
2 the Government. They had not proposed that before. I don't  
3 think we would have a problem with that word as long as it  
4 weren't meant to describe anything that's not publicly --  
5 that hasn't publicly been released is, therefore, protected.  
6 We don't think that's the standard. In the case law,  
7 confidential, in this context, usually means something whose  
8 disclosure could cause some harm. So, the mere fact that it  
9 hasn't already been publicly released is not sufficient.

10 THE COURT: Yes.

11 MR. COLATRIANO: And, so, it's not --

12 THE COURT: No, I agree with you. I did -- I was  
13 having difficulty understanding, though, why Plaintiff  
14 opposed "confidential." So, that's --

15 MR. COLATRIANO: That was added literally at the --  
16 by the Government at the last minute on Friday and they added  
17 it as a stand-alone category. And if what they meant was it  
18 hasn't been publicly -- if it hasn't already been publicly  
19 released, it should never be publicly released or it should  
20 have these restrictions, then we don't agree with that.  
21 But --

22 THE COURT: Well, I don't think that's the  
23 understood definition of confidential.

24 MR. COLATRIANO: And with that understanding, if  
25 it's something that (inaudible) disclosure would cause these

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# EXHIBIT O

**From:** Vince Colatriano  
**Sent:** Wednesday, May 13, 2015 5:25 PM  
**To:** 'Randel, Ellen'  
**Cc:** David Thompson  
**Subject:** RE: "De-Designation" of Grant Thornton Document

Ellen –

In light of Grant Thornton's refusal to "de-designate" the document at issue (in either a redacted or an unredacted version), I am writing to provide you with the required notice, under Paragraph 17 of the Protective Order, of our intent to seek a ruling from the Court on this issue. Please let me know if you have any questions.

Thanks

Vince

Vincent J. Colatriano  
Cooper & Kirk, PLLC  
1523 New Hampshire Ave. NW  
Washington, D.C. 20036  
202-220-9656  
[www.cooperkirk.com](http://www.cooperkirk.com)

---

**From:** Randel, Ellen [<mailto:Ellen.Randel@us.gt.com>]  
**Sent:** Wednesday, May 13, 2015 11:02 AM  
**To:** Vince Colatriano  
**Subject:** RE: "De-Designation" of Grant Thornton Document

Vince –

Grant Thornton does not agree to your request to de-designate the document Bates-stamped GT006315-55. This document contains information that has not been publically released. It is different from and contains more information than contained in the document you represent has been previously publically released by Treasury. Moreover, it falls under the scope of documents to be protected under the Protective Order.

Grant Thornton also does not agree to your proposal to designate and publically release a redacted version of the document Bates-stamped GT006315-55. Redaction of protected documents is not contemplated by the Protective Order and Grant Thornton will not agree to such a process.

Ellen

**Ellen Randel | Managing Director**

Grant Thornton LLP

333 John Carlyle, Suite 500 | Alexandria, VA | 22314 | United States

**T (direct)** +1 703 562 5960

**F** +1 703 837 4455

**E** [ellen.randel@us.gt.com](mailto:ellen.randel@us.gt.com) | **W** [www.grantthornton.com](http://www.grantthornton.com)

---

**From:** Vince Colatriano [<mailto:vcolatriano@cooperkirk.com>]

**Sent:** Monday, May 11, 2015 11:38 AM


**To:** Randel, Ellen

**Cc:** David Thompson; Brian Barnes

**Subject:** RE: "De-Designation" of Grant Thornton Document

Ellen –

Good morning. We believe the document at issue is not deserving of protection for multiple reasons, among which are the following:

- (1) Much of the document consists of discussions of public information relating to the history and performance of Freddie Mac, its conservatorship, the Treasury preferred stock, and other items. In addition, the document contains a fairly straightforward discussion of generally accepted accounting principles and related pronouncements, all of which, to our knowledge, are public, and their application to Freddie Mac. As such, we do not believe that the document contains information that is “proprietary, confidential, trade secret, or market-sensitive” within the meaning of the Protective Order (PO).
- (2) The analyses and projections in the document were conducted more than 3 years ago. We do not believe that the disclosure of such stale analyses and projections poses any danger of disclosing the types of sensitive, market-affecting information that motivated the court to adopt the PO.
- (3) Perhaps most importantly, the results of the analyses and projections contained in the document have already been publicly disclosed by the government. We attach for your consideration a Treasury document that was included in the public administrative record filed by the government in related litigation. That document discloses (at the page Bates-stamped Treasury 3837) that the forecasts contained therein were based on the Grant Thornton analyses. 

For these and similar reasons, we do not believe that any information contained in the document meets the PO’s definition of Protected Information. Nor do we believe that continued restrictions on the disclosure of the document are warranted. While we believe this is the case



for both the unredacted and the redacted versions of the document, we can frankly see no legitimate argument that the redacted version of the document, which is limited to projections that for the most part have already been publicly disclosed by the government, is deserving of protection.

Please let me know if you have any other questions.

Take care

Vince

Vincent J. Colatriano  
Cooper & Kirk, PLLC  
1523 New Hampshire Ave. NW  
Washington, D.C. 20036  
202-220-9656  
[www.cooperkirk.com](http://www.cooperkirk.com)

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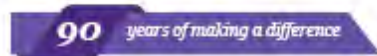
**From:** Randel, Ellen [<mailto:Ellen.Randel@us.gt.com>]  
**Sent:** Friday, May 08, 2015 3:09 PM  
**To:** Vince Colatriano  
**Subject:** RE: "De-Designation" of Grant Thornton Document

Vince –

Please explain, in detail, the basis of your belief that the Bates-stamped GT006315-55 does not contain Protected Information and/or is otherwise not deserving of protection under the PO.

Ellen

**Ellen Randel | Managing Director**  
Grant Thornton LLP  
333 John Carlyle, Suite 500 | Alexandria, VA | 22314 | United States  
**T (direct)** +1 703 562 5960  
**F** +1 703 837 4455  
**E** [ellen.randel@us.gt.com](mailto:ellen.randel@us.gt.com) | **W** [www.grantthornton.com](http://www.grantthornton.com)



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**From:** Vince Colatriano [<mailto:vcolatriano@cooperkirk.com>]  
**Sent:** Friday, May 08, 2015 1:49 PM  
**To:** Randel, Ellen  
**Cc:** David Thompson; Brian Barnes  
**Subject:** "De-Designation" of Grant Thornton Document

Ellen –

Good afternoon. Thanks very much for the update you provided this morning.

As you may know, Paragraph 17 of the Protective Order (PO) provides a mechanism for the resolution of disputes over the designation of documents produced in discovery as Protected Information. I am writing to provide you notice, pursuant to Paragraph 17, of our belief that the document that has been Bates-stamped GT006315-55 does not contain Protected Information and/or is otherwise not deserving of protection under the PO. We are therefore requesting that Grant Thornton agree to remove the Protected Information designation from that document.

Although we believe that the document at issue should be “de-designated” in its entirety, we are willing, as a potential compromise, to agree to the de-designation of a redacted version of the document. To that end, I am attaching a password-protected redacted version of the document. I will send you the password by separate email.

Under Paragraph 17 of the PO, the parties are to try to resolve any dispute relating to this request within five business days. To that end, I am available at your convenience to discuss this matter.

Thanks very much, and have a great weekend.

Vince

Vincent J. Colatriano  
Cooper & Kirk, PLLC  
1523 New Hampshire Ave. NW  
Washington, D.C. 20036  
202-220-9656  
[www.cooperkirk.com](http://www.cooperkirk.com)

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# EXHIBIT P

**From:** Vince Colatrisano  
**Sent:** Tuesday, May 19, 2015 5:04 PM  
**To:** Randel, Ellen  
**Cc:** David Thompson; Brian Barnes; Howard Slugh  
**Subject:** RE: Fairholme -- Request to De-Designate Additional Documents

Ellen. Thanks very much for getting back to me so quickly. Please consider this email to constitute notice, under Paragraph 17 of the Protective Order, of our intent to seek a ruling from the Court on this issue. Please let me know if you have any questions.

