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

FAIRHOLME FUNDS, INC., et al., *Plaintiffs-Appellants*, v. FEDERAL HOUSING FINANCE AGENCY, et al., Defendants-Appellees.	No. 14-5254

FAIRHOLME'S PUBLIC, REDACTED MOTION FOR JUDICIAL NOTICE AND SUPPLEMENTATION OF THE RECORD

Plaintiffs-Appellants in No. 14-5254 ("Fairholme") respectfully move the Court (1) to take judicial notice of the attached documents and deposition transcripts, all of which were produced in discovery by Defendants or related entities in a parallel action in the Court of Federal Claims ("CFC")—*Fairholme Funds, Inc. v. United States*, No. 13-465 (Fed. Cl.), and (2) to supplement the record on appeal with those materials.[1]

For the reasons set out in Plaintiffs' merits brief, this Court should hold that the Net Worth Sweep is facially inconsistent with FHFA's and Treasury's statutory

[1] Although disclosure of the materials produced in discovery in the CFC action is governed by a strict protective order, that court authorized Fairholme to file the materials under seal here. *See* Order, *Fairholme Funds, Inc. v. United States*, No. 13-465 (Fed. Cl. July 21, 2015), ECF No. 212.

authorities and order entry of judgment for Plaintiffs as a matter of law. But, even if that were not so, the district court's decision must be reversed. As the materials attached to this motion demonstrate, the administrative record submitted by Treasury and the "Document Compilation" and declaration submitted by FHFA in lieu of an administrative record are incomplete, misleading, and, in important respects, outright false. Thus, even if this Court is not prepared to order entry of judgment for Plaintiffs, the Court must at a minimum remand for further proceedings that account for this newly discovered evidence.

BACKGROUND

On August 17, 2012, FHFA and Treasury changed the terms under which Fannie Mae and Freddie Mac (the "Companies") would compensate Treasury for the financial support it provided them in connection with the 2008 financial crisis. Starting January 1, 2013, rather than paying a fixed annual 10% cash or 12% in-kind preferred stock dividend on Treasury's investment, the Companies were required to make quarterly payments to Treasury equal to their *entire net worth*, less a small and decreasing capital reserve that would fall to zero by 2018. This "Net Worth Sweep" effectively nationalizes the Companies and transfers to Treasury the entire economic value of the Companies' privately-held equity.

In this case, Fairholme has alleged that the Net Worth Sweep violates the Administrative Procedure Act ("APA"), as well as FHFA's fiduciary and contractual obligations to the Companies' private shareholders. Fairholme also filed a taking action against the United States in the CFC. Materials produced in discovery reveal that Treasury's administrative record and FHFA's "Document Compilation"[2] are incomplete, misleading, and, in important respects, false.

ARGUMENT

I. JUDICIAL NOTICE OF THE MATERIALS PRODUCED IN THE CFC IS WARRANTED

A. The Court May Take Judicial Notice of the Existence of the Materials Produced in Discovery in the CFC Action.

This Court has broad discretion to take judicial notice of any fact that is "not subject to reasonable dispute" and "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." FED. R. EVID. 201(b)(2); *see Power, Inc. v. NLRB*, 40 F.3d 409, 426 n.11 (D.C. Cir. 1994); *Yellow Taxi Co. of Minneapolis v. NLRB*, 721 F.2d 366, 375 n.29 (D.C. Cir. 1983). The exercise of that discretion is necessary in this case to safeguard the integrity of the judicial process, for the materials attached to this motion reveal that Treasury's

[2] FHFA described its submission in district court as a "Document Compilation" and refused to certify a true administrative record. *See* Notice of Filing Document Compilation, *Fairholme Funds, Inc. v. FHFA*, No. 13-1053 (D.D.C. Dec. 17, 2013), Dkt. 24 at 1. FHFA nevertheless represented that its document compilation included all the materials that "were before it" and "were directly or indirectly considered" when it imposed the Net Worth Sweep. *See* FHFA, Watt, Fannie, and Freddie Combined Reply in Support of Motion to Dismiss, *Fairholme Funds, Inc. v. FHFA*, No. 13-1053 (D.D.C. May 2, 2014), Dkt. 46 at 52.

administrative record and FHFA's document compilation were at best highly misleading. That the CFC discovery materials exist and were produced by the Defendants, their consultant, the Companies, and the Companies' auditors is not subject to reasonable dispute and may be readily established from the materials themselves. Accordingly, the Court should assure that this case is not decided on the basis of a false factual premise and take judicial notice of the existence of the materials in question.

Fairholme's request for judicial notice fits comfortably within this Court's precedents. This Court has long been willing to take judicial notice of facts based on the records in other cases. *See, e.g.*, *Dupree v. Jefferson*, 666 F.2d 606, 608 n.1 (D.C. Cir. 1981); *United States v. Hopkins*, 531 F.2d 576, 581 n.38 (D.C. Cir. 1976); *United States v. Dancy*, 510 F.2d 779, 787 (D.C. Cir. 1975); *Gomez v. Wilson*, 477 F.2d 411, 416 n.28 (D.C. Cir. 1973). It is particularly appropriate for the Court to do so where, as here, another case concerns "the same subject matter or questions of a related nature between the same parties." *See Veg-Mix, Inc. v. USDA*, 832 F.2d 601, 607 (D.C. Cir. 1987) (quoting *Fletcher v. Evening Star Newspaper Co.*, 133 F.2d 395 (D.C. Cir. 1942)). As in *California Valley Miwok Tribe v. United States*, 515 F.3d 1262, 1265 n.5 (D.C. Cir. 2008), many of the materials at issue were provided by litigants in this action. And similar to *Xydas v.*

United States, 445 F.2d 660, 667 n.22 (D.C. Cir. 1971), important facts about what Defendants knew can be inferred from the existence of these materials.

While the Court may take judicial notice of facts in any APA case, *see Nebraska v. EPA*, 331 F.3d 995, 998 n.3 (D.C. Cir. 2003), it has shown a particular willingness to look beyond the materials considered by the district court where they reveal that the administrative record on review is incomplete. Thus, in *Walter O. Boswell Memorial Hospital v. Heckler*, 749 F.2d 788, 792 (D.C. Cir. 1984), this Court examined materials submitted by the agency in another case when determining that a remand was necessary to complete the administrative record. And in *NRDC v. Train*, 519 F.2d 287, 291–92 (D.C. Cir. 1975), the Court considered a document that the agency had improperly omitted from its administrative record and remanded the case so that the administrative record could be completed.

Finally, judicial notice is especially appropriate in this case because it is necessary to take into account developments that occurred after the district court's decision and that bear on this Court's jurisdiction. Judicial notice is favored "when the appellate court needs to take account of developments in the case subsequent to proceedings in the trial court." KENNETH W. GRAHAM ET AL., 21B FEDERAL PRACTICE & PROCEDURE: EVIDENCE § 5110.1 (2d ed. 20105); *see Rothenberg v. Sec. Mgmt. Co.*, 667 F.2d 958, 961 n.8 (11th Cir. 1982). And this Court routinely uses judicial notice to account for intervening events relevant to its jurisdiction.[3] Materials that have come to light in the CFC since the district court dismissed the complaint on jurisdictional grounds reveal that the Defendants' jurisdictional arguments are premised on a mischaracterization of the relevant facts.

B. The Materials Produced in the CFC Action Establish That Plaintiffs Were Prejudiced By Defendants' Incomplete and Misleading Submissions.

The Net Worth Sweep went into effect on January 1, 2013, and within its first year Treasury had already received more than $100 billion more in cash dividends from the Companies than it would have received under the prior arrangement. A large share of those dividend payments resulted from increases in the Companies' net worth that reflected the reversal of excessively conservative accounting decisions that the Companies made at FHFA's direction in 2008 and 2009. Specifically, in 2013, both Companies' net worth increased by tens of billions of dollars as a result of the recognition of deferred tax assets and releases of loan loss reserves, two balance sheet adjustments that the accounting rules mandated once it became apparent that the Companies' were performing much better than FHFA had assumed they would in 2008 and 2009.

[3] *See, e.g.*, *LeBoeuf, Lamb, Greene & MacRae, LLP v. Abraham*, 347 F.3d 315, 325 (D.C. Cir. 2003); *see also Clark v. K-Mart Corp.*, 979 F.2d 965, 967 (3d Cir. 1992) (en banc) ("[B]ecause mootness is a jurisdictional issue, we may receive facts relevant to that issue . . . ." (citation omitted)).

Despite the Net Worth Sweep's timing—coming just as the Companies began generating the largest profits in their history—Defendants have steadfastly maintained that they had never envisioned or discussed the idea that the Net Worth Sweep would result in a windfall of more than $100 billion for Treasury in 2013 alone. To support that narrative, FHFA submitted a declaration from Mario Ugoletti, who as a Treasury official in 2008 was deeply involved in establishing the terms on which Treasury provided the Companies with financial support, and who, after later moving to FHFA, was a central player in the decisionmaking that led to the Net Worth Sweep. Mr. Ugoletti's declaration claims that FHFA was "concern[ed] that the 10% annual dividend to Treasury would reduce the amount of the Treasury commitment starting in 2013" and that the Net Worth Sweep was not intended or expected "to increase compensation to Treasury." Ugoletti Decl. ¶¶ 16, 19, FHFA 0008–009 (Exhibit 1, A009–10). For its part, Treasury included in its administrative record a presentation dated June 13, 2012 including financial projections showing Fannie and Freddie needing to make draws to pay Treasury's dividends and predicting that imposition of the Net Worth Sweep would result in "materially equivalent" "net cash returned to taxpayers." T3836, T3847–T3850, T3861 (Exhibit 2, A016, A027–30, A041). It is now apparent that those materials, which form the heart of Treasury's administrative record and FHFA's document compilation, are in certain respects highly misleading and in others outright false.

1. Deferred Tax Assets. Mr. Ugoletti's sworn declaration says that "neither the Conservator nor Treasury envisioned at the time of the [Net Worth Sweep] that Fannie Mae's valuation allowance on its deferred tax assets would be reversed in early 2013, resulting in a sudden and substantial increase in Fannie Mae's net worth." Ugoletti Decl. ¶ 20, FHFA 0009–10 (A010–11). But when Fairholme deposed Susan McFarland, who was Fannie's CFO at the time of the Net Worth Sweep, it learned that Redacted [redacted] McFarland Deposition Transcript 45:5–8 (Exhibit 3, A046); *see also id.* 158:7–10 (A055); 193:8–15 (A059). Redacted [redacted] *Id.* 59:14–16 (A050); *id.* 59:25–60:1 (A050); *see also id.* 164:6–12 (A056).[4] Ms. McFarland further testified that Redacted [redacted]

[4] Notably, Redacted [redacted] FHFA00103596 (Exhibit 4, A062).

[redacted] *See id.* 55:3–17 (A049). In light of Ms. McFarland's testimony, Mr. Ugoletti's sworn statement that neither agency envisioned recognition of the deferred tax assets is not credible.

Likewise, Mr. Ugoletti's testimony during his deposition revealed that [redacted] Ugoletti Decl. at 2, FHFA 0002 (A003). When asked whether he had [redacted] Mr. Ugoletti responded, [redacted] Ugoletti Deposition Transcript 331:3–22 (emphases added) ("Ugoletti Tr.") (Exhibit 5, A074). And when asked [redacted] he responded, [redacted] *Id.* 332:2–6 (emphasis added) (A074). Moreover, Jeff Foster, [redacted] testified that [redacted]

Redacted [redacted] Foster Deposition Transcript 256:16–257:1, 258:1–9 (Exhibit 6, A092, 93).[5]

Relatedly, Mr. Ugoletti's deposition testimony demonstrates that another statement in his declaration regarding deferred tax assets is, at a minimum, misleading. That carefully crafted, made-for-litigation declaration reads, "[a]t the time of the negotiation and execution of the Third Amendment, the Conservator and the Enterprises *had not yet begun to discuss* whether or when the Enterprises would be able to recognize any value to their deferred tax assets." Ugoletti Decl. ¶ 20, FHFA 0009 (emphasis added) (A010). Regardless of what the FHFA as Conservator and the Enterprises had begun to discuss, Mr. Ugoletti's deposition testimony makes clear that Redacted [redacted] Indeed, Mr. Ugoletti expressly acknowledged in his deposition that Redacted [redacted] Ugoletti Tr. 331:15 (A074), that Redacted [redacted] *id.* 323:10–13 (A072), and that Redacted [redacted]

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[5] *See also, e.g.*, GT005322 (Exhibit 7, A096) (Treasury consultant notes Redacted [redacted]).

that Redacted [redacted], *id.* 324:20–325:3 (A072).[6] And, as explained above, Ms. McFarland testified that Redacted [redacted]

The deferred tax assets issue is critical because reversal of the $74 billion tax valuation allowances alone increased Fannie's and Freddie's net worth by an amount sufficient to pay Treasury's 10% cash dividend for several years wholly apart from the substantial profits generated by their business operations. *See* Fannie Mae News Release, May 9, 2013, http://goo.gl/G1xBTU (announcing benefit of $50.6 billion from reversal of valuation allowance); Freddie Mac News Release, November 7, 2013, http://goo.gl/Hytc3l (announcing benefit of $23.9 billion from reversal of valuation allowance). It is not plausible that Defendants were aware of this issue and nevertheless believed that the Net Worth Sweep was necessary to rescue the Companies from their existing dividend obligations and would not result in increased compensation to Treasury. The Court should take judicial notice of the existence of these materials.

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[6] *See also* PWC-FM 00147059 (Exhibit 8, A098) (memo dated Redacted [redacted] DT-055518 (Exhibit 9, A107); DT-055488 (Exhibit 10, A124).

