

APPENDIX

Volume 1

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EXHIBIT 1

Bates Number	From	To	CC	Doc Family Date	Privileges	Description
UST00384501	Foster, Jeff <jeff.foster@treasury.gov>	Bowler, Timothy <timothy.bowler@treasury.gov>; "Stegman, Michael" <michael.stegman@treasury.gov>		6/10/2012	DPP	Draft presentation prepared by Treasury staff containing predecisional deliberations related to PSPA amendment considerations.
UST00502258	Foster, Jeff <jeff.foster@treasury.gov>	Bowler, Timothy <timothy.bowler@treasury.gov>; "Mlynarczyk, Beth" <beth.mlynarczyk@treasury.gov>; "Chepenik, Adam" <adam.chepenik@treasury.gov>; "Franchot, NicholasDisabled" <nicholas.franchot@treasury.gov>; "Stegman, Michael" <michael.stegman@treasury.gov>		3/5/2012	DPP	Draft policy document prepared by Treasury staff containing predecisional deliberations regarding proposed PSPA
UST00061421	Miller, Mary <mary.miller@treasury.gov>	Valverde, Sam <sam.valverde@treasury.gov>; "Adeyemo, Adewale (Wally)" <adewale.adeyemo@treasury.gov>; "Massad, Timothy" <timothy.massad@treasury.gov>; "Stegman, Michael" <michael.stegman@treasury.gov>; "Bowler, Timothy" <timothy.bowler@treasury.gov>; "Deese, Brian C." <brian_c._deese@who.eop.gov>	Woolf, AndrewDisabled <andrew.woolf@treasury.gov>	7/20/2012	DPP	Draft document prepared by Treasury staff containing predecisional deliberations related to potential modification of PSPAs.
UST00536560	ExecSecProcessUnit <execsecprocessunit@treasury.gov>	TFG75 <nauset75@treasury.gov>	ExecSecProcessUnit <execsecprocessunit@treasury.gov>, ExecSecStaff <execsecstaff@do.treas.gov>	6/1/2012	DPP	Draft document containing predecisional deliberations concerning potential modification of the PSPAs.
UST00407342	Goldblatt, Alan <alan.goldblatt@treasury.gov>	Chepenik, Adam <adam.chepenik@treasury.gov>; "Foster, JeffDisabled" <jeff.foster@treasury.gov>		6/13/2012	DPP	Draft analysis reflecting predecisional deliberations concerning GSE financial projections.

Bates Number	From	To	CC	Doc Family Date	Privileges	Description
UST00539251	Chepenik, Adam <adam.chepenik@treasury.gov>	Bowler, Timothy <timothy.bowler@treasury.gov>, "Foster, JeffDisabled" <jeff.foster@treasury.gov>, "Goldblatt, Alan" <alan.goldblatt@treasury.gov>		6/6/2012	DPP	Draft presentation for OMB containing predecisional deliberations concerning Treasury proposals for modifying the terms of the PSPAs.
UST00503672	Chepenik, Adam <adam.chepenik@treasury.gov>	Miller, Mary <mary.miller@treasury.gov>	Hester, Barrett (Bret)Disabled <barrett.hester@treasury.gov>; "Bowler, Timothy" <timothy.bowler@treasury.gov>; "Foster, JeffDisabled" <jeff.foster@treasury.gov>; "Johnson, AlfredDisabled" <alfred.johnson@treasury.gov>	1/10/2012	DPP	Draft document prepared by Treasury staff containing predecisional deliberations regarding GSE budget estimates.
UST00472229	Chepenik, Adam <adam.chepenik@treasury.gov>	Bowler, Timothy <timothy.bowler@treasury.gov>; "Foster, JeffDisabled" <jeff.foster@treasury.gov>; "Mlynarczyk, Beth" <beth.mlynarczyk@treasury.gov>		2/26/2012	DPP	Predecisional deliberative analysis of GSE financial projections prepared by Treasury staff.
UST00472232	Chepenik, Adam <adam.chepenik@treasury.gov>	Bowler, Timothy <timothy.bowler@treasury.gov>; "Foster, JeffDisabled" <jeff.foster@treasury.gov>; "Mlynarczyk, Beth" <beth.mlynarczyk@treasury.gov>		2/26/2012	DPP	Predecisional deliberative analysis of GSE financial projections prepared by Treasury staff.
UST00407182	Goldblatt, Alan <alan.goldblatt@treasury.gov>	Chepenik, Adam <adam.chepenik@treasury.gov>; "Foster, JeffDisabled" <jeff.foster@treasury.gov>		7/5/2012	DPP	Predecisional, deliberative, draft analysis of GSE financial projections prepared by Treasury staff.

Excerpts from November 19, 2015 Treasury Privilege Log

Bates Number	From	To	CC	Doc Family Date	Privileges	Description
UST00384146	Goldblatt, Alan <alan.goldblatt@treasury.gov>	Bowler, Timothy <timothy.bowler@treasury.gov>		7/3/2012	DPP	Draft presentation prepared by Treasury staff containing predecisional analysis and information related to financial forecasts for Fannie Mae.
UST00536346	Bowler, Timothy </o=ustreasury/ou=exchange administrative group(fydibohf23spdlt)/cn=recipients/cn=bowlert">	Graves, Donet (Don) <donet.graves@treasury.gov>, "Caldwell, Phyllis" <phyllis.caldwell@treasury.gov>, "Foster, Jeff" <jeff.foster@treasury.gov>		9/6/2011	DPP	Draft memorandum prepared by Treasury staff containing predecisional deliberations regarding housing policy reform, including the future of the GSEs.
UST00490551	Miller, Sarah <sarah.miller@treasury.gov>	Mlynarczyk, Beth <beth.mlynarczyk@treasury.gov>, "Stegman, Michael" <michael.stegman@treasury.gov>		7/30/2012	DPP	Draft policy paper prepared by Treasury staff containing predecisional deliberations regarding housing finance reform.
UST00389662	Foster, Jeff </o=ustreasury/ou=exchange administrative group(fydibohf23spdlt)/cn=recipients/cn=fosterj">	Valverde, Sam <sam.valverde@treasury.gov>; "Fikre, Million" <million.fikre@treasury.gov>		1/31/2012	DPP	Draft memorandum for Secretary containing predecisional deliberations related to GSE restructuring.
UST00389678	Foster, Jeff </o=ustreasury/ou=exchange administrative group(fydibohf23spdlt)/cn=recipients/cn=fosterj">	Valverde, Sam <sam.valverde@treasury.gov>; "Fikre, Million" <million.fikre@treasury.gov>		1/31/2012	DPP	Draft memorandum for Secretary containing predecisional deliberations related to mortgage finance market reform proposals.
UST00544897	Foster, Jeff </o=ustreasury/ou=exchange administrative group(fydibohf23spdlt)/cn=recipients/cn=fosterj">	Foster, Jeff		6/5/2012	DPP	Draft policy paper containing predecisional deliberations concerning housing finance reform.
UST00504514	Bowler, Timothy </o=ustreasury/ou=exchange administrative group(fydibohf23spdlt)/cn=recipients/cn=bowlert">	Mlynarczyk, Beth <beth.mlynarczyk@treasury.gov>; "Stegman, Michael" <michael.stegman@treasury.gov>		7/27/2012	DPP	Draft memorandum prepared by Treasury staff containing predecisional deliberations related to various FHFA/GSE housing finance initiatives.

Excerpts from November 19, 2015 Treasury Privilege Log

Bates Number	From	To	CC	Doc Family Date	Privileges	Description
UST00548270	Stegman, Michael	Miller, Mary <mary.miller@treasury.gov>	Stegman, Michael <michael.stegman@treasury.gov>	2/4/2012	DPP	Draft memorandum containing predecisional deliberations related to housing policy and housing finance reform.
UST00500982	Stegman, Michael; Bowler, Timothy; Parrott, Jim; Deese, Brian C.; Miller, Mary; Valverde, Sam [sam.valverde@treasury.gov]	Stegman, Michael; Bowler, Timothy; Parrott, Jim; Deese, Brian C.; Miller, Mary; Eberly, Janice [janice.eberly@treasury.gov]; ExecSecStaff [execsecstaff@do.treas.gov]	Patterson, Mark [mark.patterson@treasury.gov]; Wolin, Neal; LeCompte, Jenni [jenni.lecompte@treasury.gov]; Parrott, Jim; Miller, Mary; Stegman, Michael	5/2/2012	DPP; PCP	Memorandum reflecting confidential communication from senior White House advisors to the President regarding housing policy ideas and initiatives.
UST00513480	Foster, Jeff </o=ustreasury/ou=exchange administrative group(fydibohf23spdlt)/cn=recipients/cn=fosterj">	Foster, Jeff		5/21/2012	DPP	Draft policy document prepared by Treasury staff containing predecisional deliberations regarding housing finance reform.
UST00518402	Hester, Barrett (Bret) <barrett.hester@treasury.gov>	Miller, Mary <mary.miller@treasury.gov>	Lee, Sandra <sandra.lee@treasury.gov>, "Johnson, AlfredDisabled" <alfred.johnson@treasury.gov>	2/21/2012	DPP	Draft memorandum for Secretary containing predecisional deliberations related to policy implications of proposed housing finance legislation.
UST00492699	Stegman, Michael	Mlynarczyk, Beth <beth.mlynarczyk@treasury.gov>	Stegman, Michael <michael.stegman@treasury.gov>	5/26/2012	DPP	Draft speech containing predecisional deliberations regarding housing policies.
UST00556459	Chepenik, Adam <adam.chepenik@treasury.gov>	Foster, JeffDisabled <jeff.foster@treasury.gov>		1/6/2012	DPP	Predecisional deliberative analysis of GSE financial projections prepared by Treasury consultant.
UST00556460	Chepenik, Adam <adam.chepenik@treasury.gov>	Foster, JeffDisabled <jeff.foster@treasury.gov>		1/6/2012	DPP	Predecisional deliberative analysis of GSE financial projections prepared by Treasury consultant.
UST00556294	Chepenik, Adam <adam.chepenik@treasury.gov>	Foster, JeffDisabled <jeff.foster@treasury.gov>		1/6/2012	DPP	Predecisional deliberative analysis of GSE financial projections prepared by Treasury consultant.