Thanks again

Vince

Vincent J. Colatrisano  
Cooper & Kirk, PLLC  
1523 New Hampshire Ave. NW  
Washington, D.C. 20036  
202-220-9656  
[www.cooperkirk.com](http://www.cooperkirk.com)

---

**From:** Randel, Ellen [<mailto:Ellen.Randel@us.gt.com>]  
**Sent:** Tuesday, May 19, 2015 2:41 PM  
**To:** Vince Colatrisano  
**Subject:** RE: Fairholme -- Request to De-Designate Additional Documents

Vince –

You are correct. Grant Thornton does not agree to de-designate any documents that it has produced under the Protective Order.

Thanks,

**Ellen Randel | Managing Director**  
Grant Thornton LLP  
333 John Carlyle, Suite 500 | Alexandria, VA | 22314 | United States  
**T (direct)** +1 703 562 5960  
**F** +1 703 837 4455  
**E** [ellen.randel@us.gt.com](mailto:ellen.randel@us.gt.com) | **W** [www.grantthornton.com](http://www.grantthornton.com)



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**From:** Vince Colatriano [<mailto:vcolatriano@cooperkirk.com>]  
**Sent:** Tuesday, May 19, 2015 2:26 PM  
**To:** Randel, Ellen  
**Cc:** David Thompson; Brian Barnes; Howard Slugh  
**Subject:** Fairholme -- Request to De-Designate Additional Documents

Ellen –

Good afternoon. I'm writing, pursuant to Paragraph 17 of the *Fairholme* Protective Order (PO), to request that Grant Thornton (GT) remove the "Protected Information" designation from the following documents that were produced to us late last week:

GT007252-007304: 11/8/11 Valuation of Senior Preferred Stock (Fannie) as of 9/30/11  
GT007328-007382: 11/8/11 Valuation of Senior Preferred Stock (Freddie) as of 9/30/11  
GT007406-007446: 11/8/11 Valuation of SPSA Warrant (Fannie) as of 9/30/11  
GT007472-007512: 11/8/11 Valuation of SPSA Warrant (Freddie) as of 9/30/11  
GT007538-007572: 11/8/11 Calculation of Future Liquidity Payments (Fannie) as of 9/30/11  
GT007573-007613: 11/8/11 Calculation of Future Liquidity Payments (Freddie) as of 9/30/11

Please note that the second document listed above (GT007328-007382) is a complete version of the same Freddie preferred stock valuation document (GT006315-55) that was the subject of our email exchange last week, and with respect to which GT refused to remove the Protected Information designation.

Given the substantial overlap between the above documents and the document that was the subject of our email exchange last week, we believe that the above documents should be "de-designated" for the same reasons we believed the Freddie preferred stock valuation document should be de-designated. Of course, in light of that same substantial overlap between the matters addressed in the documents, we are assuming that for the same reasons GT refused to "de-designate" the Freddie preferred stock valuation document, it will refuse to de-designate any of the above documents. If you could promptly confirm whether GT's position with respect to these documents is in fact the same as it was for that one, we would appreciate it.

Finally, since you expressed the view, during our email exchange last week, that the PO does not authorize or contemplate the preparation of redacted versions of protected documents, we will operate under the assumption that GT would not agree to the production of public redacted versions of any of the above documents. If that assumption is incorrect, please let me know.

Looking forward to your prompt response to this request.

Thanks very much

Vince

Vincent J. Colatriano  
Cooper & Kirk, PLLC  
1523 New Hampshire Ave. NW  
Washington, D.C. 20036  
202-220-9656  
[www.cooperkirk.com](http://www.cooperkirk.com)

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# EXHIBIT Q



**From:** Vince Colatriano  
**Sent:** Tuesday, May 26, 2015 5:44 PM  
**To:** 'Randel, Ellen'  
**Subject:** RE: Fairholme -- De-Designation of Documents

Ellen. Thanks very much for getting back to me on this. Please consider this email to constitute notice, under Paragraph 17 of the Protective Order, of our intent to seek a ruling from the Court on this issue. Please let me know if you have any questions.

Thanks again

Vince

Vincent J. Colatriano  
Cooper & Kirk, PLLC  
1523 New Hampshire Ave. NW  
Washington, D.C. 20036  
202-220-9656  
[www.cooperkirk.com](http://www.cooperkirk.com)

---

**From:** Randel, Ellen [<mailto:Ellen.Randel@us.gt.com>]  
**Sent:** Friday, May 22, 2015 5:45 PM  
**To:** Vince Colatriano  
**Subject:** RE: Fairholme -- De-Designation of Documents

Vince –

Grant Thornton does not agree to de-designation.

Ellen

**Ellen Randel | Managing Director**  
Grant Thornton LLP  
333 John Carlyle, Suite 500 | Alexandria, VA | 22314 | United States  
**T (direct)** +1 703 562 5960  
**F** +1 703 837 4455  
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**From:** Vince Colatriano [<mailto:vcolatriano@cooperkirk.com>]  
**Sent:** Friday, May 22, 2015 4:55 PM  
**To:** Randel, Ellen  
**Cc:** David Thompson; Pete Patterson; Howard Slugh  
**Subject:** Fairholme -- De-Designation of Documents

Ellen –

Good afternoon. I have three additional documents that we would like to request, pursuant to Paragraph 17 of the *Fairholme* Protective Order, that Grant Thornton agree to “de-designate”. The three documents, which are attached, begin with the following Bates numbers:

GT005322  
GT007117  
GT007136

We have also prepared, as a potential compromise, redacted versions of all three documents. All of the attached files are password protected; I will send you the password by separate email.

We understand, based on our recent email exchanges, that Grant Thornton is unlikely to agree to de-designate either the full or redacted versions of these documents. While we would of course be happy if Grant Thornton reconsidered its position, we would appreciate it if, at a minimum, you could confirm that position at your earliest opportunity.

Thanks very much, and have a great weekend.

Vince

Vince

Vincent J. Colatriano  
Cooper & Kirk, PLLC

1523 New Hampshire Ave. NW  
Washington, D.C. 20036  
202-220-9656  
[www.cooperkirk.com](http://www.cooperkirk.com)

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# EXHIBIT R

U.S. Department of the Treasury |



# THE DEPARTMENT OF THE TREASURY Agency Financial Report

Fiscal Year 2011



November 15, 2011

recovering taxpayer dollars. Ultimately, Treasury expects that TARP's bank programs will produce a lifetime profit of more than \$20 billion. In May 2011, Chrysler repaid the remainder of its TARP loans, a full six years ahead of schedule. Treasury has now exited from its investment with Chrysler at a smaller loss than initially expected. Additionally, the American International Group (AIG) completed a major restructuring plan, marking a major milestone in the company's remarkable turnaround and putting taxpayers in a better position to recover their investment in AIG.

As of September 30, 2011, TARP has a total estimated cost of \$70.2 billion, a fraction of the original \$700 billion amount originally authorized by Congress. Most of the program's expected costs result from assistance provided to struggling homeowners and the automobile industry.

#### **WORKED TO STABILIZE THE HOUSING MARKET**

In the face of the worst housing crisis in a generation, Treasury played an important role in the government's programs to prevent avoidable foreclosures and support the continued repair of the housing market in fiscal year 2011.

Under Treasury's Home Affordable Modification Program (HAMP), one of several critical homeownership assistance programs under the [Making Home Affordable](#) initiative, over 800,000 families received permanent mortgage modifications. By setting affordability standard procedures and providing a framework for homeowner assistance that the private sector can follow, HAMP has also driven industry improvements that resulted in two million additional modifications outside the program. Treasury continues to refine and strengthen the Department's housing programs and is taking additional steps to help ensure Americans are better served by their mortgage companies. These steps include publishing a compliance [scorecard](#) for each of the 10 largest HAMP servicers and requiring all Making Home Affordable-participating servicers to assign a single point of contact to each homeowner requesting a HAMP modification.