2. Financial Projections. Treasury sought to prop up its proffered rationale for the Net Worth Sweep by including in its administrative record projections purportedly created during the summer of 2012 that showed the Companies unable to generate sufficient long-term profits to pay 10% cash dividends on Treasury's senior preferred stock without making additional draws on Treasury's funding commitment. *See* T3833–T3862 (A013–42). Those projections, included in a presentation dated June 13, 2012, say that they were based in part on "Grant Thornton analyses" that Treasury omitted from its administrative record. T3837 (A017). Examination of those Grant Thornton analyses reveals that Treasury's purported June 2012 projections were taken verbatim from reports that Grant Thornton prepared in [redacted] based on data from [redacted] of that year. *Compare* T3847 (A027) *with* GT007276 (Exhibit 11, A150); *compare* T3849 (A029) *with* GT007353 (Exhibit 12, A205); *see* Eberhardt Deposition Transcript 94:21–95:21, 208:22–209:11 (Exhibit 13, A238, 41) (Grant Thornton official acknowledging that [redacted]). And by the time of the Net Worth Sweep, those stale financial projections had proven to be woefully unreliable. For example, they predicted that Fannie would suffer a comprehensive net loss of $13.1 billion in fiscal year 2012. *See* T3847 (A027) & GT007276 (A150). But in the three quarters leading up to the Net Worth Sweep (the first three quarters of fiscal year

2012), Fannie actually generated comprehensive income of $6.5 billion. *See* T2403 (Exhibit 14, A245); T3350 (Exhibit 15, A248); T3910 (Exhibit 16, A251).

What is more, Treasury's administrative record fails to reveal that Treasury [redacted] For example, [redacted] UST00532144 (Exhibit 17, A260); *see* McFarland Tr. 161:18–162:12 (A055–56); FM_Fairholme_CFC-00002532 (Exhibit 18, A270); UST00005747 (Exhibit 19, A275) ([redacted]).[7]

FHFA was in possession of similar information leading up to the Net Worth Sweep. An internal FHFA email describing [redacted]

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[7] In addition, a presentation sent to senior Treasury officials in February 2012 indicated that [redacted] UST00380800 (Exhibit 20, A298).

FHFA00047889 (Exhibit 21, A350). Attached to that email is a draft presentation by Mr. Benson including [redacted] *See* FHFA0047893, Slide 14 (Exhibit 22, A369); *see also* FHFA00060208 (Exhibit 23, A398) ([redacted]).

The Court should take judicial notice of the fact that these materials exist and that Treasury's administrative record and FHFA's document compilation do not accurately represent the true record before the agencies when the Net Worth Sweep was announced.

3. Purpose of the Net Worth Sweep. [redacted] Indeed, the testimony of both Edward DeMarco—who agreed to the Net Worth Sweep in his capacity as FHFA's Acting Director—and Mr. Ugoletti indicates that [redacted] *See* Institutional Pls.' Br. 29–48. Mr. DeMarco, for example, said that [redacted]

[redacted] Transcript of DeMarco Deposition 146:17–21 ("DeMarco Tr.") (Exhibit 24, A436). And the reason he reneged on his predecessor's (Mr. Lockhart's) repeated public assurances that the central purpose of the conservatorships was to rehabilitate Fannie and Freddie and return them to private control under their existing charters was that Mr. DeMarco [redacted] *See id.* 147:10–148:4 (A436). Similarly, Mr. Ugoletti said that [redacted] Ugoletti Tr. 308:7–9 (A069).

Treasury, of course, was also committed to winding down Fannie and Freddie. Indeed, communications between FHFA and Treasury indicate that [redacted] FHFA00025815–16 (Exhibit 25, A439, 40).[8] Documents produced in the CFC indicate that [redacted]

[8] *See also* Bowler Deposition Transcript 53:10–16 (Exhibit 26, A444) ([redacted]) ("Bowler Tr."); UST00508176 (Exhibit 27, A456).

[9] For example, a [redacted] UST00480703 (Exhibit 28, A460). [redacted]

Redacted *See* UST00503991 (Exhibit 29, A476); UST00517664 (Exhibit 30, A480).[10]

Redacted

Redacted

Foster Tr. 240:10–241:5 (A089); *see also id.* 230:1–7 (A087); *id.* 239:5–14 (A089); Bowler Tr. 88:22–89:3 (A447); *id.* 255:8–256:8 (A453).

The Court should take judicial notice of the existence of documents demonstrating Redacted

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Redacted UST00480714 (A471)—Redacted

[10] Treasury officials communicated with the White House about the Net Worth Sweep during the time leading up to its adoption. *See, e.g.*, Foster Tr. 112:15–113:9 (A079); Bowler Tr. 152:16–153:13 (A450); UST00503874 (Exhibit 31, A483).

Redacted [redacted] which Defendants improperly concealed by submitting manifestly incomplete and misleading materials in the district court.

4. Agencies' Understanding of the Purchase Agreements. Documents produced in discovery also confirm that the central defense of the Net Worth Sweep—a purported concern that the Companies' cash dividend payments would exhaust the government funding commitment—was based on a false premise. [redacted] Redacted [redacted] *See, e.g.*, FHFA00083260 (Exhibit 32, A487); UST00500869 (Exhibit 33, A490). Indeed, Mr. Foster Redacted [redacted] Foster Tr. 161:17–162:4 (A083–84); *see also id.* 154:9 (A082) (acknowledging that Redacted [redacted]). The Court should take judicial notice of the existence of materials indicating that the government understood that the PSPAs provided for Fannie and Freddie to pay their dividend obligations in kind.[11]

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[11] In a similar vein, the CFC discovery materials contradict Defendants' litigation-driven construction of a provision of the Companies' agreements with Treasury providing for payment of a periodic commitment fee ("PCF"). In his declaration, Mr. Ugoletti asserted that, "It was clear by [some time before the Net

II. SUPPLEMENTATION OF THE RECORD WITH THE CFC DISCOVERY MATERIALS IS WARRANTED

Apart from, or in addition to taking judicial notice of the existence of the CFC discovery materials, the Court should add them to the record on appeal. Although the record on appeal is ordinarily limited to the record that was created before the district court, *In re AOV Indus., Inc.*, 797 F.2d 1004, 1012 (D.C. Cir. 1986), this Court nevertheless has broad discretion to supplement the record itself when "injustice might otherwise result," *Singleton v. Wulff*, 428 U.S. 106, 121 (1976); *see also Colbert v. Potter*, 471 F.3d 158, 165–66 (D.C. Cir. 2006) (acknowledging this Court's "inherent equitable power to allow supplementation of the appellate record if it is in the interests of justice."). The exercise of that

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Worth Sweep] that, given the risks of the Enterprises and the enormity of the Treasury commitment, the value of the PCF was incalculably large," Ugoletti Decl. ¶ 9, FHFA 0005 (A006)—the inference being that this was clear to people *other than Mr. Ugoletti himself*. But Mr. Ugoletti testified that Redacted [redacted] Ugoletti Tr. 170:7–13 (A066); 171:10–20 (A066). And Freddie's own internal projections showed that Redacted [redacted] FHFA00102167, Slide 27 (Exhibit 34, A519) Redacted [redacted] ; *cf.* McFarland Tr. 65:16–66:19 (A051–52). The Court should take judicial notice of the existence of materials produced in the CFC action that contradict the discussion of the PCF in Mr. Ugoletti's declaration.

power is particularly appropriate when the material sought to be introduced "go[es] to the heart of the contested issue." *In re AOV Indus., Inc.*, 797 F.2d at 1013.

As the foregoing discussion of the materials attached to this motion demonstrates, Treasury's administrative record and FHFA's document compilation and declaration were misleading and, in certain important respects, false, and they obscured the true rationale for the Net Worth Sweep and what the Defendants considered and understood when they imposed it. It is difficult to imagine materials that go more directly the heart of the matter in dispute in this case, and "it would be inconsistent with this court's own equitable obligations . . . to pretend that [the materials] do not exist." *Id*. *Accord United States ex rel. Davis v. District of Columbia*, 679 F.3d 832, 837 & n.3 (D.C. Cir. 2012). It is therefore appropriate for this Court to exercise its discretion and add the materials to the record.[12]

Finally, even if the Court chooses not to consider the attached CFC discovery materials when deciding the merits of this appeal, it should at an absolute minimum remand this case so that (1) Fairholme can amend its complaint

[12] While this Court's precedents make clear that it has authority to supplement the record on appeal, it has at times required litigants to introduce newly-discovered evidence by filing a motion in the district court under Federal Rule of Civil Procedure 60(b). *See United States ex rel. Oliver v. Philip Morris USA Inc.*, 763 F.3d 36, 44 (D.C. Cir. 2014). Fairholme believes that use of that procedure in this case would only further delay resolution of this action, but it will move to introduce the evidence in the district court if this Court disagrees.

in light of the CFC discovery materials and (2) the district court can consider the materials in resolving Fairholme's unaddressed motion to take discovery into the sufficiency of Treasury's administrative record and FHFA's document compilation.[13] Accordingly, if the Court concludes that Fairholme cannot otherwise prevail on this appeal, it should remand the case for further proceedings.

CONCLUSION

For the foregoing reasons, the Court should take judicial notice of the existence of the materials attached to this motion and add them to the record.

Date: July 29, 2015

Respectfully submitted,

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[13] *See Hoai v. Vo*, 935 F.2d 308, 315 (D.C. Cir. 1991) (noting that remand to amend complaint would have been appropriate if complaint's inadequacies were "attributable to a new development or change in law"); *Cardenas v. Smith*, 733 F.2d 909, 914 (D.C. Cir. 1984) (observing that the "appellate court can remand with directions to allow the appellant to amend pleadings"); *City of Columbia, Mo. v. Paul N. Howard Co.*, 707 F.2d 338, 341 (8th Cir. 1983) (noting that "[a]n amendment can be proper after remand to the district court even if the claim was presented for the first time on appeal").

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed with the Clerk's office this 29th day of July, 2015, and was served upon counsel for Defendants listed below via First Class U.S. Mail:

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ORAL ARGUMENT NOT YET SCHEDULED

No. 14-5254

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

FAIRHOLME FUNDS, INC., *et al.*,

Plaintiffs-Appellants,

v.

FEDERAL HOUSING FINANCE AGENCY, *et al.*,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA (NO. 1:13-CV-1053-RCL)

PUBLIC, REDACTED APPENDIX TO SEALED MOTION FOR JUDICIAL NOTICE AND SUPPLEMENTATION OF THE RECORD – VOLUME 1

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EXHIBIT 1

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

PERRY CAPITAL LLC, Plaintiff, v. JACOB J. LEW, *et al.*, Defendants.	Civil Action No. 13-cv-1025 (RLW)
FAIRHOLME FUNDS, INC., *et al.* Plaintiffs, v. FEDERAL HOUSING FINANCE AGENCY, *et al.*, Defendants.	Civil Action No. 13-cv-1053 (RLW)
ARROWOOD INDEMNITY COMPANY, *et al.*, Plaintiffs, v. FEDERAL NATIONAL MORTGAGE ASSOCIATION, *et al.*, Defendants.	Civil Action No. 13-cv-1439 (RLW)

DECLARATION OF MARIO UGOLETTI

I, Mario Ugoletti, hereby declare, based on personal knowledge of the facts, as follows:

1. I am Special Advisor to the Office of the Director of the Federal Housing Finance Agency ("FHFA"), a role I assumed in September 2009. As Special Advisor, my responsibilities include advising FHFA's Acting Director Edward DeMarco concerning the Senior Preferred Stock Purchase Agreements ("PSPAs"), described *infra*. Additionally, I serve as the primary liaison with Treasury concerning the PSPAs and any amendments to the PSPAs.

2. I was employed at Treasury from 1995 to 2009, serving as Director of the Office of Financial Institutions Policy from 2004-2009. In that capacity, I participated in the creation and implementation of the PSPAs.

3. FHFA is an independent federal agency with regulatory authority over the Federal National Mortgage Association ("Fannie Mae"), the Federal Home Loan Mortgage Corporation ("Freddie Mac") (together, the "Enterprises") and the twelve Federal Home Loan Banks ("Banks"). 12 U.S.C. § 4511.

4. On September 6, 2008, FHFA's Director appointed FHFA as Conservator of the Enterprises, and on September 7, 2008 FHFA as Conservator of the Enterprises entered into two materially identical Senior Preferred Stock Purchase Agreements (together, the "PSPAs") with the United States Treasury ("Treasury")—one for Fannie Mae and one for Freddie Mac. The Amended and Restated Agreements dated September 26, 2008 and subsequent amendments are currently available at http://www.fhfa.gov/Default.aspx?Page=364.

5. The PSPAs were a last resort after it became apparent that no infusions of capital from the private sector were forthcoming to save the Enterprises. *See Oversight Hearing to Examine Recent Treasury and FHFA Actions Regarding the Housing GSEs Before the H. Comm. on Financial Services*, 110th Cong., at 5 (Sep. 25, 2008) (statement of James B. Lockhart III,

Director, Federal Housing Finance Agency), currently *available at* http://archives.financialservices.house.gov/hearing110/lockhart092508.pdf ("After substantial effort and communication with market participants, each company reported to FHFA and to Treasury that it was unable to access capital markets to bolster its capital position without Treasury financing. FHFA's and Treasury's own discussions with investment bankers and investors corroborated this conclusion."). The PSPAs provided the market with assurances that Treasury would provide a backstop to the Enterprises. Absent the commitments of Treasury, the Enterprises would have collapsed. *See id.* at 5-6 ("In the absence of access to new capital, the only alternative left to the firms was to cease new business and shed assets in a weak market. That would have been disastrous for the mortgage markets as mortgage rates would have continued to move higher and, in turn, disastrous for the Enterprises as the prices of their securities would have fallen and credit losses would have increased."); Timothy F. Geithner, Secretary, U.S. Dep't of the Treasury, Written Testimony Before the H. Comm. on Financial Services (Mar. 23, 2010), currently *available at* http://www.treasury.gov/press-center/press-releases/Pages/tg603.aspx ("In 2007, the GSEs reported combined losses of over $5 billion . . . The GSEs ultimately reported combined 2008 losses in excess of $108 billion. . . . Both companies were severely undercapitalized and would not have been able to meet their obligations without the intervention and financial support of the government."). With the PSPAs and the market assurance they provided, the Enterprises were able to remain in operation.