Excerpts from November 19, 2015 Treasury Privilege Log

Bates Number	From	To	CC	Doc Family Date	Privileges	Description
UST00556295	Chepenik, Adam <adam.chepenik@treasury.gov>	Foster, JeffDisabled <jeff.foster@treasury.gov>		1/6/2012	DPP	Predecisional deliberative analysis of GSE financial projections prepared by Treasury consultant.
UST00409040	Eberhardt, Anne <anne.eberhardt@us.gt.com>	Foster, JeffDisabled <jeff.foster@treasury.gov>		3/12/2012	DPP	Draft document prepared for Treasury by consultant containing predecisional deliberations concerning GSE financial projections.
UST00506346	Eberhardt, Anne <anne.eberhardt@us.gt.com>	Banks, Carole <carole.banks@treasury.gov>; "Mickey, Shawn" <shawn.mickey@treasury.gov>; "Taylor, Kawan" <kawan.taylor@treasury.gov>; "Foster, JeffDisabled" <jeff.foster@treasury.gov>; "Fitzgerald, Michael P." <fitzgeraldm@oig.treas.gov>; "Rominecki, Ryan" <rrominecki@kpmg.com>	Short, John <john.short@us.gt.com>; "Dufendach, David" <david.dufendach@us.gt.com>; "Burchett, Justin" <justin.burchett@us.gt.com>	6/29/2012	DPP	Document prepared by Treasury consultant reflecting predecisional deliberations concerning financial conditions of the GSEs.
UST00475757	Rominecki, Ryan R <rrominecki@kpmg.com>	Eberhardt, Anne <anne.eberhardt@us.gt.com>; "Banks, Carole" <carole.banks@treasury.gov>; "Taylor, Kawan" <kawan.taylor@treasury.gov>; "Mickey, Shawn" <shawn.mickey@treasury.gov>; "Foster, JeffDisabled" <jeff.foster@treasury.gov>; "Mlynarczyk, Beth" <beth.mlynarczyk@treasury.gov>; "Grover, Joel A" <groverj@oig.treas.gov>; "Bankole, Ade O." <bankolea@oig.treas.gov>; "Fitzgerald, Michael P." <fitzgeraldm@oig.treas.gov>; "Cumba, Rafael J." <cumbar@oig.treas.gov>; "Faber, Bob" <bob.faber@treasury.gov>; "Wilson, Brad" <brad.wilson@us.gt.com>; "Dufendach, David" <david.dufendach@us.gt.com>; "Burchett, Justin" <justin.burchett@us.gt.com>	Tchamourliyski, Yuriy M <yтчamourliyski@kpmg.com>; "Lee, Shana H" <shlee@kpmg.com>	11/1/2011	DPP	Draft memorandum prepared containing predecisional deliberative analysis of financial projections for Fannie Mae.
UST00521902	Stegman, Michael^			6/18/2012	DPP; PCP	Memorandum reflecting confidential communication from senior White House advisors to the President regarding housing policy ideas and initiatives.

Excerpts from November 19, 2015 Treasury Privilege Log

Bates Number	From	To	CC	Doc Family Date	Privileges	Description
UST00515290	Parrott, Jim; Foster, Jeff	Foster, Jeff; Parrott, Jim		7/29/2011	DPP; PCP	Emails reflecting the exchange of information, views, and advice between Treasury officials and White House staff with broad and significant responsibility for investigating and formulating advice for consideration and direction by the President regarding housing finance issues.
UST00550441	Sperling, Gene [gene_b_sperling@who.eop.gov]; Geithner, Timothy; Wolin, Neal [neal.wolin@treasury.gov]; Miller, Mary	Geithner, Timothy; Wolin, Neal; Stegman, Michael; Gandhi, Sima [sima.gandhi@treasury.gov]; Gerety, Amias [amias.gerety@treasury.gov]; Hester, Barrett (Bret) [barrett.hester@treasury.gov]; Miller, Mary; Gibson, Campbell [campbell.gibson@treasury.gov]; Amir-Mokri, Cyrus [cyrus.amir-mokri@treasury.gov]; Chisolm, Shirley [shirley.chisolm@treasury.gov]	Deese, Brian C.	3/12/2012	Red.; PCP	Email reflecting the exchange of information, views, and advice between Treasury officials and senior White House advisors for consideration and direction by the President regarding housing finance issues.
UST00418517	ExecSecProcessUnit <execsecprocessunit@treasury.gov>	ExecSecStaff <execsecstaff@do.treas.gov>	ExecSecProcessUnit <execsecprocessunit@treasury.gov>	4/16/2012	DPP	Briefing memoranda and material prepared by Treasury staff for Secretary containing predecisional deliberations and recommendations related to various policy matters.
UST00061067	Parrott, Jim <james_m_parrott@who.eop.gov>	Bowler, Timothy <timothy.bowler@treasury.gov>		8/18/2012	DPP	Email communications between Treasury and White House staff containing predecisional deliberations related to the terms of the PSPAs.
UST00385562	Bowler, Timothy <"/o=ustreasury/ou=exchange administrative group(fydibohf23spdlt)/cn=recipients/cn=bowler">	Parrott, Jim <james_m_parrott@who.eop.gov>		8/18/2012	DPP	Email communications containing predecisional deliberations related to the budget and the amended PSPAs.
UST00478535	Foster, Jeff <"/o=ustreasury/ou=exchange administrative group(fydibohf23spdlt)/cn=recipients/cn=fosterj">	Stegman, Michael <michael.stegman@treasury.gov>		6/7/2012	DPP	Draft document containing predecisional deliberations concerning potential modifications to PSPAs.

Excerpts from November 19, 2015 Treasury Privilege Log

Bates Number	From	To	CC	Doc Family Date	Privileges	Description
UST00473767	Eberhardt, Anne <anne.eberhardt@us.gt.com>	Foster, JeffDisabled <jeff.foster@treasury.gov>		12/10/2011	DPP	Predecisional financial analysis prepared by Treasury consultant reflecting Treasury deliberations regarding GSEs.
UST00473773	Eberhardt, Anne <anne.eberhardt@us.gt.com>	Foster, JeffDisabled <jeff.foster@treasury.gov>		12/10/2011	DPP	Predecisional financial analysis prepared by Treasury consultant reflecting Treasury deliberations regarding GSEs.
UST00061011	Wrennall-Montes, Sally <sally.wrennallmontes@treasury.gov>	Gorham, Tynia <tynia.gorham@treasury.gov>; "Donnelly, Michael" <michael.donnelly@treasury.gov>; "Hopkins, JoshuaDisabled" <joshua.hopkins@treasury.gov>; "Florman, Carole" <carole.florman@treasury.gov>; "Reger, Mark" <mark.reger@treasury.gov>; "Carrington, Wanda" <wanda.carrington@treasury.gov>; "Gerety, Amias" <amias.gerety@treasury.gov>; "Rourke, Daniel" <daniel.rourke@treasury.gov>; "Tepperman, Jason" <jason.tepperman@treasury.gov>; "Quittman, Louisa" <louisa.quittman@treasury.gov>; "Roberts, Benson" <benson.roberts@treasury.gov>; "Graves, Donet (Don)" <don.gravesjr@treasury.gov>; "Rosen, Katheryn" <katheryn.rosen@treasury.gov>; "Grom, John (J.D.)Disabled" <john.grom@treasury.gov>; "Auer, LanceDisabled" <lance.auer@treasury.gov>; "Courtney, JudithDisabled" <judith.courtney@treasury.gov>; "Polan, TheodoreDisabled" <theodore.polan@treasury.gov>; "Bowler, Timothy" <timothy.bowler@treasury.gov>; "Kash, Elaine" <elaine.kash@treasury.gov>; "Koide, Melissa" <melissa.koide@treasury.gov>; "Graves, Leslie" <leslie.graves@treasury.gov>; "Stout, Jeffrey" <jeffrey.stout@do.treas.gov>; "Hester, Barrett (Bret)Disabled" <barrett.hester@treasury.gov>; "Franco, Jamie" <jamie.franco@treasury.gov>; "Roberts, David" <david.roberts@treasury.gov>	Lee, Sandra <sandra.lee@treasury.gov>; "Woolf, AndrewDisabled" <andrew.woolf@treasury.gov>; "Cabot, Chloe" <chloe.cabot@treasury.gov>; "Wrennall-Montes, Sarah (Sally)" <sally.wrennall-montes@treasury.gov>	8/20/2012	DPP	Draft information memorandum for Secretary reflecting predecisional deliberations regarding potential amendments to the PSPAs.
UST00473770	Eberhardt, Anne <anne.eberhardt@us.gt.com>	Foster, JeffDisabled <jeff.foster@treasury.gov>		12/10/2011	DPP	Predecisional financial analysis prepared by Treasury consultant reflecting Treasury deliberations regarding GSEs.