Another key housing priority for the Department in fiscal year 2011 was comprehensive housing finance reform. In February, the Administration laid out a plan to wind down Fannie Mae and Freddie Mac and reform the nation's

housing finance system. In February 2011, the Treasury Department and the Department of Housing and Urban Development released a report, "Reforming America's Housing Finance Market," that offered a new framework for housing finance. The report reflected Treasury's view that private capital should provide the dominant share of mortgage credit, and Fannie Mae and Freddie Mac should be wound down commensurate with the health of the housing market and the economy. The report concluded that government should have three core responsibilities in the housing finance market: consumer protection and robust supervision, targeted assistance for low and medium income homeowners and renters, and maintaining the ability to provide market stability in the event of a crisis.

Treasury is also working with FHFA on new options for selling single-family real estate owned properties held by Fannie Mae and Freddie Mac, and the Federal Housing Administration, as well as changes to the Home Affordable Refinance Program (HARP) that would help allow more Americans to refinance their mortgages at today's historically low rates.

#### **MANAGED SENIOR PREFERRED STOCK PURCHASE AGREEMENTS**

The *Housing and Economic Recovery Act of 2008* (HERA) authorized the Department to purchase obligations and other securities issued by Fannie Mae, Freddie Mac or one of the 12 Federal Home Loan Banks. At the time the Federal Housing Finance Agency (FHFA) placed Fannie Mae and Freddie Mac into conservatorship in September 2008, Treasury established Senior Preferred Stock Purchase Agreements (SPSPAs) to ensure that each firm maintained a positive net worth. The maximum amount available to each GSE under this agreement is currently based on a formulaic cap that allows continued draws for three years ending December 2012 at amounts that will automatically adjust upwards quarterly by the cumulative amount of any losses realized by either GSE and downward by the cumulative amount of any gains, but not below \$200 billion, and will become fixed at the end of the three years. At the conclusion of the three-year period, the remaining commitment will then be fully available to be drawn per the terms of the agreements. As of September 30, 2011 and 2010, the Department's gross

investment in Fannie Mae and Freddie Mac were \$169.0 billion and \$148.2 billion, respectively.

The U.S. Government's investment in and support of the GSEs through the SPSPAs was structured in such a way that ensures virtually all profits in the company revert to the Government in the form of dividends on the preferred shares in Fannie Mae and Freddie Mac. To get a true picture of the Government's exposure in the companies, it is critical to factor in those dividends and net them against the draws that the GSEs make from Treasury. For instance, for fiscal year 2011, while the GSEs had \$20.8 billion in gross draws, this was before accounting for \$15.6 billion in dividends paid back to Treasury, resulting in a net draw of \$5.2 billion. As of September 30, 2011 and 2010, the Department's net cost for financial support provided to the GSEs under the SPSPAs after accounting for those dividends were \$136.9 billion and \$131.7 billion, respectively.

Freddie Mac is projected to have positive net operating income starting in the fiscal year 2012 and Fannie Mae is project to have positive net operating income starting in fiscal year 2013. However, over time their net income will be inadequate to cover the senior preferred dividend payments due to Treasury based on the balance of preferred stock outstanding and the accretion of the balance due to incremental draws over time to fund further dividends. The projections take into account that the GSEs will be gradually winding down their retained mortgage portfolios to the \$250 billion cap specified in the SPSPAs and assume modest price increases on the single family guarantee business implemented gradually over time after 2013. As noted above, liabilities for gross draws under the SPSPAs do not represent the true net cost to taxpayers – since they do not include dividends paid to taxpayers on the preferred shares.

### **IMPLEMENTED REGULATORY REFORM**

Treasury helped to coordinate the rulemaking process to implement the comprehensive reforms to the financial system passed by Congress last year in the Dodd-Frank Act, including stronger protections for consumers and tougher limits on risk-taking by banks. These reforms will help make the financial system more secure and better protect the American taxpayer.

Under the Dodd-Frank Act, the Secretary of the Treasury has responsibility for standing up the CFPB and performing certain functions until a CFPB Director is in place. The CFPB was established on July 21, 2010, to make the market for consumer financial products and services work for American consumers, responsible providers, and the economy as a whole. The CFPB has rulemaking, supervisory, enforcement, and other authorities relating to consumer financial products and services. Many of these authorities transferred from seven other federal agencies to the CFPB on July 21, 2011.

Dodd-Frank also established the OFR within the Treasury Department to provide data and analysis to the FSOC and its member agencies. OFR is working to improve the quality and transparency of financial information, conduct and sponsor research related to financial stability, and promote best practices in risk management. In fiscal year 2011, the OFR focused on the initial implementation of its institutional infrastructure and on the initial delivery of data and research-related services to FSOC.

In its first year of operation, the FSOC met nine times. Throughout these meetings, the Council worked to establish its institutional framework, adopted rules of operation, released proposed regulations establishing procedures under the *Freedom of Information Act*, and adopted a transparency policy. Throughout the year, the Council drafted several studies and reports required by the Dodd-Frank Act. On January 18, 2011, the Council released studies on implementation of the Volcker Rule, concentration limits, the economic impact of Dodd-Frank, and risk retention requirements for asset-backed securities. On July 18, 2011, the Council released a report which outlined how various secured creditors are treated in existing resolution regimes and examined whether limiting the amount a secured creditor receives after a default would be an effective means of improving market discipline and protecting U.S. taxpayers.

The Dodd-Frank bill established the FIO within the Department of the Treasury. The FIO is tasked with monitoring the insurance industry for gaps in regulations, providing guidance and recommendations to FSOC regarding insurers which may pose a systemic risk to the insurance or financial systems, monitoring the extent to which underserved communities have access to affordable

FCRA; therefore the liability is calculated at the net present value of estimated future cash flows. Homeowners can refinance into FHA-guaranteed mortgages through December 31, 2012 and the Department will honor its share of claims against the letter of credit through 2020. The Department was required to deposit \$50 million with a commercial bank as its agent to administer payment of claims under the program. As of September 30, 2011, 334 loans had been refinanced and no claim payments have been made to date under this program. As of September 30, 2010, no loans had been refinanced under this program as the joint initiative was entered into late in the fiscal year. The FHA-Refinance Program is accounted for under the FCRA as discussed above.

As of September 30, 2011, and 2010, the Department had committed up to \$45.6 billion, respectively, for these programs. For fiscal year 2011 and 2010, payments made from the Housing Programs Under TARP totaled \$1.9 billion and \$543 million, respectively.

## **8. INVESTMENTS IN GOVERNMENT SPONSORED ENTERPRISES**

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Fannie Mae and Freddie Mac are stockholder-owned GSEs. Congress established these GSEs to support the supply of mortgage loans. A key function is to package purchased mortgages into securities, which are subsequently sold to investors.

In the lead up to the financial crisis, increasingly difficult conditions in the housing market challenged the soundness and profitability of the GSEs, thereby undermining the entire housing market. This led Congress to pass the Housing and Economic Recovery Act (HERA) (P.L. 110-289). This Act created the new FHFA, with enhanced regulatory authority over the GSEs, and provided the Secretary with certain authorities intended to ensure the financial stability of the GSEs, if necessary. On September 7, 2008, FHFA placed the GSEs under conservatorship and the Department entered into a Senior Preferred Stock Purchase Agreement (SPSPA) with each GSE. These actions were taken to preserve the GSEs' assets, ensure a sound and solvent financial condition, and mitigate systemic risks that contributed to current market instability.

The actions taken by the Department thus far are temporary, as defined by section 1117 of HERA, and are intended to provide financial stability. The purpose of the Department's actions is to maintain the solvency of the GSEs so they can continue to fulfill their vital roles in the home mortgage market while the Administration and Congress determine what structural changes should be made. The FHFA director may terminate the conservatorship if safe and solvent conditions can be established. Draws under the SPSPAs are designed to ensure that the GSEs maintain positive net worth as a result of any net losses from operations, and also meet taxpayer dividend requirements under the SPSPAs. While this arrangement is somewhat circular in the event that dividends exceed net income and draws are made to fund dividends, the SPSPAs were structured to ensure any draws result in an increased nominal investment as further discussed below.