6. The PSPAs provided that the Enterprises would draw funds from Treasury against the Treasury commitment if the Enterprises exhausted all of their stockholder equity and had a negative net worth (defined as liabilities exceeding assets). If Enterprise liabilities exceeded assets, the provision for mandatory receivership in the Housing and Economic Recovery Act of 2008 ("HERA") would be triggered. The PSPAs were designed so that the Enterprises could

draw funds from Treasury in amounts necessary to cure their negative net worth and bring their capital to zero. By the end of 2008, all shareholder equity had been exhausted and the Enterprises drew on the Treasury commitment to avoid mandatory receivership. *See* FHFA Data as of November 14, 2013 on Treasury and Federal Reserve Purchase Programs for GSE & Mortgage-Related Securities at 2, currently *available at* http://www.fhfa.gov/webfiles/25784/TSYSupport%202013-11-13.pdf (Freddie Mac draw of $13.8 billion for third quarter 2008; Fannie Mae draw of $15.2 billion for fourth quarter 2008).

7. The PSPAs gave Treasury an expansive bundle of rights and entitlements in exchange for the lifeline that Treasury provided, without which the Enterprises would have gone out of business. For example, Treasury received warrants to acquire 79.9% of the common stock of the Enterprises for a nominal payment. In addition, under the PSPAs, Treasury obtained Senior Preferred Stock that is senior in priority over all other series of preferred stock. The Treasury Senior Preferred Stock in each Enterprise had an initial face value of $1 billion, which increases by any amount that the Enterprises draw from Treasury under the Treasury Commitment. Further, the Treasury Senior Preferred Stock has a liquidation preference so that Treasury has priority over any other preferred or common shareholders in the event of a liquidation — that is, Treasury is entitled to the value of its Senior Preferred Stock (face value plus any amounts drawn from Treasury by the Enterprises, without reduction for dividends or other amounts that the Enterprises might pay to Treasury) before any other shareholders — preferred or common — are paid anything in liquidation.

8. The Treasury Senior Preferred Stock also included payment obligations from the Enterprises to Treasury, commensurate with the enormous risks and financial commitments that Treasury assumed. The Enterprises were obligated to pay a 10% annual dividend together with a

Periodic Commitment Fee ("PCF") that was "intended to fully compensate [Treasury] for the support provided by the ongoing Commitment." Amended and Restated Agreements, § 3.2(b) (Sept. 26, 2008). The PSPAs provided that the amount of the PCF to be imposed beginning January 2010 "shall be determined with reference to the market value of the Commitment as then in effect." *Id.*

9. The PSPA gave Treasury the right, in its sole discretion, to waive the PCF for a year at a time "based on adverse conditions in the United States mortgage market." Treasury exercised this right to waive the PCF for 2010 and 2011, years in which the Enterprises had insufficient funds to pay even the 10% dividend, let alone an additional PCF, stating that "the imposition of the PCF at this time would not fulfill its intended purpose of generating increased compensation to the American taxpayer." Periodic Commitment Fee Waiver Letters from Dept. of Treasury to FHFA (Dec. 29, 2010; Mar. 31, 2011; Jun. 30, 2011; Sept. 30, 2011; Dec. 21, 2011). It was clear by this time that, given the risks of the Enterprises and the enormity of the Treasury commitment, the value of the PCF was incalculably large.

10. Under the Second Amendment to the PSPAs (executed December 24, 2009), Treasury was obligated to commit any amount of funds necessary to maintain the Enterprises' positive net worth through December 31, 2012, subject to an initial cap of $200 billion for each of the Enterprises plus the amount of draws between January 1, 2010 and December 31, 2012. As of January 1, 2013, however, Treasury's financial commitment cap became fixed: the amount

remaining available to Fannie Mae under the cap was $117.6 billion, and the amount remaining available to Freddie Mac under the cap was $140.5 billion.[1]

11. By late 2011, analysts and key stakeholders, including institutional and Asian investors in the Enterprises' debt and mortgage backed securities (MBS), began expressing concerns about the adequacy of Treasury's financial commitment to the Enterprises after January 1, 2013, when the cap on Treasury's funding commitment would become fixed.

12. The principal driver of these concerns about the adequacy of Treasury's capital commitment were questions about the Enterprises' ability to pay the 10% annual dividend to Treasury without having to draw additional funds from Treasury, thereby eating away at the amount remaining available under the capped Treasury commitment. From the outset of the PSPAs, the Enterprises could not at times generate enough income to make these dividend payments.

13. The Enterprises drew funds from Treasury to pay the required 10% dividend back to Treasury. Of the $188 billion the Enterprises drew from Treasury from the outset of the PSPAs (September 2008) to the execution of the Third Amendment (August 2012), $45.7 billion was drawn solely to pay the 10% annual dividend back to Treasury. *See* FHFA, Data as of November 14, 2013 on Treasury and Federal Reserve Purchase Programs for GSE and

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[1] Under the Second Amendment to the PSPAs, Treasury committed to provide each Enterprise the greater of: (i) $200 billion or (ii) $200 billion plus the Enterprise's cumulative draws for 2010, 2011, and 2012, less the Enterprise's positive net worth, if any, on December 31, 2012. Second Amendment to Amended and Restated Senior Preferred Stock Purchase Agreement, at 3.

For Fannie Mae, alternative (ii) provided the greater amount: $200 billion + $40.9 billion (cumulative draws for 2010-2012) – $7.2 billion (positive net worth on December 31, 2012) – $116.1 billion (total draws from 2008-2012) = $117.6 billion.

For Freddie Mac, alternative (ii) provided the greater amount: $200 billion + $20.6 billion (cumulative draws for 2010-2012) – $8.8 billion (positive net worth on December 31, 2012) – $71.3 (total draws from 2008-2012) = $140.5 billion.

Mortgage-Related Securities at 2, 3. Additionally, each time the Enterprises drew funds to pay the 10% dividend, the total amount of the Treasury draw increased, in turn increasing the amount of the next 10% dividend payment.

14. By mid-2012, the amount of the annual 10% dividend had grown so large—$11.7 billion for Fannie Mae and $7.2 billion for Freddie Mac—that it appeared unlikely that either of the Enterprises would be able to meet that amount consistently without drawing additional funds from Treasury. *See* Freddie Mac, Quarterly Report (Form 10-Q) at 10, 85 (May 3, 2012), currently *available at* http://www.freddiemac.com/investors/sec_filings/index.html ("Over time, our dividend obligation to Treasury will increasingly drive future draws. Although we may experience period-to-period variability in earnings and comprehensive income, it is unlikely that we will generate net income or comprehensive income in excess of our annual dividends payable to Treasury over the long term."); Freddie Mac, Quarterly Report (Form 10-Q) at 10, 92 (Aug. 7, 2012), currently *available at* http://www.freddiemac.com/investors/sec_filings/index.html (same); Fannie Mae, Quarterly Report (Form 10-Q) at 11, 81 (May 9, 2012), currently *available at* http://www.fanniemae.com/resources/file/ir/pdf/quarterly-annual-results/2012/q12012.pdf ("Although we may experience period-to-period volatility in earnings and comprehensive income, we do not expect to generate net income or comprehensive income in excess of our annual dividend obligation to Treasury over the long term."); Fannie Mae, Quarterly Report (Form 10-Q) at 12-13, 83 (Aug. 8, 2012), currently *available at* http://www.fanniemae.com/resources/file/ir/pdf/quarterly-annual-results/2012/q22012.pdf (same). Because the cap on the Treasury commitment became fixed on January 1, 2013, each dollar drawn from Treasury merely to repay the Treasury dividend was one less dollar available

to the Enterprises to draw in the event the Enterprise suffered losses due, for example, to a decline in the housing market or broader economic turbulence.

15. Market forecasts—which FHFA monitored—predicted that the Enterprises' ongoing payment of the 10% dividend would completely exhaust Treasury's funding commitment within ten years, leading to potential downgrades in the Enterprises' credit ratings. Moody's rating service opined that the 10% dividend payments would "eliminate Fannie Mae's contingent capital by 2019 and Freddie Mac's by 2022 . . . [even] assum[ing] that the GSEs are able to fully offset credit losses, which we believe is unlikely." Moody's, Sector Comment, "Plan To Raise Fannie Mae and Freddie Mac Guarantee Fees Raises Question of Support," at 2 (Sept. 26, 2011). Moody's stated that this "would be credit negative and prompt a review of [the Enterprises'] Aaa ratings." *Id.* Likewise, Deutsche Bank observed that "diminishing Treasury support raises the risk that the agencies one day might face challenges in covering MBS losses" and that such a risk "becomes greater in a housing market catastrophe, such as the one that started in the US after 2006." Deutsche Bank, *The Path of US Support for Fannie Mae, Freddie Mac*, THE OUTLOOK, Mar. 14, 2012, at 6.

16. FHFA shared the concerns that the 10% annual dividend to Treasury would reduce the amount of the Treasury commitment starting in 2013. Treasury also generated and provided certain forecasts to FHFA that were similar to those prepared by market participants.

17. These concerns about the adequacy of Treasury's financial commitment undermined the purpose of the PSPAs to express financial support to holders of Enterprise debt (*i.e.*, bondholders) and mortgage backed securities. *See* FHFA Mortgage Market Note (Dec. 5, 2008), currently *available at* http://www.fhfa.gov/webfiles/1241/mmnote084.pdf. The strength of that support depends upon the Enterprises having a sufficiently large pool of available funds

from Treasury that will permit the Enterprises to continue to operate under adverse market conditions that may arise in the coming years.

18. To resolve these concerns, FHFA and Treasury agreed on the provisions that were incorporated into the Third Amendment, executed on August 17, 2012. The Third Amendment (1) eliminated the 10% annual dividend, (2) added a quarterly variable dividend in the amount (if any) of each Enterprises' positive net worth (above net worth values that were specified in the Third Amendment), and (3) suspended the PCF for as long as the quarterly variable dividend is in effect. The new dividend structure eliminated the risk that borrowings to make fixed dividend payments would lead to the exhaustion of the Treasury commitment.

19. These changes in structure did not change the underlying economics of the PSPAs. It was my belief at this time, given the size and importance of the Treasury commitment, that through the liquidation preference, fixed dividends, and the market value of the PCF, Treasury would receive as much from the Enterprises under the Second Amendment as it would under the Third Amendment. Thus, the intention of the Third Amendment was not to increase compensation to Treasury — the Amendment would not do that — but to protect the Enterprises from the erosion of the Treasury commitment that was threatened by the fixed dividend. The Third Amendment was therefore consistent with the intent of the original PSPAs to (1) fully compensate Treasury for the value of its financial support, without which the Enterprises would have been forced into receivership, and (2) protect the Enterprises and the national housing market.

20. At the time of the negotiation and execution of the Third Amendment, the Conservator and the Enterprises had not yet begun to discuss whether or when the Enterprises would be able to recognize any value to their deferred tax assets. Thus, neither the Conservator

nor Treasury envisioned at the time of the Third Amendment that Fannie Mae's valuation allowance on its deferred tax assets would be reversed in early 2013, resulting in a sudden and substantial increase in Fannie Mae's net worth, which was paid to Treasury in mid-2013 by virtue of the net worth dividend.

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

Executed this 17 day of DECEMBER 2013 at Washington, D.C.

By: ______________________
MARIO UGOLETTI

Special Advisor to the Office of the Director,
Federal Housing Finance Agency

EXHIBIT 2

HIGHLY CONFIDENTIAL

DO NOT DISTRIBUTE OR SHARE WITH OTHER PARTIES

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

Sensitive and Pre-Decisional

June 13, 2012

Discussion Agenda

Sensitive / Pre-Decisional

1) Executive Summary
2) Overview of the GSE Preferred Stock Purchase Agreements (PSPAs)
3) Key Considerations With Existing PSPAs
4) GSE Financial Projections
    - Base Case
    - Stress Case
5) Treasury's PSPA Modification Proposal

Section 1: Executive Summary

Sensitive / Pre-Decisional

1) **Executive Summary**
2) Overview of the GSE Preferred Stock Purchase Agreements (PSPAs)
3) Key Considerations With Existing PSPAs
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   - Stress Case
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Executive Summary

Sensitive / Pre-Decisional

- U.S. Department of Treasury (Treasury) provides capital support to Fannie Mae and Freddie Mac (the GSEs), pursuant to the Preferred Stock Purchase Agreements (PSPAs).
- Financial modeling by the GSEs, the Federal Housing Finance Agency (FHFA) and Treasury highlights that a majority of future draws will likely be necessary to cover dividend payments to Treasury.
- This circularity (i.e. the GSEs drawing from Treasury to pay dividends to Treasury) reduces Treasury's ability to support the capital needs of the GSEs once the final level of the caps are fixed as of the December 31, 2012 financials.
- Consequently, Treasury proposes to modify the PSPAs to protect the solvency of the GSEs.
    - Replace the fixed 10 percent quarterly cash dividend paid by each GSE to Treasury with a variable quarterly dividend equal to any net worth above a certain dollar threshold (a net worth sweep) otherwise the quarterly dividend is zero.
- Over time and based on earnings projections of the GSEs, there should be no material difference in the net cash returned to taxpayers (i.e., the difference between draws taken and dividends received) as would be expected with the fixed ten percent dividend.

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.

Section 2: Overview of the GSE Preferred Stock Purchase Agreements

Sensitive / Pre-Decisional

1) Executive Summary
2) **Overview of the GSE Preferred Stock Purchase Agreements (PSPAs)**
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Conservatorship & the PSPAs

Sensitive / Pre-Decisional

- In September 2008, the FHFA placed Fannie Mae and Freddie Mac into conservatorship.
  - As stated by FHFA, the goals of conservatorship include: (1) helping restore confidence in the GSEs, (2) enhancing the GSEs' capacity to fulfill their role in the housing market, and (3) mitigating the systemic risk that has contributed to market instability.
- When the GSEs entered conservatorship, each GSE received capital support through PSPAs with the Treasury.
  - The PSPAs were designed to provide confidence to the market that the GSEs would remain solvent.
- Under the PSPAs, Treasury committed to make advances of funds to each GSE for each calendar quarter in which the liabilities of the respective GSE exceeded its assets in order to maintain solvency (i.e. maintain positive net worth).
  - Operationally, there is a one quarter lag between the net worth deficit being measured and subsequently cured by a PSPA draw. (I.e., a one-quarter delayed payment)

Conservatorship & the PSPAs (Cont'd)

Sensitive / Pre-Decisional

- The initial cap on the Treasury Senior Preferred Stock funding commitment to each GSE was $100 billion. In return for the commitments, Treasury received a preferred stock certificate from each GSE and an initial $1 billion liquidation preference. Treasury also received warrants with the right to purchase up to 79.9 percent of the common equity of each GSE.
  - Under the terms of each preferred stock certificate, the "liquidation preference" value increases dollar-for-dollar by the amount of each advance of funds made by Treasury to the respective GSE under the commitment.
  - The cash dividend rate on the preferred stock under the PSPAs was set at 10 percent of the cumulative liquidation preference.
- Since they were initially established, the PSPAs have been amended twice:
  - First, in May 2009, when the commitment caps were increased to $200 billion for each GSE;
    - Retained portfolio cap increased to $900 billion (from $850 billion) at December 31, 2009 with 10% annual declines based on the cap (in place of the year-end balance).
  - Second, in December 2009, when the fixed $200 billion cap was amended to increase by the amount of draws between January 1, 2010 and December 31, 2012.
  - After December 31, 2012, the commitment cap becomes fixed again and the unused balance of the commitment will be available to be drawn under the existing terms of the PSPAs.