Excerpts from November 19, 2015 Treasury Privilege Log

Bates Number	From	To	CC	Doc Family Date	Privileges	Description
UST00473776	Eberhardt, Anne <anne.eberhardt@us.gt.com>	Foster, JeffDisabled <jeff.foster@treasury.gov>		12/10/2011	DPP	Predecisional financial analysis prepared by Treasury consultant reflecting Treasury deliberations regarding GSEs.
UST00473779	Eberhardt, Anne <anne.eberhardt@us.gt.com>	Foster, JeffDisabled <jeff.foster@treasury.gov>		12/10/2011	DPP	Predecisional financial analysis prepared by Treasury consultant reflecting Treasury deliberations regarding GSEs.
UST00473782	Eberhardt, Anne <anne.eberhardt@us.gt.com>	Foster, JeffDisabled <jeff.foster@treasury.gov>		12/10/2011	DPP	Predecisional financial analysis prepared by Treasury consultant reflecting Treasury deliberations regarding GSEs.
UST00481423	Foster, Jeff <"/o=ustreasury/ou=exchange administrative group(fydibohf23spdlt)/cn=recipients/cn=fosterj">	Chepenik, Adam <adam.chepenik@treasury.gov>		12/13/2011	DPP	Predecisional deliberative analysis of GSE financial projections prepared by Treasury consultant.
UST00481424	Foster, Jeff <"/o=ustreasury/ou=exchange administrative group(fydibohf23spdlt)/cn=recipients/cn=fosterj">	Chepenik, Adam <adam.chepenik@treasury.gov>		12/13/2011	DPP	Predecisional deliberative analysis of GSE financial projections prepared by Treasury consultant.
UST00481425	Foster, Jeff <"/o=ustreasury/ou=exchange administrative group(fydibohf23spdlt)/cn=recipients/cn=fosterj">	Chepenik, Adam <adam.chepenik@treasury.gov>		12/13/2011	DPP	Predecisional deliberative analysis of GSE financial projections prepared by Treasury consultant.

Excerpts from November 19, 2015 FHFA Privilege Log

Bates Number	Date	From	To	CC	Additional Recipients	Description	Privilege Assertion
FHFA00100594	9/16/2011	Tagoe, Naa Awaa	Williams, John			FHFA projection of remaining GSE Treasury funding commitment under FHFA stress scenarios containing pre-decisional deliberations	Deliberative Process; Bank Examination
FHFA00096631	6/28/2012	Williams, John	Tagoe, Naa Awaa	Calhoun, Peter		FHFA Risk Assessment Memorandum prepared in connection with FHFA's regulatory supervision regarding Fannie Mae's 4Q earnings	Bank Examination
FHFA00096634	6/28/2012	Williams, John	Tagoe, Naa Awaa	Calhoun, Peter		FHFA Risk Assessment Memorandum prepared in connection with FHFA's regulatory supervision regarding the solvency of Fannie Mae	Bank Examination
FHFA00096636	6/28/2012	Williams, John	Tagoe, Naa Awaa	Calhoun, Peter		FHFA Risk Assessment Memorandum prepared in connection with FHFA's regulatory supervision regarding Freddie Mac's 4Q earnings	Bank Examination
FHFA00096638	6/28/2012	Williams, John	Tagoe, Naa Awaa	Calhoun, Peter		FHFA Risk Assessment Memorandum prepared in connection with FHFA's regulatory supervision regarding the solvency of Freddie Mac	Bank Examination
FHFA00031520	10/29/2008	DeLeo, Wanda	Lockhart, James	DeMarco, Edward	Mullin, Stefanie; Dickerson, Christopher; Brereton, Peter; Russell, Corinne; Pollard, Alfred*; Lakroune, Amy	RM: Internal communication among senior FHFA staff containing predecisional deliberations regarding response to a media story on deferred tax assets of the GSEs and management delegations by the conservator	Deliberative Process
FHFA00092209	12/16/2008	Bjarnason, Paul	Satriano, Nicholas			FHFA presentation containing pre-decisional deliberations in relation to its regulatory supervision regarding accounting for deferred tax assets	Deliberative Process; Bank Examination

Excerpts from November 19, 2015 FHFA Privilege Log

Bates Number	Date	From	To	CC	Additional Recipients	Description	Privilege Assertion
FHFA00031960	9/7/2008	Dickerson, Christopher	Pearl, David			Document prepared by Black Rock to support pre-decisional deliberations and provided to FHFA in relation to its regulatory supervision regarding analysis of Fannie Mae's loss and capital projections	Deliberative Process; Bank Examination
FHFA00031962	9/7/2008	Dickerson, Christopher	Pearl, David			Document prepared by Black Rock to support pre-decisional deliberations and provided to FHFA in relation to its regulatory supervision regarding analysis of Freddie Mac's loss and capital projections	Deliberative Process; Bank Examination
FHFA00031964	9/7/2008	Dickerson, Christopher	Pearl, David			Presentation by Black Rock to support pre-decisional deliberations and provided to FHFA in relation to its regulatory supervision regarding analysis of GSE loss and capital projections	Deliberative Process; Bank Examination
FHFA00056237	8/27/2008	Eldarrat, Christine	Dickerson, Christopher; Tagoe, Naa Awaa; Smith, Scott; Spohn, Jeffrey; Deleo, Wanda; Clark, Tim, Crisp, Stanley	Eldarrat, Christine		Presentation prepared by consultant Blackrock containing pre-decisional deliberations regarding analysis of Freddie Mac projected losses and implications for capital	Deliberative Process
FHFA00093706	9/14/2011	Williams, John	Eberhardt, Anne	Tagoe, Naa Awaa		Presentation of FHFA Forecast Scenarios prepared by Fannie Mae at FHFA's request	Deliberative Process; Bank Examination

EXHIBIT 2



REK:KMD:EHosford
DJ No. 154-13-465

U.S. Department of Justice

Civil Division
Telephone: (202) 616-0332
Elizabeth.Hosford@usdoj.gov

Washington, DC 20530

November 13, 2015

By Email (BBarnes@cooperkirk.com) and U.S. Mail

Brian W. Barnes
Cooper & Kirk, PLLC
1523 New Hampshire Ave. NW
Washington, D.C. 20036
(202) 220-9656

Re: *Fairholme Funds, Inc. et al., v. United States*, No. 13-465C (Fed. Cl.)

Dear Mr. Barnes,

In an effort to meet our joint obligation to confer in good faith about discovery disputes, we write to address issues plaintiffs raised regarding certain documents on our privilege log, which you raised in your recent e-mail correspondence.¹ Although we have reconsidered our assertions of privilege for a small number of documents (that we intend to produce in full or redacted form), we believe that, for the vast majority of the documents you have identified, our privilege justifications satisfy the requirements of RCFC 26 and the privilege assertion is proper. We will first respond to the legal arguments raised in the letter from Vince Colatriano to Gregg Schwind dated February 5, 2015 (attached to your e-mail dated October 21, 2015), and addressed in the subsequent e-mail exchange between Messrs. Schwind and Colatriano on March 20, 23, and 27, 2015. We will then address your challenges to the individual documents identified in the chart attached to your October 29, 2015 e-mail. We hope that this comprehensive response will resolve the issues you raised regarding the Government's assertions of privilege in this action.

I. Legal Positions

A. Declarations

In his February 5, 2015 letter, Mr. Colatriano stated your position that the Government may not assert either the deliberative process or presidential communication privileges without an affidavit from the agency official attesting that the documents have been properly withheld. The Government, however, is *not* required to produce declarations in support of its invocation of the deliberative process or presidential communications privileges unless and until a motion to compel is filed with regard to specific documents over which we have asserted the privilege.

¹ This correspondence includes your e-mails dated October 21, 27, and 29, 2015, and the accompanying attachments.