Under the SPSPAs, the Department initially received from each GSE: (i) 1,000,000 shares of non-voting variable liquidation preference senior preferred stock with a liquidation preference value of \$1,000 per share, and (ii) a non-transferrable warrant for the purchase, at a nominal cost, of 79.9 percent of common stock on a fully-diluted basis. The warrants expire on September 7, 2028. The senior preferred stock accrues dividends at 10.0 percent per year, payable quarterly. This rate will increase to 12.0 percent if, in any quarter, the dividends are not paid in cash, until all accrued dividends have been paid. Dividends of \$15.6 billion and \$12.1 billion were received during fiscal years ended September 30, 2011 and 2010, respectively. In addition, beginning March 31, 2011, the GSEs were scheduled to begin paying the Department a "Periodic Commitment Fee" (PCF) on a quarterly basis, payable in cash or via an increase to the liquidation preference. The PCF was to be initially established by the Department on December 31, 2010, based on mutual agreement between the Department and each GSE, in consultation with the Chairman of the Federal Reserve Board, and then subsequently re-established every five years thereafter. This fee may be waived by the Department for up to one



year at a time, if warranted by adverse mortgage market conditions. The Department waived the PCF payments for the calendar year 2011 given that the imposition of the PCF at that time would not fulfill its intended purpose of generating increased compensation to the American taxpayer.

The SPSPAs, which have no expiration date, provide for the Department to disburse funds to the GSEs if, at the end of any quarter, the FHFA determines that the liabilities of either GSE exceed its assets. The maximum amount available to each GSE under this agreement was originally \$100.0 billion and, in May 2009, the maximum amount was raised to \$200.0 billion. In December 2009, the Department amended the SPSPAs to replace the \$200.0 billion per GSE funding commitment cap with a formulaic cap that will allow continued draws for three years at amounts that will automatically adjust upwards quarterly by the cumulative amount of any losses realized by either GSE and downward by the cumulative amount of any gains, but not below \$200.0 billion, and will become fixed at the end of the three years. At the conclusion of the three-year period ending December 2012, the remaining commitment will then be fully available to be drawn per the terms of the agreements (referred to hereafter as the "Adjusted Caps"). Draws against the funding commitment of the SPSPAs do not result in the issuance of additional shares of senior preferred stock; instead, the liquidation preference of the initial 1,000,000 shares is increased by the amount of the draw.

Actual payments to the GSEs for fiscal years ended September 30, 2011 and 2010 were \$20.8 billion and \$52.6 billion, respectively. Additionally, \$316.2 billion and \$359.9 billion were accrued as a contingent liability as of September 30, 2011 and 2010, respectively. This accrued contingent liability is based on the projected draws under the SPSPAs. It is undiscounted and does not take into account any of the offsetting dividends which may be received as a result of those draws.

#### **ACCOUNTING TREATMENT**

**Entity Transactions** – The estimated contingent liability to the GSEs accrued pursuant to the SPSPAs is funded through the Department's direct appropriations. Therefore, they are reflected at their gross amount as "entity" costs on the Department's Consolidated Statements of Net Cost and in the line item, "Cumulative Results of Operations" on the Department's Consolidated Balance Sheets, without considering the increase in senior preferred stock liquidation preference/fair value adjustments, future dividend receipts from the GSEs, or any future PCFs.

**Non-Entity Transactions** – As actual payments are made to the GSEs, they result in increases to the U.S. Government's liquidation preference in the GSEs' preferred stock, and thus represent General Fund exchange revenue reported on the Department's Consolidated Statements of Net Cost as "Net GSEs Non-Entity Revenue." The associated valuation losses and dividends are General Fund-related costs and revenues that are likewise reported as "Net GSEs Non-Entity Revenue."

From a government-wide perspective, the Department's entity expense for the accrued contingent liability under the SPSPAs may, over time, be somewhat mitigated by the General Fund's exchange revenues recognized when actual draw payments are made to the GSEs.

**INVESTMENTS IN GSEs**

As of September 30, 2011 and 2010, the Department's investments in the GSEs consisted of the following (in millions):

<b>GSEs Investments</b>	<b>Gross Investments As of 9/30/11</b>	<b>Cumulative Valuation Loss</b>	<b>9/30/11 Fair Value</b>
Fannie Mae Senior Preferred Stock	\$ 104,627	\$ (26,718)	\$ 77,909
Freddie Mac Senior Preferred Stock	66,004	(12,380)	53,624
Fannie Mae Warrants Common Stock	3,104	(2,137)	967
Freddie Mac Warrants Common Stock	2,264	(1,721)	543
<b>Total GSEs Investments</b>	<b>\$ 175,999</b>	<b>\$ (42,956)</b>	<b>\$ 133,043</b>

<b>GSEs Investments</b>	<b>Gross Investments As of 9/30/10</b>	<b>Cumulative Valuation Loss</b>	<b>9/30/10 Fair Value</b>
Fannie Mae Senior Preferred Stock	\$ 85,941	\$ (29,450)	\$ 56,491
Freddie Mac Senior Preferred Stock	63,924	(12,759)	51,165
Fannie Mae Warrants Common Stock	3,104	(2,097)	1,007
Freddie Mac Warrants Common Stock	2,264	(1,711)	553
<b>Total GSEs Investments</b>	<b>\$ 155,233</b>	<b>\$ (46,017)</b>	<b>\$ 109,216</b>

**SENIOR PREFERRED STOCK AND WARRANTS FOR COMMON STOCK**

In performing the calculations for the valuations of the senior preferred stock and warrants for common stock, the Department relied on the GSEs' public filings and press releases concerning its financial statements, projection forecasts, monthly summaries, quarterly credit supplements, independent research regarding high-yield bond and preferred stock trading, independent research regarding the GSEs' common stock trading, interviews with the GSE's management, and other information pertinent to the valuations. Because of the nature of the instruments, which are not publicly traded and for which there is no comparable trading information available, the valuation relies on significant unobservable inputs that reflect assumptions about the expectations that market participants would use in pricing.

A complicating issue for the valuation of the senior preferred stock is the interaction between liquidity payments and the ongoing liquidation preference of the stock, and the amount of dividends associated with that liquidation preference. The projections assume that a hypothetical buyer would acquire the dividend stream related to the existing balance of the liquidation preference on the transaction date, as well as no PCF payments by the GSEs. This stream of dividend payments was then discounted to address certain issues unique to the senior preferred stock.

The valuation of the warrants are impacted by the nominal exercise price and the large number of potential exercise shares, the market trading of the common stock that underlies the warrants, the principal market, and the market participants. Other discounting factors are the holding period risk related directly to the amount of time that it will take to sell the exercised shares without depressing the market and the other activity under the SPSPA.

**CONTINGENT LIABILITY**

As part of the valuation exercise, the Department prepared a series of long-range projections through 2039 to determine what the implied amount of the total contingent liability to the GSEs under the SPSPAs would be as of that year. Since future payments under the SPSPAs are deemed to be probable, the Department had estimated the contingent liability to be \$316.2 billion as of September 30, 2011. This estimate reflects the projected equity deficits of the GSEs stemming from credit losses and contractual dividend requirements. The valuation analysis as of September 30, 2011 included several case scenarios which resulted in total SPSPA estimates ranging from \$309.6 billion (based on an "optimistic"

case scenario) to \$376.1 billion (based on an “extreme” case scenario). The \$316.2 billion contingent liability reported as of September 30, 2011 reflects the Department’s most likely liability estimate. This compares to the \$359.9 billion contingent liability reported as of September 30, 2010 which was based on a range of \$359.9 billion to \$461.8 billion. The recorded contingent liability is the total estimated payments for the life of the agreements under the Adjusted Caps, minus actual payments made through the end of the fiscal year. Such accruals are adjusted as new information develops or circumstances change.