PSPAs: Key Terms

Sensitive / Pre-Decisional

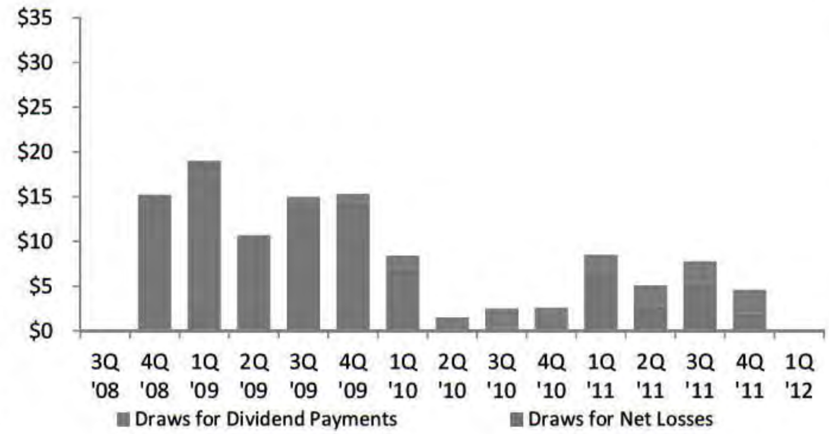
As of December 31, 2011	
Core Terms	
Amended & Restated PSPAs	Signed on September 26, 2008.
Amendments Dated	1st Amendment – May 6, 2009; 2nd Amendment – December 24, 2009.
Liquidation Preference	Increases with draws under the funding commitment.[1]
Dividend Rate	Cash 10%; if elected to be paid in kind ("PIK") 12%.
Seniority of Senior Preferred Stock	Senior Preferred Stock is senior to the existing preferred stock issued prior to conservatorship and common equity but is junior to all debt claims and obligations.
Covenants	
Retained Investment Portfolio	Reduce by 10% per year until the GSEs' retained portfolios each reach $250 billion.
Dividend Payments to Other Parties	None permitted until senior preferred stock is repaid in full.
Asset Sales	No sale, transfer, or disposition of any assets other than dispositions for fair value in the ordinary course of business.
Leverage Limitation	Not permitted to increase debt to more than 120% of the total amount of mortgages and mortgage-backed securities owned by each enterprise.
Other Terms	
Warrants	Right to purchase up to 79.9 percent of the common equity at one-thousandth of one cent ($0.00001) per share, fully diluted. Warrants expire Sept. 7, 2028.

[1] As amended on December 24, 2009, each PSPA commits Treasury to provide additional support to each Enterprise through the end of 2012 in exchange for a greater liquidation preference. Treasury's financial commitment now equals the greater of $200 billion or $200 billion plus cumulative net worth deficits experienced during 2010, 2011, and 2012, less any surplus remaining as of December 31, 2012. Beginning in 2013, the capacity available becomes fixed and the remaining capacity declines as there are further draws.

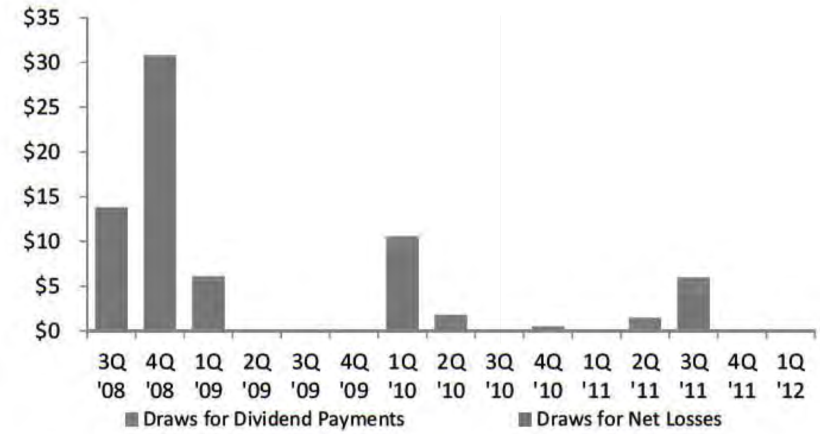
PSPAs: Usage To Date

Sensitive / Pre-Decisional

Fannie Mae:
$ in Billions



Freddie Mac:
$ in Billions



- Cumulative gross draws by Fannie Mae through March 31, 2012 total **$117.2 billion** (including the initial $1.0 billion liquidation preference), of which $19.4 billion were drawn to fund senior preferred stock dividends paid to Treasury.
- Cumulative gross draws by Freddie Mac through March 31, 2012 total **$72.3 billion** (including the initial $1.0 billion liquidation preference), of which $7.0 billion were drawn to fund senior preferred stock dividends paid to Treasury.
- Since 2008, nearly **17%** of the total PSPA draws by Fannie Mae and nearly **10%** of the total PSPA draws by Freddie Mac have been used to pay senior preferred stock dividends back to Treasury.

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Remaining Preferred Stock Purchase Agreement Capacity

Sensitive / Pre-Decisional

- Initial Purchase Agreement had a specified funding commitment cap of $100 billion for each GSE.
- The May 2009 amendment increased the specified cap for each institution to a fixed $200 billion.
- The Dec. 2009 amendment modified the fixed cap and allowed the cap to increase dollar for dollar for any draws between Jan. 1, 2010 and Dec. 31, 2012.
  - At the end of 2009, Fannie Mae had drawn $75.2 billion and Freddie Mac had drawn $50.7 billion, excluding the initial $1.0 billion liquidation preference for which the GSEs did not receive cash proceeds.
- At the end of 2012, these caps become fixed and there will be ~$125 billion of capacity remaining for Fannie Mae and ~$149 billion for Freddie Mac.
  - This remaining capacity will decline to the extent there are further draws from 2013 onward.

Fannie Mae:

PSPA cap as of 12/24/09 amendment	$200 billion
+ Est. PSPA draws[1] Jan. '10 – Dec. '12	+ $65.9 billion
Total est. PSPA cap on Dec. 31, 2012	$265.9 billion
- PSPA draws through Dec. 31, 2009	- $75.2 billion
- Est. PSPA draws[1] Jan. '10 – Dec. '12	- $65.9 billion
= Remaining capacity Dec. 31, 2012 *(less any positive net worth on Dec. 31, 2012)*	$124.8 billion

Freddie Mac:

PSPA cap as of 12/24/09 amendment	$200 billion
+ Est. PSPA draws[2] Jan. '10 – Dec. '12	+ $25.1 billion
Total est. PSPA cap on Dec. 31, 2012	$225.1 billion
- PSPA draws through Dec. 31, 2009	- $50.7 billion
- Est. PSPA draws[1] Jan. '10 – Dec. '12	- $25.1 billion
= Remaining capacity Dec. 31, 2012 *(less any positive net worth on Dec. 31, 2012)*	$149.3 billion

[1] Actual draws between January 1, 2010 and March 31, 2012, forecasted draws thereafter. Forecasted draws through December 31, 2012 as estimated by the base case forecast in the Federal Housing Finance Agency's annual "Projections of the Enterprises' Financial Performance" report, released October 2011.

Section 3: Key Considerations With Existing PSPAs

Sensitive / Pre-Decisional

1) Executive Summary
2) Overview of the GSE Preferred Stock Purchase Agreements (PSPAs)
3) **Key Considerations With Existing PSPAs**
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   - Base Case
   - Stress Case
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Structural Considerations With The PSPAs

Sensitive / Pre-Decisional

- A large percentage of recent draws has been used to fund dividend payments.
  - Of Fannie Mae's $117.2 billion draw, $19.4 billion (~17%) has been used to fund dividends.
  - Of Freddie Mac's $72.3 billion draw, $7.0 billion (~10%) has been used to fund dividends.
- Financial modeling employed by the GSEs, FHFA and Treasury highlights that a majority of future draws will likely be used to pay dividend payments to Treasury.
  - "Our annual dividend obligation on the senior preferred stock exceeds our annual historical earnings in all but one period... it is unlikely that we will regularly generate net income... in excess of our annual dividends payable to Treasury. As a result, there is significant uncertainty as to our long-term financial sustainability. Continued cash payment of senior preferred dividends... will have an adverse impact on our future financial condition and net worth..." – Freddie Mac 2011 10-K.
  - "We will continue to need funds from Treasury as a result of a number of factors, including the dividends we are required to pay Treasury on the senior preferred stock... As a result of our draws, we do not expect to earn profits in excess of our annual dividend obligation to Treasury for the indefinite future..." – Fannie Mae 2011 10-K.
- The circularity described above (i.e. the GSEs drawing from Treasury to pay dividend payments to Treasury) reduces Treasury's ability to support the capital needs of the GSEs once the final level of the caps are fixed as of the December 31, 2012 financials.

Section 4: GSE Financial Projections

Sensitive / Pre-Decisional

1) Executive Summary
2) Overview of the GSE Preferred Stock Purchase Agreements (PSPAs)
3) Key Considerations With Existing PSPAs
4) **GSE Financial Projections**
   - **Base Case**
   - **Stress Case**
5) Treasury's PSPA Modification Proposal

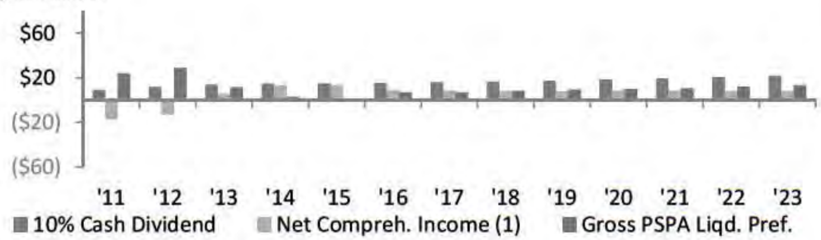
Fannie Mae Base Case PSPA Forecast

Sensitive / Pre-Decisional

Projections: $ in billions	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017	FY2018	FY2019	FY2020	FY2021	FY2022	FY2023
Net Comprehensive Income (Loss)[1]	($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[2]	*($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[3]	-	-	-	-	-	-	-	-	-	-	-	**$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* [4]	*$117.9*	*$116.7*	*$109.7*	*$102.6*	*$94.4*	*$85.0*	*$75.2*	*$64.5*	*$52.4*	*$38.9*
Cumulative Net PSPA Investment[5]	**$112.3**	**$109.7**	**$97.7**	**$84.0**	**$75.8**	**$67.0**	**$58.6**	**$50.5**	**$41.9**	**$33.2**	**$24.7**	**$16.4**

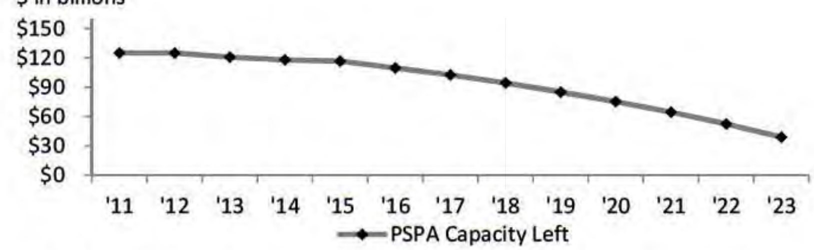
Per annum projected PSPA draws and dividends

$ in billions



Projected PSPA funding capacity as a result of draws

$ in billions



(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.