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See, e.g., United States v. Reynolds, 345 U.S. 1, 10–11 (1953) (reversing and remanding trial court’s decision compelling the production of documents subject to governmental privilege when formal claim of privilege was not submitted until after initial ruling on motion to compel); *Dairyland Power Co-op. v. United States*, 79 Fed. Cl. 659, 662 (2007) (“[T]he White House need not formally invoke the presidential communications privilege until the party making the discovery request has shown a heightened need for the information sought.”); *see also In re Sealed Case*, 121 F.3d 729, 741 (D.C. Cir. 1997) (Government did not “have an obligation to formally invoke its privileges in advance of the motion to compel,” because it satisfied the requirements of the Federal Rules of Civil Procedure when it timely objected to the subpoena for documents and stated the claim of privilege under which it was objecting). If plaintiffs ultimately file a motion to compel challenging the applicability of these privileges to specific documents, we will provide declarations in support of our privilege assertions with respect to those documents.

B. FHFA’s Assertion Of Bank Examination And Deliberative Process Privileges

We disagree with your contentions that FHFA may not assert the bank examination privilege generally with respect to the GSEs, or, at a minimum, with respect to any documents created during the conservatorship. We also disagree with your contention that FHFA may not assert the deliberative process privilege at all given the Government’s position that the FHFA is not the United States when acting as conservator.

FHFA may assert the bank examination and deliberative process privileges with respect to the GSEs if the court determines that, contrary to our position, FHFA is the United States when acting as conservator. As we indicated in our March 27, 2015 e-mail, we believe the question of the availability to FHFA of these privileges during the conservatorship goes to the heart of the jurisdictional argument in our motion to dismiss: whether FHFA, acting as conservator, is the United States.

Our position has not changed. If you are suggesting that the court should now decide the legal issue raised in our motion to dismiss before jurisdictional discovery is concluded, we would agree; indeed, it has been our position all along that jurisdictional discovery is unnecessary and inappropriate here. If, however, Fairholme is willing to seek a ruling on this issue before discovery is concluded, notwithstanding its prior assertion that the issue could not be decided absent discovery, then we would also insist that we jointly ask the court to decide the other issues in our motion. We do not believe this issue to be severable from the final question of jurisdiction.

C. Subjective Motivation

We disagree with your contention that the Government may not assert the deliberative process and bank examination privileges when the “Government’s subjective motivations are at issue.”

First, in the Federal Circuit, the presence of a claim turning on the subjective motivation of the Government is not a basis for overcoming the deliberative process privilege. *First Heights Bank, FSB v. United States*, 46 Fed. Cl. 312, 321-22 (2000) (refusing to adopt D.C. Circuit rule,

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as stated in *In re Subpoenas Duces Tecum*, 145 F.3d 1422 (D.C. Cir. 1998), barring assertion of deliberative process privilege “in any case where the Government’s intent is potentially relevant” because it was inconsistent with Federal Circuit precedent). Second, even if that were the law in this circuit, neither the jurisdictional questions currently in dispute nor the merits of plaintiffs’ takings claims turn on the Government’s motivation behind its actions—the only matters at issue are what, in fact, the Government did. See *Air Pegasus of D.C., Inc. v. United States*, 424 F.3d 1206, 1212–13 (Fed. Cir. 2005) (taking claims require two-part showing that plaintiff must have had a valid property interest and “governmental *action* at issue amounted to a compensable taking of that property interest”) (emphasis added) (quotation marks and citation omitted).

D. Post-Decisional Deliberations

We disagree with your contention that the Government may never assert the deliberative process privilege over documents generated after the decision at issue.

As we stated in our March 27, 2015 e-mail, the Government may assert the deliberative process privilege with respect to communications that post-date a decision if the communications recount Government employees’ views of the proposed decision before the decision was adopted. *Ford Motor Co. v. United States*, 94 Fed. Cl. 211, 223 (2010) (“[D]ocuments created after a decision which recount pre-decisional deliberations are covered by the [deliberative process] privilege”) (citing *Citizens for Responsibility and Ethics in Washington v. Dep’t of Justice*, 658 F. Supp. 2d 217, 233-34 (D.D.C. 2009)). We have withheld documents falling into this category pursuant to this rule. Furthermore, certain documents over which we asserted the privilege after August 17, 2012, relate to deliberations and decisions other than the adoption of the Third Amendment.

If you contend the deliberative process privilege cannot be asserted in either of these scenarios, then those discrete legal issues are appropriate for briefing and may be undertaken without court review of documents. To the extent you have raised this objection with regard to specific documents, we provide additional information in part II below.

E. Factual Information

As we stated in our March 27, 2015 e-mail, we generally agree that the bank examination and deliberative process privileges may not be asserted over purely factual documents or the reasonably divisible factual portions of otherwise privileged documents. Our privilege assertions are consistent with this premise, including with respect to the documents you identified in your chart sent on October 29, 2015.

We disagree with your position that financial projection models are factual documents not subject to the deliberative process privilege. Other courts have recognized that the use of financial projections as part of an agency’s decision-making process is properly protected by the deliberative process privilege. See, e.g., *Am. Petroleum Tankers Parent, LLC v. United States*, 952 F. Supp. 2d 252, 269 (D.D.C. 2013) (“[T]he applicability of the privilege ‘does not turn on whether the material is purely factual in nature or whether it is already in the public domain, but rather on whether the selection or organization of facts is part of an agency’s deliberative process.’”) (quoting *Ancient Coin Collectors Guild v. U.S. Dep’t of State*, 641 F.3d 504, 513

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(D.C. Cir. 2011)); *id.* at 269-70 (finding that slides depicting financial projections of “Stress” and “Expected case[s],” “on its face,” reflected the Government’s “culling and performing its own analysis as part of the deliberative process” and “falls squarely within the privilege afforded to documents reflecting an agency’s ‘exercise of discretion and judgment calls’”) (quoting *Ancient Coin Collectors*, 641 F.3d at 513).

If it is your position that the deliberative process privilege cannot be asserted over financial projection models, then that discrete legal issue is appropriate for briefing and may be undertaken without court review of documents.

F. Attorney-Client Privilege

We disagree with your contention that there has been subject matter waiver of the attorney-client privilege with respect to Treasury’s communications with DOJ prior to the Third Amendment.

As an initial matter, we note that you abandoned your request for documents reflecting communications between Treasury and DOJ relating to the Net Worth Sweep, as indicated in the letter from David Thompson to Gregg Schwind dated October 6, 2014. Accordingly, we marked two of the documents you have identified—UST00419116 and UST00419126—as not responsive.

Regarding the substance of your waiver arguments, we see no basis for a broad waiver of attorney-client communications between Treasury and DOJ based on either of the documents you have identified. *See* Fed. R. Evid. 502(a) (the disclosure of a privileged attorney-client communication may only waive privilege over an undisclosed communication or information if “(1) the waiver is intentional; (2) the disclosed and undisclosed communications or information concern the same subject matter; and (3) they ought in fairness to be considered together”). Contrary to your assertion in your October 21, 2015 e-mail, the inclusion of the June 13, 2012 presentation to the SEC and the August 15, 2012 action memorandum in the administrative record in the district court action did not constitute a waiver of the attorney-client privilege with respect to the subject matter of DOJ’s advice to Treasury.

We generally agree with your statement in the February 5, 2015 letter that the attorney-client privilege only protects confidential communications sent to or received from an attorney for the purpose of obtaining legal advice. We further agree that the privilege generally does not apply when a lawyer is asked for or provides advice about policy or other non-legal matters. If there are documents over which you contend we have improperly asserted this privilege on these grounds, please identify those and we will review them.²

² We note that you have challenged one document—UST00550357—on the basis that the “privilege log does not indicate that this document is an attorney-client communication.” While the privilege log identifies this document as an attachment to an e-mail from Under Secretary of Domestic Finance Mary Miller to an administrative assistant, the cover e-mail, UST00550356, which has been produced, shows Ms. Miller was forwarding an e-mail containing attachments

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If you maintain your position that the Government has waived attorney-client privilege with respect to all communications with DOJ concerning any part of the Third Amendment, notwithstanding your abandonment of your request for DOJ documents more than a year ago, we believe that discrete legal issue is ripe for briefing and does not require the court to consider any undisclosed documents subject to that purported waiver unless and until the court finds a waiver actually occurred. We will not individually address the documents you have identified as subject to a waiver of attorney-client privilege at this time.

G. Need

You have provided insufficient information upon which to evaluate the plaintiffs' assertion that their need would overcome the Government's assertion of the deliberative process, bank examination, and presidential communications privileges. *See, e.g., Abramson v. United States*, 39 Fed. Cl. 290, 296–97 (1997) (“[A] movant may still overcome the privilege by demonstrating a ‘compelling need’ to discover the privileged information. Furthermore, once the privilege has been invoked, a court should hesitate to request documents or information for inspection *in camera* until such time that the moving party has made this difficult showing.”). Because your e-mail to us has not articulated the basis underlying the need for any of the specifically identified documents, we cannot respond.