In performing the calculations for the valuation and contingent liability estimates, the Department relied on the GSEs’ public filings and press releases concerning its audited and unaudited financial statements, monthly summaries, quarterly credit supplements, September 2011 forecast for the years 2011 through 2014 (as provided by FHFA), and interviews with the GSEs’ management and FHFA. The GSE managers were not able to provide the Department with a forecast of needed draws under the SPSPAs after December 31, 2015; however, they did provide the Department with general guidance as to the key assumptions that were used for subsequent periods. The forecasts after 2015 generally assume similar operating assumptions on the guarantee business and assume a gradual wind-down of the retained portfolios (and corresponding net interest income) through 2026, as directed under the provisions of the SPSPAs for the GSEs to reduce their investment portfolios by 10.0 percent per annum. The Department also relied upon economic and demographic data from the 2011 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds and the FHFA’s House Price Index.

Based on the annual valuation of the Department’s estimated future contingent liability, the Department increased its liability by accruing an expense of \$320.6 billion at the end of fiscal year 2010. The Department reduced its estimated liability by \$22.9 billion at the end of the fiscal year 2011 via a reduction in expense. Both the increase in expense in fiscal year 2010 and reduction in expense in fiscal year 2011 were recorded as entity costs within the Economic Program section of the Department’s Consolidated Statements of Net Cost.

As of September 30, 2011 and 2010, the summarized aggregated financial condition of the GSEs was as follows (in millions):

	<b>2011</b>	2010
Combined Assets		
Investment Securities	\$ 422,741	\$ 474,437
Mortgage Loans	4,715,057	4,782,405
Other	248,415	261,510
<b>Total Combined Assets</b>	<b>5,386,213</b>	5,518,352
Combined Liabilities		
Long Term Debt	4,974,759	5,033,151
Other	425,236	487,706
<b>Total Combined Liabilities</b>	<b>5,399,995</b>	5,520,857
<b>Combined net deficit</b>	<b>\$ (13,782)</b>	\$ (2,505)
<b>For the nine months ended September 30,</b>		
Combined net interest income	\$ 28,832	\$ 24,312
Combined provisions for loan losses	(28,672)	(35,082)
<b>Net interest income (loss) after provision for loan losses</b>	<b>\$ 160</b>	\$ (10,770)
<b><i>Regulatory Capital - minimum capital deficit as of September 30,</i></b>	<b>\$ (231,531)</b>	<b>\$ (198,999)</b>
<i>Excludes financial guarantees not consolidated on GSE balance sheets.</i>		

The above information was taken directly from the quarterly reports filed with the SEC, which are publicly available on the SEC’s website ([www.SEC.gov](http://www.SEC.gov)) and also the GSE investor relations websites.

Both GSEs reported very low early delinquencies on additions to their credit books in 2009 through 2011. This favorable early delinquency experience is an improvement compared with the loans originated in 2005 through 2008. However, both GSEs expect to make additional draws under the SPSPA in future periods despite improving levels of net income as the required dividend payment amounts under the SPSPAs are estimated to exceed the net income of the GSEs. Thus, incremental draws under the SPSPAs are projected to be needed to meet dividend payment requirements. The GSEs expect their net worth will also be impacted negatively by dividend payments on the SPSPAs, coupled with continued expected credit losses associated with the exposures that originated in the period 2005 through 2008.

Under the existing SPSPAs, as amended, the Department's projections show that each GSE will fully utilize the amount of funding available under the Adjusted Cap. This is in addition to any draws during calendar years 2010 through 2012, as this period is not subject to the Adjusted Cap. The Department's projections of future liquidity payments may differ from actual experience. Future actual liquidity payment levels will depend on numerous factors that are difficult to predict, including, but not limited to, changes in government policy with respect to the GSEs, the business cycle, inflation, home prices, unemployment rates, interest rates, changes in housing preferences, home financing alternatives, availability of debt financing, market rates of guarantee fees, outcomes of loan refinancings and modifications, new housing programs, and other applicable factors.

### **GSEs Non-Entity Revenue**

For the fiscal years ended, September 30, 2011 and 2010, GSEs Non-Entity Revenue consisted of the following (in millions):

<b>Summary of GSEs Non-Entity Revenue</b>	<b>2011</b>	<b>2010</b>
General Fund Revenue from Increase in Liquidity Preference of GSEs Preferred Stock	\$ (20,766)	\$ (52,600)
Current Valuation (Gain)/Loss on GSEs Warrants/Preferred Stock	(3,061)	8,064
GSEs Preferred Stock Dividends	(15,588)	(12,142)
<b>Total GSEs Non-Entity Revenue</b>	<b>\$ (39,415)</b>	<b>\$ (56,678)</b>

### **CHANGING REGULATORY ENVIRONMENT**

On July 9, 2010, FHFA published in the Federal Register a proposed rule to clarify certain terms of the conservatorship and receivership operations for the GSEs. The key issues addressed in the proposed rule are the status and priority of claims and the relationships among various classes of creditors and equity-holders under conservatorships or receiverships.

On July 21, 2010, the President signed the Dodd-Frank Act into law which significantly changed the regulation of the financial services industry, including the creation of new standards related to regulatory oversight of financial institutions deemed systemically important; an orderly liquidation mechanism for these institutions; and oversight of derivatives, capital requirements, asset-backed securitization, mortgage underwriting, and consumer financial protection. Also, it contains a provision requiring the Secretary to conduct a study and develop recommendations regarding the options for ending the conservatorship. On February 11, 2011, the President delivered to Congress a report from the Secretary that provided recommendations regarding the options for ending the conservatorship and plans to wind down the GSEs. To date, Congress has not approved a plan to address what will be done with the GSEs.

# EXHIBIT S

F E D E R A L   H O U S I N G   F I N A N C E   A G E N C Y

# Report to Congress 2012



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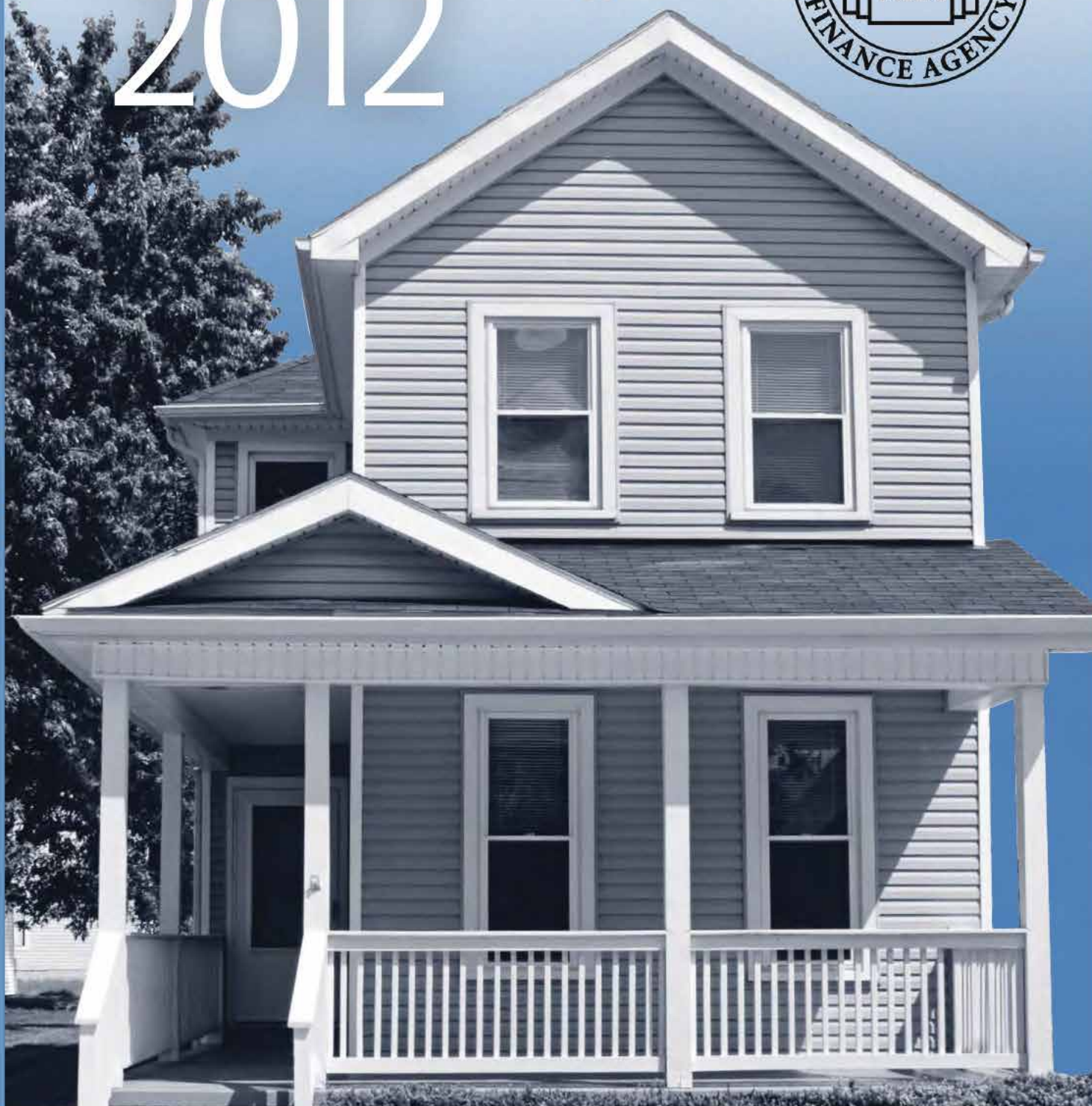