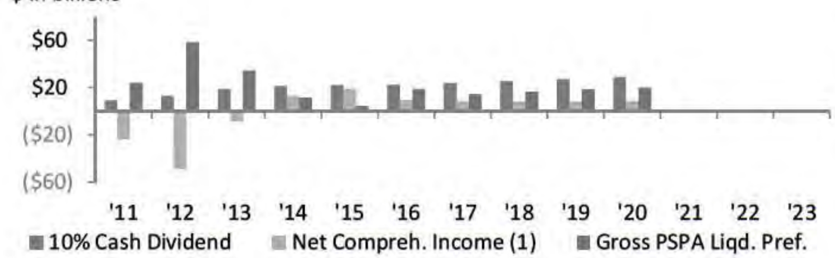
Fannie Mae Downside Case PSPA Forecast

Sensitive / Pre-Decisional

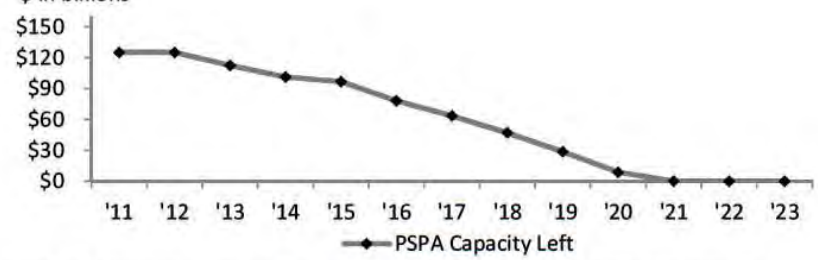
Projections: $ in billions	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017	FY2018	FY2019	FY2020	FY2021	FY2022	FY2023
Net Comprehensive Income (Loss)[1]	($49.0)	($8.8)	$12.9	$18.6	$9.3	$8.7	$8.2	$8.0	$8.7	$8.5	-	-
Total Gross PSPA Draw	$58.1	$34.3	$11.3	$4.5	$18.6	$14.5	$16.5	$18.4	$19.9	$8.7	-	-
Total Dividend Paid	($12.9)	($18.6)	($21.1)	($21.9)	($22.2)	($23.7)	($25.2)	($26.9)	($28.8)	($8.7)	-	-
Total PSPA Draw Net of PSPA Dividends	$45.2	$15.7	($9.8)	($17.4)	($3.6)	($9.2)	($8.7)	($8.5)	($8.9)	-	-	-
Projected End of Period Net Worth[2]	*($20.3)*	*($13.4)*	*($10.3)*	*($9.0)*	*($3.4)*	*($3.9)*	*($4.4)*	*($4.9)*	*($5.2)*	-	-	-
Percent of Dividends Funded by PSPA Draws	100%	100%	54%	21%	84%	61%	65%	68%	69%	-	-	-
Dollar Amt. of Dividends Funded by Earnings	$0.0	$0.0	$9.8	$17.4	$3.6	$9.2	$8.7	$8.5	$8.9	-	-	-
Cumulative Cash Dividends Funded by Earnings	$0.0	$0.0	$9.8	$27.2	$30.8	$40.0	$48.7	$57.2	$66.2	-	-	-
Cumulative Net Return To Taxpayers By FY2023[3]	-	-	-	-	-	-	-	-	$60.9	-	-	-
Beginning PSPA Liquidation Preference	$112.6	$170.7	$205.0	$216.3	$220.8	$239.4	$253.9	$270.4	$288.8	$308.7	-	-
Total Gross Liquidation Preference	$58.1	$34.3	$11.3	$4.5	$18.6	$14.5	$16.5	$18.4	$19.9	$8.7	-	-
Cumulative Gross Liquidation Preference	$170.7	$205.0	$216.3	$220.8	$239.4	$253.9	$270.4	$288.8	$308.7	$317.4	-	-
Remaining PSPA Funding Capacity	*$125.0*	*$112.4* [4]	*$101.1*	*$96.6*	*$78.0*	*$63.5*	*$47.0*	*$28.6*	*$8.7*	*($0.0)*	-	-
Cumulative Net PSPA Investment[5]	$140.6	$156.2	$146.4	$129.1	$125.5	$116.3	$107.6	$99.0	$90.1	-	-	-

TREASURY-3848

Per annum projected PSPA draws and dividends



Projected PSPA funding capacity as a result of draws



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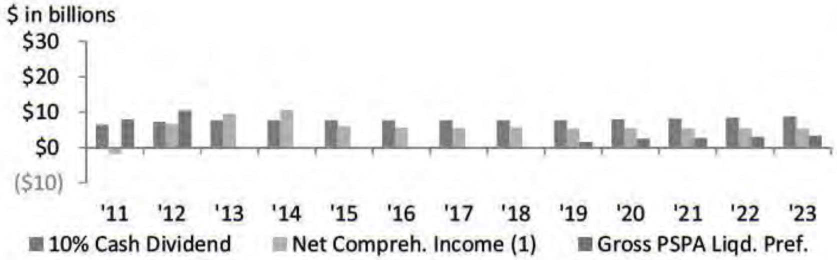
(5) The cumulative net PSPA investment decreases by the dollar amount of dividends funded by earnings paid to the U.S. Department of the Treasury.

Freddie Mac Base Case PSPA Forecast

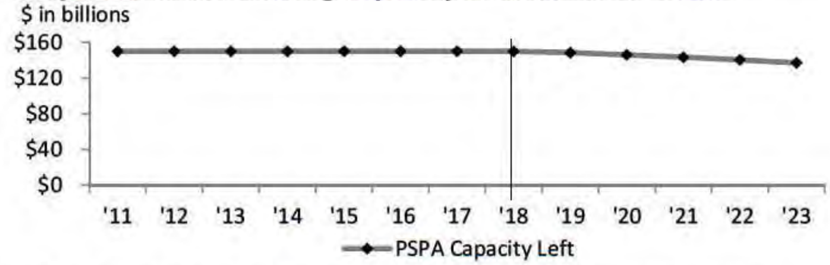
Sensitive / Pre-Decisional

Projections: $ in billions	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017	FY2018	FY2019	FY2020	FY2021	FY2022	FY2023
Net Comprehensive Income (Loss)[1]	$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[2]	*$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[3]	-	-	-	-	-	-	-	-	-	-	-	**$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* [4]	*$150.0*	*$150.0*	*$150.0*	*$150.0*	*$150.0*	*$148.5*	*$146.0*	*$143.4*	*$140.4*	*$137.1*
Cumulative Net PSPA Investment[5]	**$60.5**	**$52.8**	**$45.2**	**$37.5**	**$29.8**	**$22.2**	**$14.5**	**$8.3**	**$2.9**	($2.7)	($8.1)	($13.5)

Per annum projected PSPA draws and dividends



Projected PSPA funding capacity as a result of draws



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Freddie Mac Downside Case PSPA Forecast

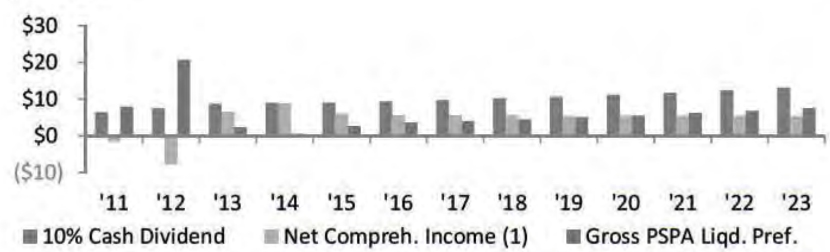
Sensitive / Pre-Decisional

Projections: $ in billions	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017	FY2018	FY2019	FY2020	FY2021	FY2022	FY2023
Net Comprehensive Income (Loss)[1]	($7.8)	$6.6	$8.9	$6.1	$5.6	$5.6	$5.7	$5.4	$5.5	$5.4	$5.4	$5.4
Total Gross PSPA Draw	$20.7	$2.3	$0.5	$2.7	$3.6	$4.0	$4.4	$5.1	$5.5	$6.2	$6.8	$7.5
Total Dividend Paid	($7.6)	($8.8)	($9.0)	($9.1)	($9.4)	($9.7)	($10.2)	($10.6)	($11.2)	($11.7)	($12.4)	($13.1)
Total PSPA Draw Net of PSPA Dividends	$13.1	($6.5)	($8.4)	($6.4)	($5.8)	($5.7)	($5.8)	($5.5)	($5.7)	($5.5)	($5.6)	($5.6)
Projected End of Period Net Worth[2]	*($1.1)*	*($0.9)*	*($0.5)*	*($0.8)*	*($0.9)*	*($1.1)*	*($1.2)*	*($1.3)*	*($1.5)*	*($1.6)*	*($1.8)*	*($2.0)*
Percent of Dividends Funded by PSPA Draws	100%	26%	6%	30%	38%	41%	43%	48%	49%	53%	55%	57%
Dollar Amt. of Dividends Funded by Earnings	$0.0	$6.5	$8.4	$6.4	$5.8	$5.7	$5.8	$5.5	$5.7	$5.5	$5.6	$5.6
Cumulative Cash Dividends Funded by Earnings	**$0.0**	**$6.5**	**$14.9**	**$21.3**	**$27.0**	**$32.8**	**$38.6**	**$44.1**	**$49.7**	**$55.3**	**$60.8**	**$66.4**
Cumulative Net Return To Taxpayers By FY2023[3]	-	-	-	-	-	-	-	-	-	-	-	**$64.4**
Beginning PSPA Liquidation Preference	$72.2	$92.9	$95.2	$95.7	$98.4	$102.0	$106.0	$110.4	$115.5	$121.0	$127.2	$134.0
Total Gross Liquidation Preference	$20.7	$2.3	$0.5	$2.7	$3.6	$4.0	$4.4	$5.1	$5.5	$6.2	$6.8	$7.5
Cumulative Gross Liquidation Preference	$92.9	$95.2	$95.7	$98.4	$102.0	$106.0	$110.4	$115.5	$121.0	$127.2	$134.0	$141.5
Remaining PSPA Funding Capacity	*$150.0*	*$149.0* [4]	*$148.4*	*$145.7*	*$142.1*	*$138.1*	*$133.7*	*$128.6*	*$123.1*	*$116.9*	*$110.1*	*$102.6*
Cumulative Net PSPA Investment[5]	**$70.4**	**$64.0**	**$55.6**	**$49.2**	**$43.4**	**$37.7**	**$31.9**	**$26.4**	**$20.7**	**$15.2**	**$9.6**	**$4.0**

TREASURY-3850

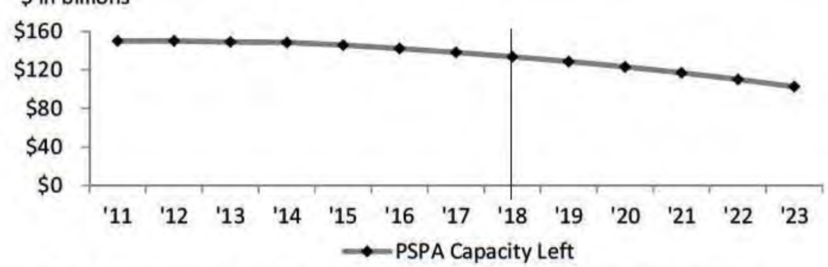
Per annum projected PSPA draws and dividends

$ in billions



Projected PSPA funding capacity as a result of draws

$ in billions



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Section 5: Treasury's PSPA Modification Proposal

Sensitive / Pre-Decisional

1) Executive Summary
2) Overview of the GSE Preferred Stock Purchase Agreements (PSPAs)
3) Key Considerations With Existing PSPAs
4) GSE Financial Projections
   - Base Case
   - Stress Case
5) **Treasury's PSPA Modification Proposal**

Goals of Modifying the PSPAs

Sensitive / Pre-Decisional

- Treasury would like to modify the PSPAs given the challenges and circularity embedded in the current structure.

- Any modification would need to achieve four core goals:

  1) Protect the taxpayers' investment in the GSEs.

  2) There should be no material difference in the net cash returned to taxpayers (i.e., the difference between draws taken and dividends received) as would be expected with the fixed ten percent dividend.

  3) The maximum financial upside possible should be retained for the taxpayer if/when the GSEs return to sustained profitability.

  4) Should be executed in a transparent manner that maintains stakeholder confidence in the GSEs so they can fulfill their current and future mission.

Treasury's PSPA Modification Proposal

Sensitive / Pre-Decisional

- Replace the fixed 10 percent quarterly cash dividend paid by each GSE to Treasury with a variable quarterly dividend equal to a net worth sweep based upon financial results.
  - If quarterly net worth[(1)] is positive above a minimum amount[(2)], all of that value would be paid to Treasury.
  - If quarterly net worth[(1)] is negative, no dividends would be paid to Treasury.
    - The GSEs would draw on the remaining funding commitment capacity to maintain positive net worth.
- The proposed modification has the following impact on PSPA operations:
  - Eliminates the circularity of Treasury funding dividends paid to Treasury.
  - All future net income/profits above an established threshold are distributed to Treasury as dividends.
  - Future draws are only used to meet solvency needs and fund actual operating losses to the extent necessary.

(1) Net worth is determined by subtracting the total liabilities from the total assets as reflected on the GSE balance sheets as of an applicable date, prepared in accordance with GAAP.

(2) Treasury is proposing a minimum net worth amount of $10,000,000,000 for the quarterly reporting periods between January 1, 2013 and December 31, 2019. For all subsequent periods, the minimum net worth amount will be $1,000,000. The economic rationale behind the minimum net worth amount is to avoid having unnecessary PSPA draws that result from price volatility in the GSEs mortgage investment portfolios. By January 1, 2020, these portfolios need to be reduced to $250 billion from their current levels of $708 billion and $653 billion at Fannie Mae and Freddie Mac, respectively.