In addition, several of the documents for which you assert that your need overcomes a qualified privilege are highly iterative documents that were frequently updated, modified, and, in many cases, never finalized. The sheer number of variations of similar documents underscore that these versions are both deliberative and predecisional. We believe that plaintiffs' purported need for any particular version of these highly iterative documents should be evaluated within the context of numerous similar, non-identical copies. Moreover, because selective review of such iterative documents could be misleading to the court, at a minimum, the court should be made aware of the existence of other variations when evaluating plaintiffs' asserted need for the version challenged, and plaintiffs should provide the court with an opportunity to review those other versions simultaneously in order to resolve the parties' privilege disputes in the most efficient manner. It will be our position that the court's resolution of a privilege challenge to a single version of a highly iterative document will *not* apply to other similar versions where plaintiffs did not specifically identify and provide the court an opportunity to review the other versions. To promote efficiency, in addressing your challenges to specific documents in part II below, we have, where applicable, identified the similar versions of highly iterative documents.

shared with agency counsel and reflecting legal advice. We will not withdraw our assertion of attorney-client privilege over this document.

We also note that one of the documents you contend is subject to a waiver of attorney-client privilege—UST00061421—has not been withheld pursuant to that privilege.

II. Document Challenges

We have reviewed the documents you have identified in your e-mails dated October 21, 27, and 29, 2015.³ As mentioned above, we have reconsidered our assertion of privilege over a small number of documents. We maintain, however, that our assertions of privilege over the vast majority of those documents you have identified were proper.

A. Documents For Which We Have Reconsidered Our Privilege Assertion

UST00506605 is a memorandum summarizing proposed housing legislation. We have reconsidered our assertion of the deliberative process privilege and are withdrawing that assertion. We will produce this memorandum to you and remove the entry from our privilege log.

UST00405880 and UST00413379 are agendas or timelines prepared for Treasury by Grant Thornton. We have reconsidered our assertion of the deliberative process privilege and are withdrawing that assertion. We will produce these documents to you and remove the entries from our privilege log. We will also produce the following, similar documents and remove the relevant entries from our privilege log:

UST00405880; UST00406237; UST00469233; UST00408055; UST00476955;
UST00476959; and UST00477228.

UST00385540 is a memorandum to Under Secretary for Domestic Finance Mary Miller concerning an upcoming meeting with Freddie Mac management. We believe the assertion of the deliberative process privilege is justified. However, we withdraw our privilege assertion over *this version*, the final copy of the memorandum, and we will remove the entry from our privilege log, because the substance concerns communications between Treasury and the GSEs. We maintain our assertion of privilege over *draft versions* of the same memorandum, including:

UST00060837; UST00060844; UST00060846; UST00060853; UST00364606;
UST00385549; UST00385555; and UST00397727.

UST00384174 is an internal chart containing predecisional deliberations concerning potential housing finance reforms. This chart was inadvertently marked as protected by the attorney-client privilege during the review process. We are withdrawing our assertion of the attorney-client privilege over this document. However, as discussed further below, we maintain our assertion of the deliberative process privilege over this document. Accordingly, we will not produce this chart.

FHFA00096631, FHFA00096634, FHFA00096636, and FHFA00096638 are memoranda prepared by FHFA staff concerning the GSEs' risk assessment for the first quarter 2012. We have reconsidered our assertion of the deliberative process privilege over these four documents

³ Because the list of documents attached to your October 29, 2015 e-mail did not include any of the documents that we had addressed in our letter dated September 1, 2015, we assume that you are no longer challenging the documents that we addressed in our September 1, 2015 letter.

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and have decided to withdraw our assertion of the deliberative process privilege. However, we maintain our assertion of the bank examination privilege over the same four documents. Accordingly, we will not produce these memoranda.

FHFA00092209 is a presentation from the FHFA Office of the Chief Accountant dated October 29, 2008. We have reconsidered our position that our assertion of privilege encompassed the entire document and have decided to withdraw our assertion of the deliberative process privilege over portions of the document. We will, therefore, produce this presentation in redacted form.

B. Insufficient Descriptions

You assert that we have provided insufficient privilege justifications for the following six documents:

UST00385540; UST00472229; UST00472232; UST00536346; UST00490551; and UST00504514.

As discussed above, we have decided to withdraw our privilege assertion over UST00385540. We believe that resolves any dispute as to that document.

UST00472229 and UST00472232 were each justified as a “Predecisional analysis of GSE financial projections prepared by Treasury staff.” We believe this description is sufficient. These two documents were attached to a non-privileged e-mail chain discussing Treasury’s preparation of a presentation concerning the potential amendments to the PSPAs. These two documents contain financial projections regarding Fannie Mae and Freddie Mac. This substance is reflected in our justification.

UST00536346 was justified as a “Draft memorandum prepared by Treasury staff containing predecisional deliberations regarding housing policy reform, including the future of the GSEs.” We believe this description is sufficient. The draft memorandum is addressed from Under Secretary for Domestic Finance Mary Miller to Secretary Geithner, with the subject line “Housing Policy Options.” The draft memorandum concerns various housing policy ideas. This substance is reflected in our justification.

UST00490551 was justified as a “Draft policy paper prepared by Treasury staff containing predecisional deliberations regarding housing finance reform.” We believe this description is sufficient. The draft paper is an iteration of a housing finance reform policy paper document that was never finalized. The draft paper concerns numerous broad housing policy reforms, some of which still have not received a final decision by the agency. This substance is reflected in the justification.

UST00504514 was justified as “Draft memorandum prepared by Treasury staff containing predecisional deliberations related to various FHFA/GSE housing finance initiatives.” We believe this description is proper. This draft memorandum was prepared by a member of Treasury staff and summarizes a July 27, 2012 meeting between Treasury and FHFA, as indicated in the non-privileged cover e-mail—UST00504513. The memorandum contains

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summaries of the status of discussions between the two agencies regarding housing policy initiatives. This substance is reflected in the justification.

C. Not Predecisional

You have asserted that the following documents are not predecisional:

UST00061003; UST00061011; UST00061015; UST00061016; UST00061017;
UST00061019; UST00061020; UST00061022; UST00061071; UST00384174;
UST00385540; UST00385569; UST00385572; UST00389662; UST00389678;
UST00398303; UST00409040; UST00490162; and UST00536560.

As discussed above, we have decided to withdraw our privilege assertion over UST00385540. We believe that action resolves any dispute as to that document.

UST00061003, UST00061015, UST00061016, UST00061017, UST00061019, UST00061020, UST00061022, and UST00385569 are draft versions of a letter from Under Secretary for Domestic Finance Mary Miller to the employees of the GSEs and related e-mails. These drafts reflect Government deliberations concerning how to communicate certain messages about policy decisions to a group of individuals; these drafts have been properly withheld under the deliberative process privilege because the decision regarding the communication had not yet been made. The letter was never sent. However, a version shared with FHFA Acting Director Edward DeMarco—UST006076—has already been produced. We will not withdraw our assertion of privilege over the unfinished draft versions you have identified or any others that may be on the privilege log, including:

UST00061005; UST00061018; UST00061024; UST00061026; UST00061028;
UST00393598; UST00393602; UST00393608; UST00393612; UST00393614;
UST00397662; UST00397666; and UST00397667.

UST00061011 is a copy of an August 9, 2012 memorandum regarding the Domestic Finance Report for the weeks of August 13 and 20, 2012. This report was sent to Secretary Geithner on August 9, 2012, and was re-circulated on August 20, 2012. It reflects predecisional deliberations concerning the Third Amendment before the agreement was signed, as well as other policy decisions that were not yet made when the memorandum was sent again on August 20, 2012. We will not withdraw our assertion of privilege over this memorandum.

UST00385572 is an internal draft Treasury document dated August 1, 2012, and attached to an e-mail sent that same day, detailing the proposed changes to be incorporated into the Third Amendment and discussing the rationale and expected timing of the amendment. It is substantially similar to another document—UST00061175—that you have identified. These documents are predecisional because they were created and shared before the Third Amendment was adopted and contain deliberations concerning Treasury's rationale for entering into it. We would note, however, that a final version of a document with similar substance was produced in full to plaintiffs because it was shared with GSE management. *See, e.g.*, UST00534610. We will not withdraw our assertion of privilege over these internal draft documents.

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If you nevertheless contend that your purported need overcomes any privilege we have asserted and will request a review of these documents, we believe you should identify to the court the following variations of similar documents with the same general substance:

UST00385538; UST00385574; UST00394150; UST00394152; UST00404712;
 UST00463433; UST00463475; UST00503885; UST00504496; UST00504499;
 UST00521918; UST00521919; UST00521920; UST00521921; UST00534106;
 UST00534223; UST00534633; UST00535129; UST00551196; UST00551197;
 UST00551198; and UST00551199.