Table 12. Freddie Mac Earnings

Period	Earnings (\$ in Millions)					
	Net Interest Income <sup>a</sup> (\$)	Guarantee Fee Income <sup>a</sup> (\$)	Administrative Expenses (\$)	Credit-Related Expenses <sup>b</sup> (\$)	Net Income (Loss) (\$)	Return on Equity <sup>c</sup> (%)
4Q12	4,456	56	422	(733)	4,457	N/M
3Q12	4,269	51	401	561	2,928	N/M
2Q12	4,386	49	401	125	3,020	N/M
1Q12	4,500	45	337	1,996	577	N/M
Annual Data						
2012	17,611	201	1,561	1,949	10,982	N/M
2011	18,397	170	1,506	11,287	(5,266)	N/M
2010	16,856	143	1,597	17,891	(14,025)	N/M
2009	17,073	3,033	1,685	29,837	(21,553)	N/M
2008	6,796	3,370	1,505	17,529	(50,119)	N/M
2007	3,099	2,635	1,674	3,060	(3,094)	(21.0)
2006	3,412	2,393	1,641	356	2,327	9.8
2005	4,627	2,076	1,535	347	2,113	8.1
2004	9,137	1,382	1,550	140	2,937	9.4
2003	9,498	1,653	1,181	2	4,816	17.7
2002	9,525	1,527	1,406	126	10,090	47.2
2001	7,448	1,381	1,024	39	3,158	20.2
2000	3,758	1,243	825	75	3,666	39.0
1999	2,926	1,019	655	159	2,223	25.5
1998	2,215	1,019	578	342	1,700	22.6
1997	1,847	1,082	495	529	1,395	23.1
1996	1,705	1,086	440	608	1,243	22.6
1995	1,396	1,087	395	541	1,091	22.1
1994	1,112	1,108	379	425	983	23.3
1993	772	1,009	361	524	786	22.3
1992	695	936	329	457	622	21.2
1991	683	792	287	419	555	23.6
1990	619	654	243	474	414	20.4
1989	517	572	217	278	437	25.0
1988	492	465	194	219	381	27.5
1987	319	472	150	175	301	28.2
1986	299	301	110	120	247	28.5
1985	312	188	81	79	208	30.0
1984	213	158	71	54	144	52.0
1983	125	132	53	46	86	44.5
1982	30	77	37	26	60	21.9
1981	34	36	30	16	31	13.1
1980	54	23	26	23	34	14.7
1979	55	18	19	20	36	16.2
1978	37	14	14	13	25	13.4
1977	31	9	12	8	21	12.4
1976	18	3	10	(1)	14	9.5
1975	31	3	10	11	16	11.6
1974	42	2	8	33	5	4.0
1973	31	2	7	15	12	9.9
1972	10	1	5	4	4	3.5
1971	10	1	Not Available Before 1972	Not Available Before 1972	6	5.5

Source: Freddie Mac

N/M = not meaningful

<sup>a</sup> Adoption of accounting guidance related to transfers of financial assets and consolidation of variable interest entities, effective January 1, 2010, significantly changed presentation of these items in the financial statements. Consequently, financial results for 2010 and later are not directly comparable

to previous years. Effective January 1, 2010, guarantee fee income associated with the securitization activities of consolidated trusts is reflected in net interest income.

<sup>b</sup> For years 2002 through 2012, defined as provision/(benefit) for credit losses and real-estate owned operations income/expense. For years 2000 and 2001, includes only provision for credit losses.

<sup>c</sup> Ratio computed as annualized net income (loss) available to common stockholders divided by the simple average of beginning and ending common stockholders' equity (deficit).

Table 13. Freddie Mac Balance Sheet

End of Period	Balance Sheet (\$ in Millions) <sup>a</sup>								
	Total Assets (\$)	Total Mortgage Assets <sup>b</sup> (\$)	Nonmortgage Investments (\$)	Total Debt Outstanding (\$)	Stockholders' Equity (\$)	Senior Preferred Stock (\$)	Fair-Value of Net Assets (\$)	Mortgage Assets Held for Investment (Gross) <sup>c</sup> (\$)	Indebtedness <sup>d</sup> (\$)
4Q12	1,989,856	1,912,929	58,076	1,967,042	8,827	72,336	(58,300)	557,544	552,472
3Q12	2,016,503	1,938,543	69,214	1,997,668	4,907	72,336	(62,300)	567,966	570,320
2Q12	2,066,335	1,986,237	59,823	2,050,356	1,086	72,336	(76,600)	581,279	589,681
1Q12	2,114,944	2,035,335	54,168	2,100,251	(18)	72,317	(89,200)	618,298	629,320
Annual Data									
2012	1,989,856	1,912,929	58,076	1,967,042	8,827	72,336	(58,300)	557,544	552,472
2011	2,147,216	2,062,713	39,342	2,131,983	(146)	72,171	(78,400)	653,313	674,314
2010	2,261,780	2,149,586	74,420	2,242,588	(401)	64,200	(58,600)	696,874	728,217
2009	841,784	716,974	26,271	780,604	4,278	51,700	(62,500)	755,272	805,073
2008	850,963	748,747	18,944	843,021	(30,731)	14,800	(95,600)	804,762	
2007	794,368	710,042	41,663	738,557	26,724	Not Applicable Before 2008	12,600	720,813	
2006	804,910	700,002	68,614	744,341	26,914		31,800	703,959	
2005	798,609	709,503	57,324	740,024	25,691		30,900	710,346	
2004	795,284	664,582	62,027	731,697	31,416		30,900	653,261	
2003	803,449	660,531	53,124	739,613	31,487		27,300	645,767	
2002	752,249	589,899	91,871	665,696	31,330		22,900	567,272	
2001	641,100	503,769	89,849	578,368	19,624		18,300	497,639	
2000	459,297	385,451	43,521	426,899	14,837		Not Available Before 2001	385,693	
1999	386,684	322,914	34,152	360,711	11,525			324,443	
1998	321,421	255,670	42,160	287,396	10,835			255,009	
1997	194,597	164,543	16,430	172,842	7,521			164,421	
1996	173,866	137,826	22,248	156,981	6,731			137,755	
1995	137,181	107,706	12,711	119,961	5,863			107,424	
1994	106,199	73,171	17,808	93,279	5,162			73,171	
1993	83,880	55,938	18,225	49,993	4,437			55,938	
1992	59,502	33,629	12,542	29,631	3,570			33,629	
1991	46,860	26,667	9,956	30,262	2,566			26,667	
1990	40,579	21,520	12,124	30,941	2,136			21,520	
1989	35,462	21,448	11,050	26,147	1,916			21,448	
1988	34,352	16,918	14,607	26,882	1,584			16,918	
1987	25,674	12,354	10,467	19,547	1,182			12,354	
1986	23,229	13,093	Not Available Before 1987	15,375	953			13,093	
1985	16,587	13,547		12,747	779			13,547	
1984	13,778	10,018		10,999	606			10,018	
1983	8,995	7,485		7,273	421			7,485	
1982	5,999	4,679		4,991	296			4,679	
1981	6,326	5,178		5,680	250			5,178	
1980	5,478	5,006		4,886	221			5,006	
1979	4,648	4,003		4,131	238			4,003	
1978	3,697	3,038		3,216	202			3,038	
1977	3,501	3,204		3,110	177			3,204	
1976	4,832	4,175		4,523	156			4,175	
1975	5,899	4,878		5,609	142			4,878	
1974	4,901	4,469		4,684	126			4,469	
1973	2,873	2,521		2,696	121			2,521	
1972	1,772	1,726		1,639	110			1,726	
1971	1,038	935		915	107			935	

Source: Freddie Mac

<sup>a</sup> Adoption of accounting guidance related to transfers of financial assets and consolidation of variable interest entities effective January 1, 2010, significantly changed the presentation of these items in the financial statements. Consequently, financial results for 2010 and later are not directly comparable to previous years.