Hypothetical Cashflows prior to 2020 where the GSE has positive net worth that totals less than $10 billion

Sensitive / Pre-Decisional

Current 10% Annualized Dividend

Quarter with Positive Net Worth

Income Statement	Net Comprehensive Income	$2.00
Balance Sheet	Assets	$3,202.00
	Liabilities	$3,200.00
	Net Worth	$2.00
	Dividend Accrued	*$2.50*
Cash Flows: TSY	Dividend Payment	$2.50
	Less: Increase in Liq. Pref.	($0.50)
	Net Cash to/from Treasury	$2.00
PSPAs	Beg. Cum. Liquidation Pref.	$100.00
	End. Cum. Liquidation Pref.	$100.50

Quarter with Negative Net Worth

Income Statement	Net Comprehensive Income	($2.00)
Balance Sheet	Assets	$3,198.00
	Liabilities	$3,200.00
	Net Worth	($2.00)
	Dividend Accrued	$2.50
Cash Flows: TSY	Dividend Payment	$2.50
	Less: Increase in Liq. Pref.	($4.50)
	Net Cash to/from Treasury	($2.00)
PSPAs	Beg. Cum. Liquidation Pref.	$100.00
	End. Cum. Liquidation Pref.	$104.50

Proposed Net Worth Sweep

Quarter with Positive Net Worth

Income Statement	Net Comprehensive Income	$2.00
Balance Sheet	Assets	$3,202.00
	Liabilities	$3,200.00
	Net Worth	$2.00
	Dividend Accrued	*$0.00*
Cash Flows: TSY	Dividend Payment	$0.00
	Less: Increase in Liq. Pref.	$0.00
	Net Cash to/from Treasury	$0.00
PSPAs	Beg. Cum. Liquidation Pref.	$100.00
	End. Cum. Liquidation Pref.	$100.00

Quarter with Negative Net Worth

Income Statement	Net Comprehensive Income	($2.00)
Balance Sheet	Assets	$3,198.00
	Liabilities	$3,200.00
	Net Worth	($2.00)
	Dividend Accrued	*$0.00*
Cash Flows: TSY	Dividend Payment	$0.00
	Less: Increase in Liq. Pref.	($2.00)
	Net Cash to/from Treasury	($2.00)
PSPAs	Beg. Cum. Liquidation Pref.	$100.00
	End. Cum. Liquidation Pref.	$102.00

Hypothetical Cashflows prior to 2020 where the GSE has positive net worth that totals more than $10 billion

Sensitive / Pre-Decisional

Current 10% Annualized Dividend

Quarter with Positive Net Worth

Income Statement	Net Comprehensive Income	$2.00
Balance Sheet	Assets	$3,212.00
	Liabilities	$3,200.00
	Net Worth	$12.00
	Dividend Accrued	*$2.50*
Cash Flows: TSY	Dividend Payment	$2.50
	Less: Increase in Liq. Pref.	$0.00
	Net Cash to/from Treasury	$2.50
PSPAs	Beg. Cum. Liquidation Pref.	$100.00
	End. Cum. Liquidation Pref.	$100.00

Proposed Net Worth Sweep

Quarter with Positive Net Worth

Income Statement	Net Comprehensive Income	$2.00
Balance Sheet	Assets	$3,212.00
	Liabilities	$3,200.00
	Net Worth	$12.00
	Dividend Accrued	*$2.00*
Cash Flows: TSY	Dividend Payment	$2.00
	Less: Increase in Liq. Pref.	$0.00
	Net Cash to/from Treasury	$2.00
PSPAs	Beg. Cum. Liquidation Pref.	$100.00
	End. Cum. Liquidation Pref.	$100.00

Hypothetical Cashflows Where The GSE Has Positive Net Worth After 2020

Sensitive / Pre-Decisional

Current 10% Annualized Dividend

Quarter with Positive Net Worth

Income Statement	Net Comprehensive Income	$2.00
Balance Sheet	Assets	$3,212.00
	Liabilities	$3,200.00
	Net Worth	$12.00
	Dividend Accrued	*$2.50*
Cash Flows: TSY	Dividend Payment	$2.50
	Less: Increase in Liq. Pref.	$0.00
	Net Cash to/from Treasury	$\boxed{\$2.50}$
PSPAs	Beg. Cum. Liquidation Pref.	$100.00
	End. Cum. Liquidation Pref.	$100.00

Proposed Net Worth Sweep

Quarter with Positive Net Worth

Income Statement	Net Comprehensive Income	$2.00
Balance Sheet	Assets	$3,212.00
	Liabilities	$3,200.00
	Net Worth	$12.00
	Dividend Accrued	*$12.00*
Cash Flows: TSY	Dividend Payment	$12.00
	Less: Increase in Liq. Pref.	$0.00
	Net Cash to/from Treasury	$\boxed{\$12.00}$
PSPAs	Beg. Cum. Liquidation Pref.	$100.00
	End. Cum. Liquidation Pref.	$100.00

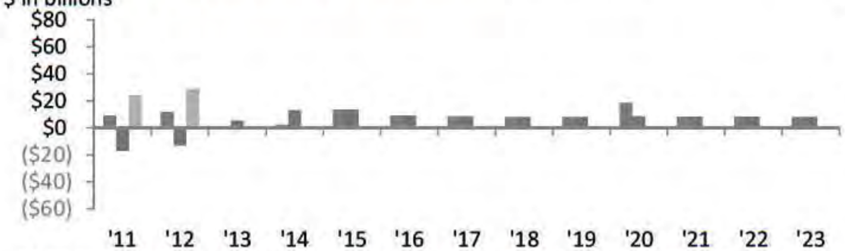
Fannie Mae Base Case PSPA Forecast Under Sweep Proposal

Sensitive / Pre-Decisional

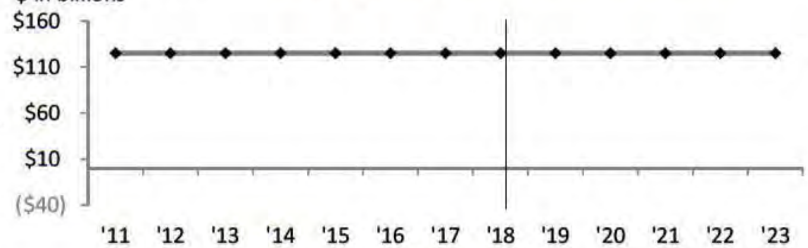
Projections: $ in billions	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017	FY2018	FY2019	FY2020	FY2021	FY2022	FY2023
Net Comprehensive Income (Loss)[1]	($13.1)	$5.4	$13.1	$13.5	$9.1	$8.5	$8.0	$7.9	$8.5	$8.4	$8.1	$8.0
Total Gross PSPA Draw	$28.7	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0
Total Net Worth Sweep Dividend	($11.8)	$0.0	($2.3)	($13.5)	($9.1)	($8.5)	($8.0)	($7.9)	($18.5)	($8.4)	($8.1)	($8.0)
Total PSPA Draw Net of Net Worth Sweep	$16.9	$0.0	($2.3)	($13.5)	($9.1)	($8.5)	($8.0)	($7.9)	($18.5)	($8.4)	($8.1)	($8.0)
Projected End of Period Net Worth[2]	*($6.2)*	*($0.8)*	*$10.0*	*$10.0*	*$10.0*	*$10.0*	*$10.0*	*$10.0*	*$0.0*	*$0.0*	*$0.0*	*$0.0*
Percent of Dividends Funded by PSPA Draws	100%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Dollar Amt. of Dividends Funded by Earnings	$0.0	$0.0	$2.3	$13.5	$9.1	$8.5	$8.0	$7.9	$18.5	$8.4	$8.1	$8.0
Cumulative Cash Dividends Funded by Earnings	$0.0	$0.0	$2.3	$15.8	$24.9	$33.4	$41.4	$49.3	$67.8	$76.2	$84.3	$92.4
Cumulative Net Return To Taxpayers By FY2023[3]	-	-	-	-	-	-	-	-	-	-	-	$92.4
Beginning PSPA Liquidation Preference	$112.6	$141.3	$141.3	$141.3	$141.3	$141.3	$141.3	$141.3	$141.3	$141.3	$141.3	$141.3
Total Gross Liquidation Preference	$28.7	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0
Cumulative Gross Liquidation Preference	$141.3	$141.3	$141.3	$141.3	$141.3	$141.3	$141.3	$141.3	$141.3	$141.3	$141.3	$141.3
Remaining PSPA Funding Capacity	*$125.0*	*$125.0* [4]	*$125.0*	*$125.0*	*$125.0*	*$125.0*	*$125.0*	*$125.0*	*$125.0*	*$125.0*	*$125.0*	*$125.0*
Cumulative Net PSPA Investment[5]	$112.3	$112.3	$110.0	$96.5	$87.4	$78.9	$70.9	$63.0	$44.4	$36.0	$27.9	$19.9

TREASURY-3857

Per annum projected PSPA draws and dividends



Projected PSPA funding capacity as a result of draws



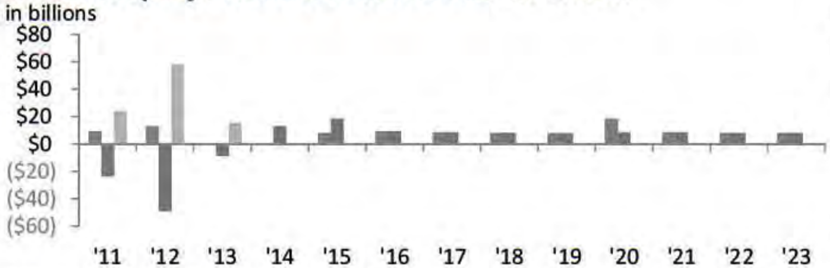
(1) Net comprehensive income is defined as the sum of economic net interest margin, fees and other income less a provision for credit losses, administrative expenses and other non-interest expenses.
(2) Until 2020, the GSEs can retain $10 billion in net worth before being required to sweep dividends. 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.
(6) Net worth sweep dividend begins in FY2013. 10 percent cash dividend paid through FY2012.

Fannie Mae Downside Case PSPA Forecast Under Sweep Proposal

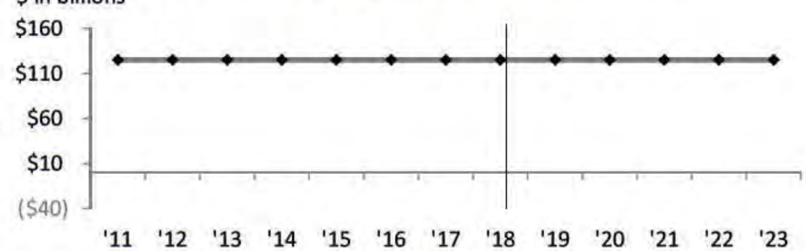
Sensitive / Pre-Decisional

Projections: $ in billions	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017	FY2018	FY2019	FY2020	FY2021	FY2022	FY2023
Net Comprehensive Income (Loss)[1]	($49.0)	($8.8)	$12.9	$18.6	$9.3	$8.7	$8.2	$8.0	$8.7	$8.5	$8.2	$8.2
Total Gross PSPA Draw	$58.1	$15.7	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0
Total Net Worth Sweep Dividend	($12.9)	$0.0	$0.0	($8.1)	($9.3)	($8.7)	($8.2)	($8.0)	($18.7)	($8.5)	($8.2)	($8.2)
Total PSPA Draw Net of Net Worth Sweep	$45.2	$15.7	$0.0	($8.1)	($9.3)	($8.7)	($8.2)	($8.0)	($18.7)	($8.5)	($8.2)	($8.2)
Projected End of Period Net Worth[2]	*($20.3)*	*($13.4)*	*($0.5)*	*$10.0*	*$10.0*	*$10.0*	*$10.0*	*$10.0*	*$0.0*	*$0.0*	*$0.0*	*$0.0*
Percent of Dividends Funded by PSPA Draws	100%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Dollar Amt. of Dividends Funded by Earnings	$0.0	$0.0	$0.0	$8.1	$9.3	$8.7	$8.2	$8.0	$18.7	$8.5	$8.2	$8.2
Cumulative Cash Dividends Funded by Earnings	**$0.0**	**$0.0**	**$0.0**	**$8.1**	**$17.4**	**$26.1**	**$34.2**	**$42.3**	**$60.9**	**$69.5**	**$77.6**	**$85.8**
Cumulative Net Return To Taxpayers By FY2023[3]	-	-	-	-	-	-	-	-	-	-	-	**$85.8**
Beginning PSPA Liquidation Preference	$112.6	$170.7	$186.3	$186.3	$186.3	$186.3	$186.3	$186.3	$186.3	$186.3	$186.3	$186.3
Total Gross Liquidation Preference	$58.1	$15.7	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0
Cumulative Gross Liquidation Preference	$170.7	$186.3	$186.3	$186.3	$186.3	$186.3	$186.3	$186.3	$186.3	$186.3	$186.3	$186.3
Remaining PSPA Funding Capacity	*$125.0*	*$125.0* [4]	*$125.0*	*$125.0*	*$125.0*	*$125.0*	*$125.0*	*$125.0*	*$125.0*	*$125.0*	*$125.0*	*$125.0*
Cumulative Net PSPA Investment[5]	**$0.0**	**$154.0**	**$154.0**	**$145.9**	**$136.6**	**$127.9**	**$119.8**	**$111.8**	**$93.1**	**$84.6**	**$76.4**	**$68.2**

Per annum projected PSPA draws and dividends



Projected PSPA funding capacity as a result of draws



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(6) Net worth sweep dividend begins in FY2013. 10 percent cash dividend paid through FY2012.

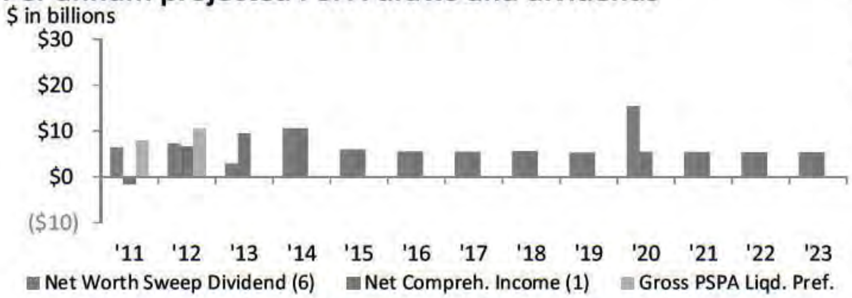
Freddie Mac Base Case PSPA Forecast Under Sweep Proposal

Sensitive / Pre-Decisional

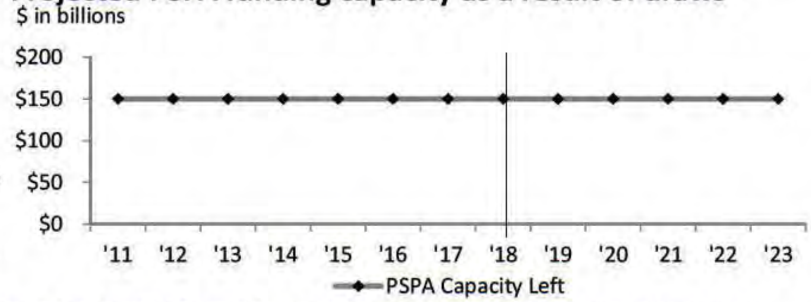
Projections: $ in billions	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017	FY2018	FY2019	FY2020	FY2021	FY2022	FY2023
Net Comprehensive Income (Loss)[1]	$6.7	$9.5	$10.6	$6.0	$5.5	$5.5	$5.6	$5.3	$5.5	$5.4	$5.4	$5.4
Total Gross PSPA Draw	$10.5	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0
Total Net Worth Sweep Dividend	($7.3)	($3.0)	($10.6)	($6.0)	($5.5)	($5.5)	($5.6)	($5.3)	($15.5)	($5.4)	($5.4)	($5.4)
Total PSPA Draw Net of Net Worth Sweep	$3.2	($3.0)	($10.6)	($6.0)	($5.5)	($5.5)	($5.6)	($5.3)	($15.5)	($5.4)	($5.4)	($5.4)
Projected End of Period Net Worth[2]	*$3.5*	*$10.0*	*$10.0*	*$10.0*	*$10.0*	*$10.0*	*$10.0*	*$10.0*	*$0.0*	*$0.0*	*$0.0*	*$0.0*
Percent of Dividends Funded by PSPA Draws	100%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Dollar Amt. of Dividends Funded by Earnings	$0.0	$3.0	$10.6	$6.0	$5.5	$5.5	$5.6	$5.3	$15.5	$5.4	$5.4	$5.4
Cumulative Cash Dividends Funded by Earnings	$0.0	$3.0	$13.6	$19.6	$25.1	$30.6	$36.2	$41.5	$57.0	$62.4	$67.8	$73.2
Cumulative Net Return To Taxpayers By FY2023[3]	-	-	-	-	-	-	-	-	-	-	-	$73.2
Beginning PSPA Liquidation Preference	$72.2	$82.7	$82.7	$82.7	$82.7	$82.7	$82.7	$82.7	$82.7	$82.7	$82.7	$82.7
Total Gross Liquidation Preference	$10.5	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0
Cumulative Gross Liquidation Preference	$82.7	$82.7	$82.7	$82.7	$82.7	$82.7	$82.7	$82.7	$82.7	$82.7	$82.7	$82.7
Remaining PSPA Funding Capacity	*$150.0*	*$150.0* [4]	*$150.0*	*$150.0*	*$150.0*	*$150.0*	*$150.0*	*$150.0*	*$150.0*	*$150.0*	*$150.0*	*$150.0*
Cumulative Net PSPA Investment[5]	$60.5	$57.5	$46.9	$40.9	$35.4	$29.9	$24.3	$19.0	$3.5	($2.0)	($7.4)	($12.7)

TREASURY-3859

Per annum projected PSPA draws and dividends



Projected PSPA funding capacity as a result of draws



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(6) Net worth sweep dividend begins in FY2013. 10 percent cash dividend paid through FY2012.