UST00061071 and UST00384174 are internal charts, dated August 16, 2012 and June 21, 2012 respectively, that address the status of various ongoing Treasury policy initiatives. As an initial matter, both of these charts pre-date the Third Amendment. These charts are also substantially similar to three other documents you have identified—UST00384239, UST00457298, and UST00503959. These charts are predecisional because they reflect contemporaneous deliberations regarding ongoing policy initiatives relating both to the GSEs and other Treasury policies before they were adopted. We would note, however, that we previously withdrew our assertion of privilege over—and produced—the charts of this type that were provided to the Secretary. *See, e.g.*, UST00459705. Additionally, in reviewing these documents, we have identified four other versions sent to Secretary Geithner, which we will produce and remove from our log—UST00081170; UST00081174; UST00420216; and UST00420217.⁴

If you nevertheless contend that your purported need overcomes any privilege we have asserted and will request a review of these documents, we believe you should identify to the court the following variations of similar documents with the same general substance:

UST00060800; UST00364742; UST00364747; UST00364755;-UST00364758;
 UST00365393; UST00365510; UST00365513; UST00365523; UST00366027;
 UST00366032; UST00366319; UST00366391; UST00366593; UST00369613;
 UST00384231; UST00384236; UST00384328; UST00384338; UST00384344;
 UST00384362;-UST00398989; UST00405090; UST00405092; UST00405100;
 UST00405964; UST00406057; UST00407264; UST00407271; UST00407273;
 UST00407278; UST00407304; UST00407321; UST00410494; UST00410608;
 UST00410934; UST00411188; UST00411195; UST00411338; UST00412996;
 UST00415433; UST00415440; UST00415450; UST00415601; UST00415604;
 UST00415607; UST00415610; UST00415612; UST00415614; UST00415621;
 UST00415623; UST00415627; UST00415631; UST00416029; UST00420383;
 UST00426177; UST00426183; UST00426188; UST00427188; UST00427217;
 UST00427223; UST00427227; UST00427230; UST00427235; UST00427436;
 UST00427442; UST00427869; UST00427889; UST00427906; UST00427915;
 UST00427937; UST00427945; UST00427953; UST00429086; UST00429092;
 UST00429166; UST00429191; UST00429197; UST00439852; UST00442322;
 UST00457225; UST00457226; UST00457230; UST00457240; UST00458028;

⁴ Consistent with our previous agreement, we will redact non-responsive material from the compilation of documents provided to Secretary Geithner.

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UST00459833; UST00462326; UST00462869; UST00462874; UST00462878;
UST00463902; UST00466806; UST00466814; UST00469211; UST00469310;
UST00469340; UST00469342; UST00469463; UST00469479; UST00471436;
UST00471440; UST00471443; UST00471447; UST00471479; UST00471971;
UST00471974; UST00472025; UST00472267; UST00472269; UST00472343;
UST00472427; UST00472476; UST00473286; UST00473388; UST00473620;
UST00474008; UST00474044; UST00474050; UST00475864; UST00475873;
UST00475882; UST00476195; UST00476197; UST00476495; UST00476514;
UST00476521; UST00476529; UST00476543; UST00476551; UST00476559;
UST00476576; UST00478319; UST00478510; UST00478513; UST00479619;
UST00480661; UST00480736; UST00480742; UST00481112; UST00481113;
UST00481118; UST00481124; UST00481202; UST00481206; UST00481243;
UST00481247; UST00481248; UST00481428; UST00481434; UST00481441;
UST00481447; UST00481653; UST00481658; UST00481667; UST00481672;
UST00482723; UST00482735; UST00482745; UST00482757; UST00482776;
UST00482778; UST00482848; UST00483031; UST00483046; UST00483086;
UST00483096; UST00483289; UST00486583; UST00486667; UST00486673;
UST00486779; UST00486788; UST00486790; UST00486882; UST00486883;
UST00490152; UST00490197; UST00490201; UST00491438; UST00491448;
UST00491482; UST00491568; UST00494327; UST00494594; UST00501883;
UST00502478; UST00502648; UST00502652; UST00502655; UST00502771;
UST00502775; UST00502779; UST00502788; UST00502814; UST00502820;
UST00502833; UST00503047; UST00503694; UST00503746; UST00503747;
UST00503779; UST00503785; UST00503843; UST00503899; UST00504065;
UST00504713; UST00505560; UST00505725; UST00507667; UST00508189;
UST00508195; UST00508202; UST00508209; UST00508215; UST00508250;
UST00508260; UST00508383; UST00508438; UST00508692; UST00509165;
UST00510647; UST00510650; UST00510656; UST00510926; UST00514202;
UST00514217; UST00514232; UST00514271; UST00514296; UST00514318;
UST00514321; UST00514324; UST00514339; UST00514364; UST00514368;
UST00514372; UST00514376; UST00514481; UST00514487; UST00514777;
UST00514779; UST00516048; UST00517035; UST00517036; UST00517037;
UST00517056; UST00517061; UST00517067; UST00517076; UST00517081;
UST00517086; UST00517095; UST00520465; UST00521769; UST00522034;
UST00533136; UST00533139; UST00533143; UST00533277; UST00534108;
UST00534467; UST00534625; UST00534628; UST00534630; UST00535030;
UST00535031; UST00535220; UST00535975; UST00536157; UST00540239;
UST00541257; UST00542086; UST00545596; UST00545598; UST00545668;
UST00545733; UST00548379; UST00548382; UST00548383; UST00548386;
UST00548584; UST00550574; UST00550576; UST00550579; UST00550991;
UST00550996; UST00551001; UST00551006; UST00551011; UST00551017;
UST00551332; UST00554616; UST00554652; UST00555326; UST00555971; and
UST00555985.

UST00398303 is a projection dated August 27, 2012, of the budgetary costs of Treasury's support of the GSEs, prepared for OMB in anticipation of the Fiscal Year 2014 Federal budget. This document is predecisional because it concerns matters that had not yet

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occurred. We will not withdraw our assertion of the deliberative process privilege over this document.

UST00389662 is a memorandum dated December 14, 2011, from Under Secretary for Domestic Finance Mary Miller to Secretary Geithner with the subject “Potential GSE Restructuring Options.” It is identical to another document you have challenged—UST00473445. This memorandum was written nearly a year before the execution of the Third Amendment and is predecisional. It is also deliberative because it presents multiple policy options to the Secretary with Treasury staff views of them. We will not withdraw our assertion of privilege over this document.

UST00389678 is a memorandum dated January 25, 2012, from Michael Stegman to Secretary Geithner with the subject “Summary of Mortgage Finance Market Reform Proposals.” It is identical to another document you have challenged—UST00480844. This memorandum is predecisional because it presents policy options to the Secretary, including options with respect to certain issues that have yet to be decided. Because the memorandum presents the Secretary with Treasury staff views on policy initiatives, it is also deliberative. We will not withdraw our assertion of privilege over this document.

UST00409040 is set of financial projections regarding the GSEs provided by Grant Thornton to Treasury on March 12, 2012. These projections were relied upon during deliberations concerning the Third Amendment and other policy discussions within Treasury and are predecisional.

UST00490162 is a draft of speech for Secretary Geithner that was ultimately delivered on February 2, 2012. The version you identified, dated January 28, 2012, is predecisional because it is a non-final version dated several days before the speech was finalized and delivered. We note that the final version, as delivered, is publicly available at: <http://www.treasury.gov/press-center/press-releases/Pages/tg1408.aspx>. This version was also produced previously—UST00420538.

If you nevertheless contend that your purported need overcomes any privilege we have asserted and will request a review of these documents, we believe you should identify to the court the following variations of similar documents with the same general substance:

UST00081675; UST00081713; UST00081721; UST00081758; UST00081767;
UST00081775; UST00405181; UST00405189; UST00420012; UST00432069;
UST00432076; UST00432119; UST00432128; UST00432229; UST00432231;
UST00432237; UST00456927; UST00472647; UST00502838; UST00502844;
UST00502850; UST00502857; UST00502865; UST00502891; UST00502898;
UST00502905; UST00502912; UST00502919; UST00502925; UST00502931;
UST00502937; UST00502943; UST00502969; UST00502975; UST00503000;
UST00503005; UST00503069; UST00503074; UST00503096; UST00503101;
UST00503156; UST00503158; UST00503162; UST00503201; UST00503963;
UST00505609; UST00507828; UST00507834; UST00513987; UST00522265;
UST00522302; UST00522328; UST00522335; UST00537576; UST00548295;
UST00548300; UST00548306; UST00548314; UST00548449; UST00548455;

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UST00548462; UST00548469; UST00548475; UST00548482; UST00548487;
UST00548494; UST00548499; UST00548505; UST00548510; UST00548517;
UST00548522; UST00548528; UST00548534; UST00548536; UST00555821; and
UST00555827.

UST00536560 is an internal document dated June 1, 2012, concerning the status of potential covenants to be incorporated into the Third Amendment. This document precedes the Third Amendment and is predecisional. We will not withdraw our assertion of privilege over this document.

If you nevertheless contend that your purported need overcomes any privilege we have asserted and will request a review of these documents, we believe you should identify to the court the following variations of similar documents with the same general substance:

UST00365717; UST00365721; UST00384754; UST00396069; UST00468868;
UST00469401; UST00504802; UST00504810; UST00504941; UST00504946;
UST00504972; UST00505000; UST00505005; UST00505013; UST00505018;
UST00505048; UST00505058; UST00505631; UST00506528; UST00517968;
UST00518022; UST00521913; UST00521967; UST00533276; UST00533695;
UST00534502; and UST00536565.