<sup>b</sup> Excludes allowance for loan losses.

<sup>c</sup> Amounts for 2009 and later meet the definition of mortgage assets in the Treasury Senior Preferred Stock Purchase Agreement for the purpose of determining the maximum amount of mortgage assets that may be held.

<sup>d</sup> As defined in the Treasury Senior Preferred Stock Purchase Agreement for 2009 and later.



# EXHIBIT T

*The Department of the Treasury*  
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## 7. INVESTMENTS AND RELATED INTEREST

Investments in U.S. Government securities held by Treasury Department entities have been eliminated against the federal debt liability for financial reporting purposes (Note 4). The ESF holds most of the Treasury Department's other investments. Securities that the Treasury Department has both the positive intent and ability to hold to maturity are classified as investment securities held to maturity and are carried at historical cost, adjusted for amortization of premiums and accretion of discounts. Foreign investment holdings are normally invested in interest bearing securities issued or held through foreign governments or monetary authorities (Note 5).

As of September 30, 2008 and September 30, 2007, entity investments in foreign investment holdings consisted of the following (in millions):

Type of Investment	Cost/ Acquisition Value	Unamortized (Premium)/ Discount	Net Investment	Interest Receivable	9/30/08 Investment Balance	9/30/08 Market Value
Euro Bonds & Notes	\$ 4,477	\$ 29	\$ 4,506	\$ 115	\$ 4,621	\$ 4,641
Japanese Government Bonds	5,908	3	5,911	11	5,922	5,935
Other Investments	39	(6)	33	0	33	33
Total Non-Federal	<u>\$ 10,424</u>	<u>\$ 26</u>	<u>\$ 10,450</u>	<u>\$ 126</u>	<u>\$ 10,576</u>	<u>\$ 10,609</u>

Type of Investment	Cost/ Acquisition Value	Unamortized (Premium)/ Discount	Net Investment	Interest Receivable	9/30/07 Investment Balance	9/30/07 Market Value
Euro Bonds & Notes	\$ 4,338	\$ 52	\$ 4,390	\$ 113	\$ 4,503	\$ 4,462
Japanese Government Bonds	5,520	9	5,529	8	5,537	5,538
Other Investments	40	(6)	34	0	34	34
Total Non-Federal	<u>\$ 9,898</u>	<u>\$ 55</u>	<u>\$ 9,953</u>	<u>\$ 121</u>	<u>\$ 10,074</u>	<u>\$ 10,034</u>

On September 7, 2008 the Treasury Department entered into senior preferred stock purchase agreements with each GSE. In exchange for entering into these agreements, Treasury Department initially received from each GSE: (1) 1,000,000 shares of non-voting variable liquidation preference senior preferred stock with a liquidation preference value of \$1,000 per share and (2) warrants for the purchase at a nominal cost of 79.9 percent of common stock on a fully-diluted basis. The warrants expire on September 7, 2028 (Note 24). The GSE preferred stock and warrants for common stock were valued (Notes 1Q and 24) as of the initial date at cost of \$7,032 million and also valued at September 30, 2008 at \$12,374 million. As of September 30, 2008, GSE investments consisted of the following (in millions):

GSE Investment	Cost/ Appraisal Value	Unamortized (Premium) Discount	Net Investment	Interest Receivable	9/30/08 Investment Balance	9/30/08 Appraisal Value
Fannie Mae Sr. Preferred Stock	\$ 840	\$ 0	\$ 840	\$ 0	\$ 840	\$ 741
Freddie Mac Sr. Preferred Stock	824	0	824	0	824	727
Fannie Mae Warrants Common Stock	3,104	0	3,104	0	3,104	6,507
Freddie Mac Warrants Common Stock	2,264	0	2,264	0	2,264	4,399
Total GSE Investment	<u>\$ 7,032</u>	<u>\$ 0</u>	<u>\$ 7,032</u>	<u>\$ 0</u>	<u>\$ 7,032</u>	<u>\$ 12,374</u>

# EXHIBIT U

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**  
**Washington, D.C. 20549**  
**Form 10-K**

**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d)**  
**OF THE SECURITIES EXCHANGE ACT OF 1934**  
**For the fiscal year ended December 31, 2008**  
**Commission File No.: 0-50231**

**Federal National Mortgage Association**

*(Exact name of registrant as specified in its charter)*

**Fannie Mae**

**Federally chartered corporation**  
*(State or other jurisdiction of  
incorporation or organization)*

**3900 Wisconsin Avenue,  
NW Washington, DC**  
*(Address of principal executive offices)*

**52-0883107**  
*(I.R.S. Employer  
Identification No.)*

**20016**  
*(Zip Code)*

**Registrant's telephone number, including area code:**  
**(202) 752-7000**

**Securities registered pursuant to Section 12(b) of the Act:**

<u>Title of Each Class</u>	<u>Name of Each Exchange on Which Registered</u>
Common Stock, without par value	New York Stock Exchange Chicago Stock Exchange New York Stock Exchange
8.25% Non-Cumulative Preferred Stock, Series T, stated value \$25 per share	New York Stock Exchange
8.75% Non-Cumulative Mandatory Convertible Preferred Stock, Series 2008-1, stated value \$50 per share	New York Stock Exchange
Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series S, stated value \$25 per share	New York Stock Exchange
7.625% Non-Cumulative Preferred Stock, Series R, stated value \$25 per share	New York Stock Exchange
6.75% Non-Cumulative Preferred Stock, Series Q, stated value \$25 per share	New York Stock Exchange
Variable Rate Non-Cumulative Preferred Stock, Series P, stated value \$25 per share	New York Stock Exchange
5.50% Non-Cumulative Preferred Stock, Series N, stated value \$50 per share	New York Stock Exchange
4.75% Non-Cumulative Preferred Stock, Series M, stated value \$50 per share	New York Stock Exchange
5.125% Non-Cumulative Preferred Stock, Series L, stated value \$50 per share	New York Stock Exchange
5.375% Non-Cumulative Preferred Stock, Series I, stated value \$50 per share	New York Stock Exchange
5.81% Non-Cumulative Preferred Stock, Series H, stated value \$50 per share	New York Stock Exchange
Variable Rate Non-Cumulative Preferred Stock, Series G, stated value \$50 per share	New York Stock Exchange
Variable Rate Non-Cumulative Preferred Stock, Series F, stated value \$50 per share	New York Stock Exchange

**Securities registered pursuant to Section 12(g) of the Act:**

**Variable Rate Non-Cumulative Preferred Stock, Series O, stated value \$50 per share**

*(Title of class)*

**5.375% Non-Cumulative Convertible Series 2004-1 Preferred Stock, stated value \$100,000 per share**

*(Title of class)*

**5.10% Non-Cumulative Preferred Stock, Series E, stated value \$50 per share**

*(Title of class)*

**5.25% Non-Cumulative Preferred Stock, Series D, stated value \$50 per share**

*(Title of class)*

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act. Yes  No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

*(Do not check if a smaller reporting company)*

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes  No

The aggregate market value of the common stock held by non-affiliates of the registrant computed by reference to the price at which the common stock was last sold on June 30, 2008 (the last business day of the registrant's most recently completed second fiscal quarter) was approximately \$20,932 million.