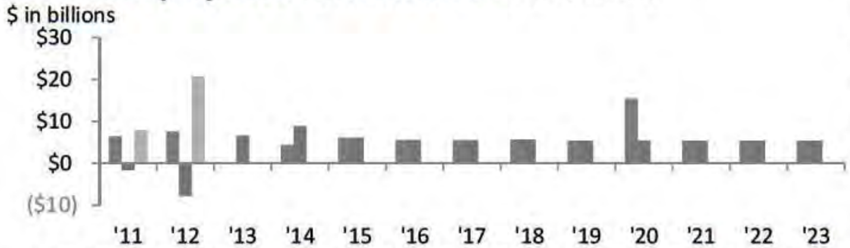
Freddie Mac Downside Case PSPA Forecast Under Sweep Proposal

Sensitive / Pre-Decisional

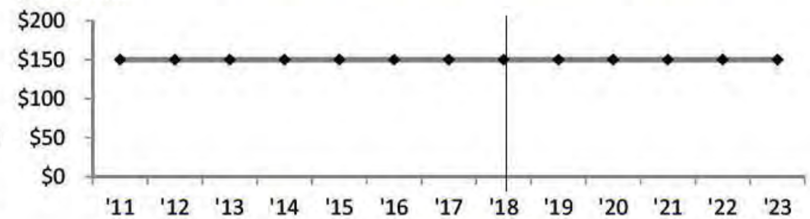
Projections: $ in billions	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017	FY2018	FY2019	FY2020	FY2021	FY2022	FY2023
Net Comprehensive Income (Loss)[1]	($7.8)	$6.6	$8.9	$6.1	$5.6	$5.6	$5.7	$5.4	$5.5	$5.4	$5.4	$5.4
Total Gross PSPA Draw	$20.7	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0
Total Net Worth Sweep Dividend	($7.6)	$0.0	($4.4)	($6.1)	($5.6)	($5.6)	($5.7)	($5.4)	($15.5)	($5.4)	($5.4)	($5.4)
Total PSPA Draw Net of Net Worth Sweep	$13.1	$0.0	($4.4)	($6.1)	($5.6)	($5.6)	($5.7)	($5.4)	($15.5)	($5.4)	($5.4)	($5.4)
Projected End of Period Net Worth[2]	*($1.1)*	*$5.5*	*$10.0*	*$10.0*	*$10.0*	*$10.0*	*$10.0*	*$10.0*	*$0.0*	*$0.0*	*$0.0*	*$0.0*
Percent of Dividends Funded by PSPA Draws	100%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Dollar Amt. of Dividends Funded by Earnings	$0.0	$0.0	$4.4	$6.1	$5.6	$5.6	$5.7	$5.4	$15.5	$5.4	$5.4	$5.4
Cumulative Cash Dividends Funded by Earnings	$0.0	$0.0	$4.4	$10.5	$16.1	$21.7	$27.4	$32.7	$48.2	$53.7	$59.1	$64.4
Cumulative Net Return To Taxpayers By FY2023[3]	-	-	-	-	-	-	-	-	-	-	-	$64.4
Beginning PSPA Liquidation Preference	$72.2	$92.9	$92.9	$92.9	$92.9	$92.9	$92.9	$92.9	$92.9	$92.9	$92.9	$92.9
Total Gross Liquidation Preference	$20.7	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0
Cumulative Gross Liquidation Preference	$92.9	$92.9	$92.9	$92.9	$92.9	$92.9	$92.9	$92.9	$92.9	$92.9	$92.9	$92.9
Remaining PSPA Funding Capacity	*$150.0*	*$150.0* [4]	*$150.0*	*$150.0*	*$150.0*	*$150.0*	*$150.0*	*$150.0*	*$150.0*	*$150.0*	*$150.0*	*$150.0*
Cumulative Net PSPA Investment[5]	$0.0	$70.4	$66.1	$60.0	$54.3	$48.8	$43.1	$37.7	$22.2	$16.8	$11.4	$6.0

TREASURY-3860

Per annum projected PSPA draws and dividends



Projected PSPA funding capacity as a result of draws



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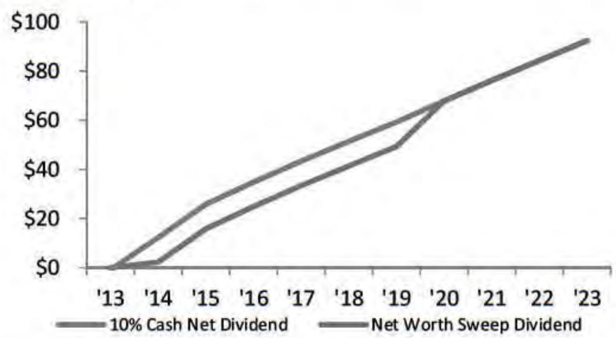
(6) Net worth sweep dividend begins in FY2013. 10 percent cash dividend paid through FY2012.

Summary

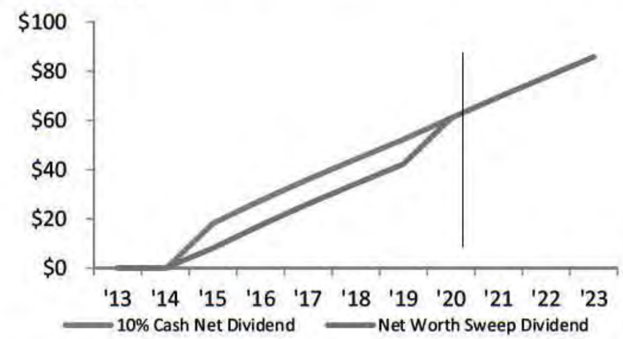
Sensitive / Pre-Decisional

- The net cash returned to taxpayers post the dividend modification is materially equivalent under the proposal as with the 10 percent fixed dividend.
  - The aggregate net cash returned by the GSEs remains materially the same.

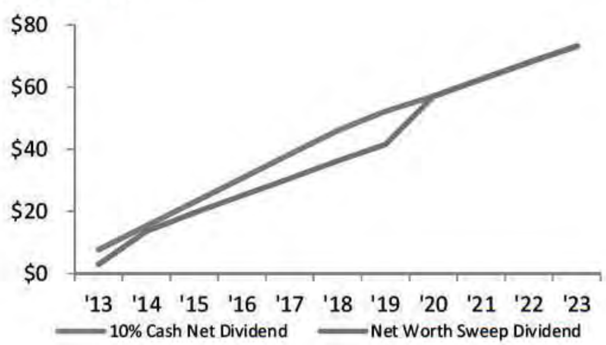
Fannie Mae Base Case Net Cash Returned to Taxpayers
($ in billions)



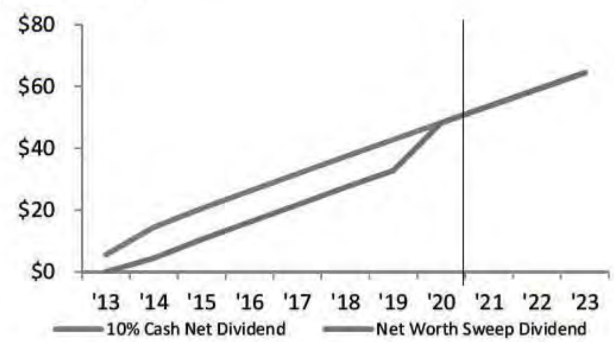
Fannie Mae Downside Case Net Cash Returned to Taxpayers
($ in billions)



Freddie Mac Base Case Net Cash Returned to Taxpayers
($ in billions)



Freddie Mac Downside Case Net Cash Returned to Taxpayers
($ in billions)

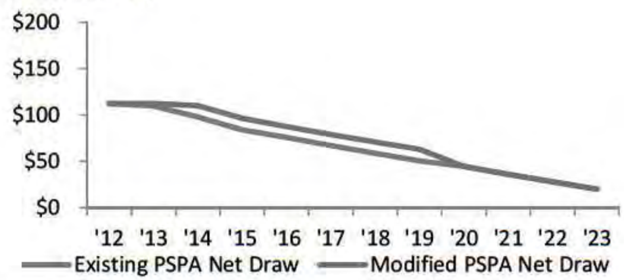


Summary (Cont'd)

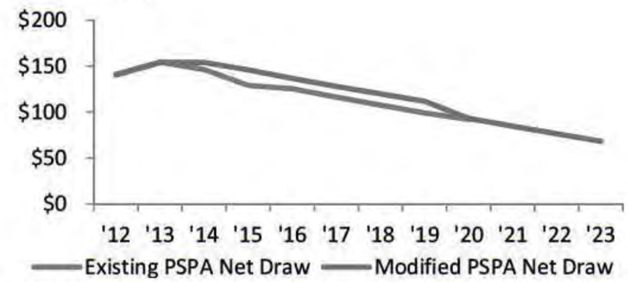
Sensitive / Pre-Decisional

- The net PSPA investment is materially equivalent under the proposal as with the 10 percent fixed dividend.
    - Under all scenarios, net draws (total payments made by Treasury to GSEs under PSPA funding commitments less dividends received) are materially equivalent.
    - In certain positive scenarios (not modeled), the proceeds recaptured by Treasury might be higher.
- The residual economic value of Treasury's existing and future liquidation preference may be higher as investor confidence in the GSEs should improve, which will decrease funding costs and enhance profitability.

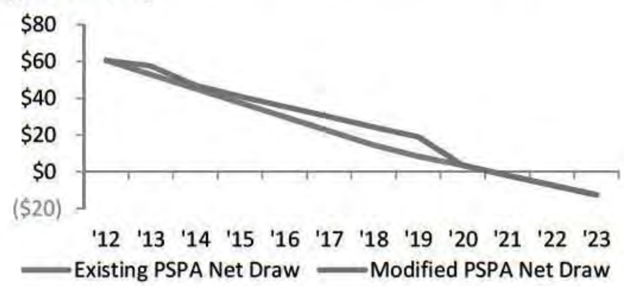
Fannie Mae Base Case Net PSPA Investment
($ in billions)



Fannie Mae Downside Case Net PSPA Investment
($ in billions)



Freddie Mac Base Case Net PSPA Investment
($ in billions)



Freddie Mac Downside Case Net PSPA Investment
($ in billions)

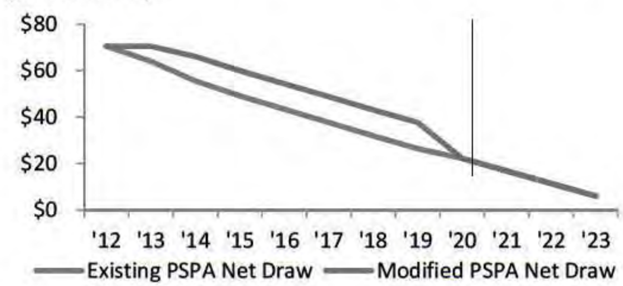


EXHIBIT 3

REDACTED

EXHIBIT 4

REDACTED

EXHIBIT 5

REDACTED

EXHIBIT 6

REDACTED

EXHIBIT 7

REDACTED

EXHIBIT 8

REDACTED

EXHIBIT 9

REDACTED

EXHIBIT 10

REDACTED

EXHIBIT 11

REDACTED

EXHIBIT 12
REDACTED

EXHIBIT 13

REDACTED

EXHIBIT 14

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934
For the fiscal year ended December 31, 2011
Commission File No.: 0-50231

Federal National Mortgage Association

(Exact name of registrant as specified in its charter)

Fannie Mae

Federally chartered corporation *(State or other jurisdiction of incorporation or organization)*	**52-0883107** *(I.R.S. Employer Identification No.)*
3900 Wisconsin Avenue, NW Washington, DC *(Address of principal executive offices)*	**20016** *(Zip Code)*

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

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

Title of Each Class	Name of Each Exchange on Which Registered
None	

Securities registered pursuant to Section 12(g) of the Act:
Common Stock, without par value
(Title of class)
8.25% Non-Cumulative Preferred Stock, Series T, stated value $25 per share
(Title of class)
8.75% Non-Cumulative Mandatory Convertible Preferred Stock, Series 2008-1 stated value $50 per share
(Title of class)
Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series S, stated value $25 per share
(Title of class)
7.625% Non-Cumulative Preferred Stock, Series R, stated value $25 per share
(Title of class)
6.75% Non-Cumulative Preferred Stock, Series Q, stated value $25 per share
(Title of class)
Variable Rate Non-Cumulative Preferred Stock, Series P, stated value $25 per share
(Title of class)
Variable Rate Non-Cumulative Preferred Stock, Series O, stated value $50 per share
(Title of class)
5.375% Non-Cumulative Convertible Series 2004-1 Preferred Stock, stated value $100,000 per share
(Title of class)
5.50% Non-Cumulative Preferred Stock, Series N, stated value $50 per share
(Title of class)
4.75% Non-Cumulative Preferred Stock, Series M, stated value $50 per share
(Title of class)
5.125% Non-Cumulative Preferred Stock, Series L, stated value $50 per share
(Title of class)
5.375% Non-Cumulative Preferred Stock, Series I, stated value $50 per share
(Title of class)
5.81% Non-Cumulative Preferred Stock, Series H, stated value $50 per share
(Title of class)
Variable Rate Non-Cumulative Preferred Stock, Series G, stated value $50 per share
(Title of class)
Variable Rate Non-Cumulative Preferred Stock, Series F, stated value $50 per share
(Title of class)
5.10% Non-Cumulative Preferred Stock, Series E, stated value $50 per share
(Title of class)
5.25% Non-Cumulative Preferred Stock, Series D, stated value $50 per share
(Title of class)

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

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

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☑ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☑

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

Large accelerated filer ☐ Accelerated filer ☑ Non-accelerated filer ☐ (Do not check if a smaller reporting company) Smaller reporting company ☐

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

The aggregate market value of the common stock held by non-affiliates of the registrant computed by reference to the last reported sale price of the common stock quoted on the OTC Bulletin Board on June 30, 2011 (the last business day of the registrant's most recently completed second fiscal quarter) was approximately $383 million.