D. Communications Outside The White House

You have challenged the following documents on your assumption that they are “[c]ommunications outside the White House not covered by PCP”: UST00500982; UST00515290; UST00521902; and UST00550441.

UST00500982 and UST00515290 are communications that were sent directly to or from a White House employee with an e-mail address ending in “who.eop.gov,” as reflected on the privilege log.

UST00550441 is an e-mail chain that was produced to you with only one part of one sentence redacted pursuant to the presidential communication privilege. Although the top of the e-mail chain was sent internally among Treasury staff, the one redacted line is contained in an e-mail sent directly from a White House employee with an e-mail address ending in “who.eop.gov,” as evident on the face of the document.

UST00521902 is a draft memorandum on White House letterhead that was developed by White House advisors and Treasury staff in connection with presidential decisionmaking on potential housing finance reforms. The draft memorandum presents specific policy recommendations for presidential approval and contains a candid analysis of the pros and cons of the particular proposed reforms. It was properly withheld under both the deliberative process and presidential communication privileges.

E. Factual Material (Other Than Financial Models)

You have challenged our privilege assertion with respect to the following documents because you contend they contain factual materials not protected by the deliberative process privilege:

UST00061071; UST00061175; UST00061421; UST00384146; UST00384174; UST00384501; UST00385540; UST00385572; UST00389662; UST00389678; UST00405880; UST00407182; UST00409040; UST00413379; UST00418517; UST00426270; UST00457298; UST00472229; UST00472232; UST00473445; UST00475757; UST00478535; UST00480844; UST00490162; UST00490551; UST00492699; UST00500982; UST00502258; UST00503672; UST00503877; UST00503959; UST00504514; UST00505494; UST00506346; UST00513480; UST00518402; UST00521902; UST00536346; UST00536560; UST00544897; UST00548270; UST00550357; FHFA00031520; FHFA00031960; FHFA00031962; FHFA00031964; FHFA00056237; FHFA00092209; FHFA00093706; FHFA00096631; FHFA00096634; FHFA00096636; and FHFA00096638.

Other than those documents you have challenged on other grounds and we have specifically addressed above, we will not address these documents individually. We have completed a comprehensive review of these documents and believe the privilege was correctly asserted because they contain non-factual deliberative information or factual information that is not reasonably segregable from the deliberative information. If you provide us with your basis for contending that these specific documents are entirely factual, we may be able to narrow the dispute.

F. Factual Material (Financial Models)

You have challenged our assertion of privilege over the following documents because they contain financial models that you contend are not protected by the deliberative process privilege:

UST00407342; UST00409040; UST00473767; UST00473773; UST00473776; UST00473779; UST00473782; UST00473770; UST00481423; UST00481424; UST00481425; UST00539251; UST00556294; UST00556295; UST00556459; UST00556460; and FHFA00100594.

As discussed above, we disagree with your argument that financial models are factual documents, and thus are not covered by the deliberative process privilege. We believe that the court can resolve this legal issue without *in camera* review of individual privileged documents. However, we agree the court may benefit from reviewing samples of the types of projections you contend are not covered by the deliberative process privilege. There are numerous examples of projections for which we have previously waived privilege available in the Administrative Record from the district court action and in documents we have produced in this action.

If you nevertheless contend that your purported need overcomes any privilege we have asserted and will request a review of these documents, we believe you should identify to the court the following variations of similar documents with the same general substance:

- 14 -

UST00407331; UST00407333; UST00407335; UST00407337; UST00407339;
UST00407344; UST00470130; UST00470131; UST00470132; UST00473770;
UST00473785; UST00473786; UST00473787; UST00481473; UST00481474;
UST00481475; UST00515969; UST00556299; UST00556300; UST00556304;
UST00556305; UST00556310; UST00556320; UST00556321; UST00556322;
UST00556397; UST00556398; UST00556399; UST00556402; UST00556403;
UST00556404; UST00556454; UST00556455; UST00556464; UST00556465;
UST00556470; UST00556476; UST00556477; UST00556478; UST00556553;
UST00556554; UST00556555; UST00556558; UST00556559; and UST00556560.

G. Documents We Have Deemed Not Responsive

You have challenged our designation of the following three documents as not responsive: UST00061161; UST00419116; and UST00419126.

UST00061161 is a draft memorandum from Deputy Assistant Secretary Timothy Bowler to Under Secretary for Domestic Finance Mary Miller concerning a meeting with the GSE management teams on August 9, 2012. This was marked not responsive during the review process after a placeholder had been produced. We now agree that it is responsive and we will add the entry to our privilege log. We note that UST00061161 is a nearly exact duplicate of two other documents (UST00532160 and UST00532196) already on our log. Additionally, we have identified the final version of the memorandum and will produce it in full because the substance concerns communications between Treasury and the GSEs.

UST00419116 and UST00419126 were marked not responsive because, as discussed above, plaintiffs abandoned the request for documents “reflecting communications between Treasury and DOJ relating to [the] Net Worth Sweep,” as indicated in the letter from David Thompson to Gregg Schwind dated October 6, 2014. We will not add these entries to our privilege log.

* * *

Please let me know if you have additional questions or comments.

Very truly yours,

/s/ Elizabeth M. Hosford
ELIZABETH M. HOSFORD
Assistant Director
Commercial Litigation Branch

EXHIBIT 3

Cooper & Kirk

Lawyers

A Professional Limited Liability Company

Vincent J. Colatriano
(202) 220-9656
vcolatriano@cooperkirk.com

1523 New Hampshire Avenue, N.W.
Washington, D.C. 20036

(202) 220-9600
Fax (202) 220-9601

February 5, 2015

BY EMAIL AND FIRST CLASS MAIL

Gregg M. Schwind
Senior Trial Counsel
Commercial Litigation Branch
Civil Division
U. S. Department of Justice
P.O. Box 480 Ben Franklin Station
Washington, D.C. 20044

Re: *Fairholme Funds, Inc., et al. v. United States* (No. 13-465C) (Fed. Cl)

Dear Gregg:

On January 16, 2015, the Government provided its first log identifying some of the Treasury documents it plans to withhold as privileged. I am writing to raise a number of objections regarding the documents that appear on the Treasury privilege log as well as on the FHFA privilege logs that the Government had previously provided. For ease of reference, I have included with this letter copies of the Government's privilege logs that identify the document-specific objections discussed below, but please note that a number of Plaintiffs' objections apply to broader categories of documents and thus are not specifically identified in the logs. Of course, by raising these objections, Plaintiffs do not waive any others they may have regarding the sufficiency of the Government's privilege logs or its assertions of privilege.

* * * *

Insufficient Descriptions. Some of the logs' document descriptions do not provide enough information to enable us to meaningfully assess the Government's assertions of privilege. For example, the Government asserts the deliberative process privilege with respect to Treasury documents that discuss "policies on a number of economic and housing issues," Treas. Doc. 9, "various Federal responses to the financial crisis," Treas. Doc. 23, and a "variety of policy and budget issues," Treas. Doc. 47. Without more specific descriptions of the policy issues discussed, it is impossible for us to evaluate, among other things, the claim that these documents are predecisional. In the privilege logs that accompany this letter, we have denoted document descriptions that are insufficient with an "I." Please provide more detailed descriptions of those documents.

Relatedly, our review of the privilege logs has been hampered by the Government's failure to provide a list of the positions of the individuals identified on its logs. For example, it is

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Lawyers

Gregg M. Schwind
Senior Trial Counsel
February 5, 2015
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difficult to assess whether documents withheld under the attorney-client privilege were circulated so broadly within the government as to defeat the privilege without knowing the identities of those who received the documents in question. Similarly, it would be difficult for us to assess whether particular documents are deliberative if we do not know whether the senders and recipients had policymaking positions. Please provide a list of the positions held by the individuals who appear on the Government's privilege logs.

Deliberative Process Privilege. A substantial portion of the documents that appear on the privilege logs were withheld under the deliberative process privilege, and we have a number of objections to the withholding of those documents:

First, the Government has maintained throughout this litigation that when FHFA acts as conservator its actions are not attributable to the United States. Yet the Government is withholding numerous FHFA documents under the deliberative process privilege—a privilege that shields only communications *within the Executive Branch*. The Government's litigating position precludes it from asserting the deliberative process privilege with respect to documents produced by or shared with FHFA. For similar reasons, the Government cannot assert the deliberative process privilege for documents produced by or shared with Fannie and Freddie.

Second, the deliberative process privilege cannot be used to shield documents when the Government's subjective motivation is at issue. The Government's subjective motivations are at issue in this case with respect to such matters as whether FHFA acted as the United States when it agreed to the Net Worth Sweep, why the Government allowed the Companies' preexisting capital structure and stockholders to remain in place when it imposed the conservatorships, and when and how the conservatorships will end. Accordingly, documents relevant to such questions as why FHFA agreed to the Net Worth Sweep cannot be withheld on deliberative process privilege grounds.

Third, the deliberative process privilege can only be asserted by a signed affidavit from a senior agency official attesting that he or she reviewed the documents in question and determined that they should be withheld. The Government has not yet provided such affidavits for the documents it is withholding under the deliberative process privilege, and we request that it promptly do so.