As of January 31, 2009, there were 1,091,230,272 shares of common stock of the registrant outstanding.

**DOCUMENTS INCORPORATED BY REFERENCE:**

None.

***Senior Preferred Stock Purchase Agreement and Related Issuance of Senior Preferred Stock and Common Stock Warrant******Senior Preferred Stock Purchase Agreement***

On September 7, 2008, we, through FHFA, in its capacity as conservator, and Treasury entered into a senior preferred stock purchase agreement, which was subsequently amended and restated on September 26, 2008. We refer to this agreement as the “senior preferred stock purchase agreement.” Pursuant to the agreement, we agreed to issue to Treasury (1) one million shares of Variable Liquidation Preference Senior Preferred Stock, Series 2008-2, which we refer to as the “senior preferred stock,” with an initial liquidation preference equal to \$1,000 per share (for an aggregate liquidation preference of \$1.0 billion), and (2) a warrant to purchase, for a nominal price, shares of common stock equal to 79.9% of the total number of shares of our common stock outstanding on a fully diluted basis at the time the warrant is exercised, which we refer to as the “warrant.” The terms of the senior preferred stock and warrant are summarized in separate sections below. We did not receive any cash proceeds from Treasury at the time the senior preferred stock or the warrant was issued.

The senior preferred stock and warrant were issued to Treasury as an initial commitment fee in consideration of the commitment from Treasury to provide up to \$100.0 billion in funds to us under the terms and conditions set forth in the senior preferred stock purchase agreement. The senior preferred stock purchase agreement provides that, on a quarterly basis, we generally may draw funds up to the amount, if any, by which our total liabilities exceed our total assets, as reflected on our consolidated balance sheet, prepared in accordance with GAAP, for the applicable fiscal quarter (referred to as the “deficiency amount”), provided that the aggregate amount funded under the agreement may not exceed \$100.0 billion.

On February 18, 2009, Treasury announced that it is amending the senior preferred stock purchase agreement to increase its commitment from \$100.0 billion to \$200.0 billion and revise some of the covenants under the senior preferred stock purchase agreement. Because an amended agreement has not been executed as of the date of this report, the description of the senior preferred stock purchase agreement in this section is of the terms of the existing agreement.

The senior preferred stock purchase agreement provides that the deficiency amount will be calculated differently if we become subject to receivership or other liquidation process. The deficiency amount may be increased above the otherwise applicable amount upon our mutual written agreement with Treasury. In addition, if the Director of FHFA determines that the Director will be mandated by law to appoint a receiver for us unless our capital is increased by receiving funds under the commitment in an amount up to the deficiency amount (subject to the maximum amount that may be funded under the agreement), then FHFA, in its capacity as our conservator, may request that Treasury provide funds to us in such amount. The senior preferred stock purchase agreement also provides that, if we have a deficiency amount as of the date of completion of the liquidation of our assets, FHFA (or our Chief Financial Officer if we are not under conservatorship), may request funds from Treasury in an amount up to the deficiency amount (subject to the maximum amount that may be funded under the agreement).

At December 31, 2008, our total liabilities exceeded our total assets, as reflected on our consolidated balance sheet, by \$15.2 billion. The Director of FHFA submitted a request on February 25, 2009 for funds from Treasury on our behalf under the terms of the senior preferred stock purchase agreement to eliminate our net worth deficit as of December 31, 2008. FHFA requested that Treasury provide the funds on or prior to March 31, 2009. The amounts we draw under the senior preferred stock purchase agreement will be added to the liquidation preference of the senior preferred stock, and no additional shares of senior preferred stock will be issued under the senior preferred stock purchase agreement.

In addition to the issuance of the senior preferred stock and warrant, beginning on March 31, 2010, we are required to pay a quarterly commitment fee to Treasury. This quarterly commitment fee will accrue from January 1, 2010. The fee, in an amount to be mutually agreed upon by us and Treasury and to be determined with reference to the market value of Treasury’s funding commitment as then in effect, will be determined on or before December 31, 2009, and will be reset every five years. Treasury may waive the quarterly commitment fee for up to one year at a time, in its sole discretion, based on adverse conditions in the

	Shares Outstanding			Senior Preferred	Preferred Stock	Common Stock	Additional Paid-In Capital	Retained Earnings (Accumulated Deficit)	Accumulated Other Comprehensive Loss <sup>(1)</sup>	Treasury Stock	Total Stockholders' Equity (Deficit)
	Senior Preferred	Preferred	Common								
Cumulative effect from the adoption of SFAS 157 and SFAS 159, net of tax . . . . .	—	—	—	—	—	—	—	148	(93)	—	55
<b>Balance as of January 1, 2008, adjusted . . . . .</b>	—	466	974	—	16,913	593	1,831	33,696	(1,455)	(7,512)	44,066
Comprehensive loss:											
Net loss . . . . .	—	—	—	—	—	—	—	(58,707)	—	—	(58,707)
Other comprehensive loss, net of tax effect:											
Unrealized losses on available-for-sale securities (net of tax of \$2,954) . . . . .	—	—	—	—	—	—	—	—	(5,487)	—	(5,487)
Reclassification adjustment for gains included in net loss (net of tax of \$36) . . . . .	—	—	—	—	—	—	—	—	(67)	—	(67)
Unrealized losses on guaranty assets and guaranty fee buy-ups . . . . .	—	—	—	—	—	—	—	—	(342)	—	(342)
Net cash flow hedging losses . . . . .	—	—	—	—	—	—	—	—	1	—	1
Prior service cost and actuarial losses, net of amortization for defined benefit plans . . . . .	—	—	—	—	—	—	—	—	(323)	—	(323)
Total comprehensive loss . . . . .											(64,925)
Common stock dividends (\$0.75 per share) . . . . .	—	—	—	—	—	—	—	(741)	—	—	(741)
Senior preferred stock dividends declared . . . . .	—	—	—	—	—	—	(31)	—	—	—	(31)
Preferred stock dividends declared . . . . .	—	—	—	—	—	—	—	(1,038)	—	—	(1,038)
Senior preferred stock issued . . . . .	1	—	—	1,000	—	—	—	—	—	—	1,000
Preferred stock issued . . . . .	—	141	—	—	4,812	—	(127)	—	—	—	4,685
Conversion of convertible preferred stock into common stock . . . . .	—	(10)	16	—	(503)	8	495	—	—	—	—
Common stock issued . . . . .	—	—	94	—	—	49	2,477	—	—	—	2,526
Common stock warrant issued . . . . .	—	—	—	—	—	—	3,518	—	—	—	3,518
U.S. Treasury commitment <sup>(2)</sup> . . . . .	—	—	—	—	—	—	(4,518)	—	—	—	(4,518)
Treasury stock issued for stock options and benefit plans . . . . .	—	—	1	—	—	—	(24)	—	—	168	144
<b>Balance as of December 31, 2008 . . . . .</b>	<u>1</u>	<u>597</u>	<u>1,085</u>	<u>\$1,000</u>	<u>\$21,222</u>	<u>\$650</u>	<u>\$ 3,621</u>	<u>\$(26,790)</u>	<u>\$(7,673)</u>	<u>\$(7,344)</u>	<u>\$(15,314)</u>

<sup>(1)</sup> Accumulated other comprehensive loss is comprised of \$7.3 billion, \$1.6 billion and \$577 million in net unrealized losses on available-for-sale securities, net of tax, and \$(382) million, \$282 million and \$132 million in net unrealized gains (losses) on all other components, net of tax for 2007 and 2006, as of December 31, 2008, 2007 and 2006, respectively.

<sup>(2)</sup> Amount represents the aggregate fair value of both the senior preferred stock and common stock warrant issued to the U.S. Treasury.

See Notes to Consolidated Financial Statements