As of January 31, 2012, there were 1,158,072,058 shares of common stock of the registrant outstanding.

DOCUMENTS INCORPORATED BY REFERENCE: The information required by Item 11 in Part III will be included in an amendment to this annual report on Form 10-K filed on or before April 30, 2012.

We remained a constant source of liquidity in the multifamily market. We owned or guaranteed approximately 21% of the outstanding debt on multifamily properties as of September 30, 2011 (the latest date for which information was available).

Summary of Our Financial Performance for 2011

Our financial results for 2011 reflect the continued weakness in the housing and mortgage markets, which remain under pressure from high levels of unemployment and underemployment, and the prolonged decline in home prices since their peak in the third quarter of 2006. Our credit-related expenses continue to be a key driver of our net losses for each period presented. The substantial majority of our credit-related expenses are from single-family loans we acquired prior to 2009, which decreased as a percentage of our single-family guaranty book of business to 47% as of December 31, 2011 from 60% as of December 31, 2010. Our credit-related expenses vary from period to period primarily based on changes in home prices, borrower payment behavior, the types and volumes of loss mitigation activities completed, and actual and estimated recoveries from our lender and mortgage insurer counterparties.

In addition, the decline in interest rates during 2011 resulted in significant fair value losses on our derivatives. These fair value losses on our derivatives were offset by fair value gains during 2011 related to our mortgage investments; however, only a portion of these investments is recorded at fair value in our financial statements. Derivative instruments are an integral part of how we manage interest rate risk and an inherent part of the cost of funding and hedging our mortgage investments. We expect high levels of period-to-period volatility in our results because our derivatives are recorded at fair value in our financial statements while some of the instruments they hedge are not recorded at fair value in our financial statements.

Total Comprehensive Loss

We recognized a total comprehensive loss of $16.4 billion for 2011, consisting of a net loss of $16.9 billion and other comprehensive income of $447 million. In comparison, our total comprehensive loss for 2010 was $10.6 billion, consisting of a net loss of $14.0 billion and other comprehensive income of $3.4 billion.

The increase in our net loss in 2011, as compared with 2010, was primarily due to an increase in net fair value losses and credit-related expenses, which were partially offset by an increase in net interest income. The primary drivers of these changes were:

- a $6.1 billion increase in net fair value losses primarily driven by losses on our risk management derivatives in 2011 due to a significant decline in swap rates during the period;
- a $2.9 billion increase in net interest income driven by lower interest expense on debt, which was partially offset by lower interest income on loans and securities;
- an $884 million increase in credit-related expenses primarily driven by a decline in actual and projected home prices.

The $3.0 billion decline in our other comprehensive income was primarily driven by lower gains on the fair value of our available-for-sale securities due to widening credit spreads in 2011 compared with narrowing spreads in 2010.

See "Consolidated Results of Operations" for more information on our results.

Net Worth

Our net worth deficit of $4.6 billion as of December 31, 2011 reflects the recognition of our total comprehensive loss of $1.9 billion and our payment to Treasury of $2.6 billion in senior preferred stock dividends during the fourth quarter of 2011. The Acting Director of FHFA will submit a request to Treasury on our behalf for $4.6 billion to eliminate our net worth deficit.

In the fourth quarter of 2011, we received $7.8 billion in funds from Treasury to eliminate our net worth deficit as of September 30, 2011. Upon receipt of the additional funds requested to eliminate our net worth deficit as of

EXHIBIT 15

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 10-Q

☑ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended March 31, 2012

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the transition period from to

Commission File No.: 0 50231

Federal National Mortgage Association

(Exact name of registrant as specified in its charter)

Fannie Mae

Federally chartered corporation *(State or other jurisdiction of incorporation or organization)*	**52-0883107** *(I.R.S. Employer Identification No.)*
3900 Wisconsin Avenue, NW **Washington, DC** *(Address of principal executive offices)*	**20016** *(Zip Code)*

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

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S T (§ 232 405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☑ No ☐

Indicate by check mark 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 2b 2 of the Exchange Act

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 Exchange Act) Yes ☐ No ☑

As of March 31, 2012, there were 1,158,069,699 shares of common stock of the registrant outstanding.

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- We helped over 1,000,000 homeowners retain their homes or otherwise avoid foreclosure from January 1, 2009 through March 31, 2012, which helped to support neighborhoods, home prices and the housing market Moreover, borrowers' ability to pay their modified loans has improved in recent periods as we have enhanced the structure of our modifications One year after modification, 74% of the modifications we made in the first quarter of 20 were current or paid off, compared with 65% of the modifications we made in the first quarter of 2010
- We helped borrowers refinance loans through our Refi Plus™ initiative, which includes loans refinanced under the Obama Administration's Home Affordable Refinance Program ("HARP") The Refi Plus initiative provides expanded refinance opportunities for eligible Fannie Mae borrowers From April 1, 2009, the date we began accepting delivery of Refi Plus loans, through March 31, 2012, we have acquired approximately 2,000,000 loans refinanced under our Refi Plus initiative Refinances delivered to us through Refi Plus in the first quarter of 20 2 reduced borrowers' monthly mortgage payments by an average of $191 Some borrowers' monthly payments increased as they took advantage of the ability to refinance through Refi Plus to reduce the term of their loan, to switch from an adjustable rate mortgage to a fixed rate mortgage, or to switch from an interest only mortgage to a fully amortizing mortgage
- We support affordability in the multifamily rental market Over 85% of the multifamily units we financed from 2009 through 2011 were affordable to families earning at or below the median income in their area
- In addition to purchasing and guaranteeing loans, we provide funds to the mortgage market through short term financing and other activities These activities are described in more detail in our 2011 Form 10 K in "Business Business Segments Capital Markets."

2012 Acquisitions and Market Share

In the first quarter of 2012, we purchased or guaranteed approximately $221 billion in loans, measured by unpaid principal balance, which includes $14.2 billion in delinquent loans we purchased from our single family MBS trusts These activities enabled our lender customers to finance approximately 934,000 single family conventional loans and loans for approximately 117,000 units in multifamily properties during the first quarter of 2012

We remained the largest single issuer of mortgage related securities in the secondary market during the first quarter of 20 2, with an estimated market share of new single family mortgage related securities issuances of 5 % Our estimated market share of new single family mortgage related securities issuances was 54% in the fourth quarter of 2011 and 49% in the first quarter of 2011.

We remained a constant source of liquidity in the multifamily market We owned or guaranteed approximately 21% of the outstanding debt on multifamily properties as of December 3 , 20 (the latest date for which information was available)

Summary of Our Financial Performance for the First Quarter of 2012

We experienced a significant improvement in our financial results in the first quarter of 2012 compared with the first quarter of 2011, even though our results continued to be impacted by weakness in the housing and mortgage markets

Total Comprehensive Income (Loss)

We recognized total comprehensive income of $3 billion in the first quarter of 20 2, consisting of net income of $2 7 billion and other comprehensive income of $362 million. In comparison, we recognized a total comprehensive loss of $6.3 billion in the first quarter of 2011, consisting of a net loss of $6.5 billion and other comprehensive income of $181 million

The significant improvement in our financial results in the first quarter of 2012 compared with the first quarter of 2011 was due to an $8.7 billion decrease in our credit related expenses, primarily driven by: (1) a less significant decline in home prices as the housing market continued to stabilize; we estimate that home prices declined by

EXHIBIT 16

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 10-Q

☑ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended June 30, 2012

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from to

Commission File No.: 0-50231

Federal National Mortgage Association

(Exact name of registrant as specified in its charter)

Fannie Mae

Federally chartered corporation	**52-0883107**
(State or other jurisdiction of incorporation or organization)	*(I.R.S. Employer Identification No.)*
3900 Wisconsin Avenue, NW Washington, DC	**20016**
(Address of principal executive offices)	***(Zip Code)***

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

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☑ No ☐

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

Large accelerated filer ☐	Accelerated filer ☑
Non-accelerated filer ☐ (Do not check if a smaller reporting company)	Smaller reporting company ☐

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

As of June 30, 2012, there were 1,158,069,699 shares of common stock of the registrant outstanding.

Comprehensive Income (Loss)

Quarterly Results

We recognized comprehensive income of $5.4 billion in the second quarter of 2012, consisting of net income of $5.1 billion and other comprehensive income of $328 million. In comparison, our comprehensive loss and net loss for the second quarter of 2011 were $2.9 billion.

The significant improvement in our second quarter results was primarily due to recognition of a benefit for credit losses of $3.0 billion in the second quarter of 2012 compared with a provision for credit losses of $6.5 billion in the second quarter of 2011. This benefit for credit losses was due to a decrease in our total loss reserves driven primarily by an improvement in the profile of our single-family book of business resulting from an increase in actual home prices, including the sales prices of our REO properties. In addition, our single-family serious delinquency rate continued to decline, driven in large part by the quality and growth of our new single-family book of business, our modification efforts and current period foreclosures. Key factors impacting our credit-related results include:

- Home prices increased by 3.2% in the second quarter of 2012 compared with 1.2% in the second quarter of 2011. We historically see seasonal improvement in home prices in the second quarter; however, the home price increase in the second quarter of 2012 was larger than expected and the largest quarterly increase we have seen in the last few years. Higher home prices decrease the likelihood that loans will default and reduce the amount of credit loss on loans that do default.
- Sales prices on dispositions of our REO properties improved in the second quarter of 2012 as a result of strong demand. We received net proceeds from our REO sales equal to 59% of the loans' unpaid principal balance in the second quarter of 2012, compared with 56% in the first quarter of 2012 and 54% in the second quarter of 2011.
- Our single-family serious delinquency rate declined to 3.53% as of June 30, 2012 from 3.67% as of March 31, 2012 and 4.08% as of June 30, 2011.
- In addition to the reasons described above, the cash flow projections on our individually impaired loans improved due to accelerated expected prepayment speeds as a result of lower mortgage interest rates: the average 30-year fixed-rate mortgage interest rate was 3.68% in June 2012, compared with 3.95% in March 2012 and 4.51% in June 2011, according to Freddie Mac's Primary Mortgage Market Survey®. The accelerated expected prepayment speeds reduced the expected lives of modified loans and thus reduced the expected expense related to the concessions we have granted to borrowers.

As discussed below in "Our Expectations Regarding Future Loss Reserves and Credit-Related (Income) Expenses," due to the large size of our guaranty book of business, even small changes in home prices, economic conditions and other variables can result in significant volatility in the amount of credit-related expenses or income we recognize from period to period.

The improvement in our credit results in the second quarter of 2012 was partially offset by fair value losses of $2.4 billion, compared with fair value losses of $1.6 billion in the second quarter of 2011. Our fair value losses in the second quarter of 2012 were primarily due to risk management derivative losses on pay-fixed swaps, primarily driven by a decrease in swap rates in the quarter. Derivative instruments are an integral part of how we manage interest rate risk and an inherent part of the cost of funding and hedging our mortgage investments. We expect high levels of period-to-period volatility in our results because our derivatives are recorded at fair value in our financial statements while some of the instruments they hedge are not recorded at fair value in our financial statements.

Year-to-Date Results

Our comprehensive income for the first half of 2012 was $8.5 billion, consisting of net income of $7.8 billion and other comprehensive income of $690 million. In comparison, we recognized a comprehensive loss of $9.2 billion in the first half of 2011, consisting of a net loss of $9.4 billion and other comprehensive income of $183 million.

The significant improvement in our financial results was primarily due to recognizing a benefit for credit losses of $1.0 billion in the first half of 2012 compared with a provision of $17.1 billion in the first half of 2011. The improvement was a result of the same factors that impacted the second quarter of 2012, which are described above. The improvement in our credit results was partially offset by higher fair value losses on risk management derivatives.

See "Consolidated Results of Operations" for more information on our results.

Net Worth

Our net worth of $2.8 billion as of June 30, 2012 reflects our comprehensive income of $8.5 billion offset by our payment to Treasury of $5.8 billion in senior preferred stock dividends during the first half of 2012.

EXHIBIT 17

REDACTED

Public Appendix—Sealed Material in Separate Supplement

ORAL ARGUMENT NOT YET SCHEDULED

No. 14-5254

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

FAIRHOLME FUNDS, INC., *et al.*,

Plaintiffs-Appellants,

v.

FEDERAL HOUSING FINANCE AGENCY, *et al.*,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA (NO. 1:13-CV-1053-RCL)

PUBLIC, REDACTED APPENDIX TO SEALED MOTION FOR JUDICIAL NOTICE AND SUPPLEMENTATION OF THE RECORD ï VOLUME 2

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EXHIBIT 34

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