Fourth, the Government appears to have withheld on deliberative process privilege grounds a number of documents dated after the relevant policy decisions were made. For example, the Net Worth Sweep was announced on August 17, 2012, yet numerous documents from the following days are described on the Treasury log as "predecisional policy information related to PSPA amendments." *See, e.g.*, Treas. Docs. 126-142. Documents that post-date the Net

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Lawyers

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Senior Trial Counsel
February 5, 2015
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Worth Sweep obviously cannot be predecisional with respect to that policy. Deliberative process privilege documents on the logs that do not appear to be predecisional are identified with a “P.”

Fifth, many of the documents withheld under the deliberative process privilege appear to contain non-deliberative factual information. For example, the Government asserts the privilege with respect to a Treasury document “providing information related to market reaction to changes to the PSPAs.” Treas. Doc. 123. We infer that this document discusses how the financial markets responded to the Net Worth Sweep—non-deliberative factual information not covered by the deliberative process privilege. The Government cannot withhold such information as privileged to the extent that it can be segregated from any deliberative portions of the same document. Documents that should be produced in whole or in part because they contain non-deliberative information are denoted in the accompanying logs with an “F.”

Sixth, the deliberative process privilege is a qualified privilege, meaning that it can be overcome by a showing that Plaintiffs’ need for the document in question outweighs any harm that production might cause to future governmental policy discussions. A number of the documents the Government has withheld on deliberative process grounds appear to be highly relevant to the issues on which the Court authorized discovery, and we do not believe that production of those documents is likely to inhibit future discussions among policymakers. Documents for which we think, based on the information we have been provided thus far, that the qualified privilege is overcome by Plaintiffs’ need are denoted in the accompanying logs by an “N.”

Bank Examination Privilege. We also have several objections to the Government’s decision to withhold a significant number of FHFA documents under the bank examination privilege:

First, Fannie and Freddie are not banks, and FHFA is not a bank regulator. Those facts place FHFA documents outside the limited ambit of the bank examination privilege.

Second, even if FHFA could properly invoke the bank examination privilege with respect to documents that predate the imposition of the conservatorships on September 6, 2008, it cannot do so with respect to documents created during the conservatorships. The rationale for the bank examination privilege is that it is necessary to promote frank disclosure of information by an independent bank to its regulator. This rationale is inapposite while the “bank” in question is wholly controlled by its supposed “regulator”.

Third, like the deliberative process privilege, the bank examination privilege cannot be used to shield documents relevant to a dispute over the Government’s subjective motivations. Thus, to the extent the bank examination materials on FHFA’s privilege logs are relevant to such

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Lawyers

Gregg M. Schwind
Senior Trial Counsel
February 5, 2015
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matters as whether FHFA acted as the United States when it agreed to the Net Worth Sweep, why the Government allowed the Companies' preexisting capital structure and stockholders to remain in place when it imposed the conservatorships, and when and how the conservatorships will end, they should be produced.

Fourth, also like the deliberative process privilege, the bank examination privilege does not protect factual or other non-deliberative information. Documents that should be disclosed in whole or in part on this ground are identified on the accompanying FHFA privilege logs with an "F."

Finally, the bank examination privilege is a qualified privilege, and Plaintiffs have a sufficient need for some of the documents on FHFA's privilege logs to overcome the privilege. Those documents are identified, based on the information we have been provided thus far, on the accompanying FHFA privilege logs by an "N."

Presidential Communications Privilege. We have at least three objections to the Government's withholding of certain documents under the presidential communications privilege:

First, this privilege must be personally invoked by the President of the United States. *Center on Corporate Responsibility, Inc. v. Shultz*, 368 F. Supp. 863, 872-73 (D.D.C. 1973). Please provide affidavits establishing that Presidents Obama and Bush have specifically directed the withholding of the documents in question.

Second, the privilege does not extend to staff outside the White House in executive branch agencies or to White House officials carrying out duties other than advising or preparing to advise the President. Thus, communications exclusively within the Treasury Department are not covered by the presidential privilege, *see, e.g.*, Treas. Doc. 70, and even communications from White House staff will not be covered if not made for purposes of giving the President advice, *see, e.g.*, Treas. Doc. 145. Documents that are not shielded by the presidential communications privilege on these grounds are identified in the privilege logs with an "A."

Third, the presidential communications privilege is a qualified privilege that can be overcome in a civil case by a showing that a document contains important evidence that is not available with due diligence elsewhere. Documents for which we believe that this standard is satisfied, based on the information we have been provided thus far, are identified in the privilege logs with an "E."

Attorney-Client Privilege. The attorney-client privilege only protects confidential com-

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Gregg M. Schwind
Senior Trial Counsel
February 5, 2015
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munications sent to or received from an attorney for the purpose of obtaining legal advice. Documents widely shared within the government or sent to government employees who do not need them are not confidential and therefore not privileged. The privilege does not apply when a lawyer is asked for or provides advice about policy or other non-legal matters. *E.g.*, FHFA Doc. 58. Similarly, the Government cannot shield under the attorney-client privilege documents that were created for reasons other than to obtain or provide legal advice. *E.g.*, FHFA Doc. 28; FHFA Doc. 381. Documents that appear to have been improperly withheld under the attorney-client privilege are identified in the accompanying privilege logs with an "L."

* * * *

We are of course available to discuss the issues raised in this letter in an effort to resolve our objections without court action. *See* RCFC 37(a)(1). Even if the parties cannot completely resolve their differences over the sufficiency of the Government's privilege logs and its assertions of privilege, it is in everyone's interest to narrow the set of issues that the Court may ultimately need to resolve. To that end, we would suggest that the parties meet in person, or confer on the phone, to discuss the matters raised in this letter no later than February 13, 2015.

Sincerely,



Vincent J. Colatriano

EXHIBIT 4



REK:KMD:GMSchwind
154-13-465

U.S. Department of Justice

Civil Division
Telephone: (202)-353-2345
Facsimile: (202) 514-7969

Washington, DC 20530

July 10, 2015

By E-mail and U.S. Mail

Vincent J. Colatriano
Cooper & Kirk, PLLC
1523 New Hampshire Ave. NW
Washington, D.C. 20036
202-220-9656

Re: *Fairholme Funds, Inc. et al., v. United States*, No. 13-465C (Fed. Cl.)

Dear Mr. Colatriano:

Please be advised that the Government inadvertently provided plaintiffs several documents it considers privileged. Pursuant to paragraph 13 of the Protective Order, the Government is asserting privilege over the documents listed below. We request that plaintiffs immediately destroy or delete all copies thereof, as well as all notes, memoranda or other documents that summarize, discuss or quote the documents, and delete any copy of the documents, or any portion thereof, from any word processing or database tape or disk plaintiffs maintain. Further, please notify us immediately if plaintiffs have disclosed any of the documents to any other parties. The Bates numbers of the documents inadvertently produced are:

UST00421805
UST00472610 - UST00472614
UST00471710 - UST00471715
UST00471716 - UST00471741
UST00497476 - UST00497487
UST00497679 - UST00497714
UST00511655 - UST00511656
UST00511673 - UST00511674

If you have any questions, please do not hesitate to contact me.

Very truly yours,

/s/ Gregg M. Schwind
Gregg M. Schwind
Senior Trial Counsel
U. S. Department of Justice
Gregg.Schwind@usdoj.gov

EXHIBIT 5

From: Brian Barnes
Sent: Friday, July 17, 2015 4:59 PM
To: Hosford, Elizabeth (CIV); Schwind, Gregg (CIV)
Cc: Calhoun, Era C. (CIV); David Thompson; Vince Colatriano; Pete Patterson
Subject: RE: Fairholme v. US; Clawback Letter

Hi Liz,

It appears that not all of the documents identified in the Government's letter are on Treasury's final privilege log (UST00421805, UST00497476 et seq., UST00497679 et seq., and UST00511673 et seq. don't show up when we run text searches). Could you please either direct me to the page on the privilege log where those documents appear or confirm that the Government will be producing a supplemental privilege log for them today as required by paragraph 13 of the Protective Order?

Many thanks,

Brian W. Barnes
Cooper & Kirk, PLLC
(202) 220-9623

From: Schwind, Gregg (CIV) [mailto:Gregg.Schwind@usdoj.gov]
Sent: Friday, July 10, 2015 10:02 PM
To: Vince Colatriano; Brian Barnes; David Thompson; Pete Patterson
Cc: Hosford, Elizabeth (CIV); Calhoun, Era C. (CIV)
Subject: Fairholme v. US; Clawback Letter

Vince,

Please see the attached letter regarding a small number of privileged documents inadvertently produced in discovery. Let us know if you have any questions.

Gregg

Gregg M. Schwind
Senior Trial Counsel
U. S. Department of Justice
(202) 353-2345

Overnight address:
1100 L Street, N.W.
Washington, D.C. 20005

EXHIBIT 6



REK:KMD:EHosford
154-13-465

U.S. Department of Justice

Civil Division
Telephone: (202) 616-0332
Elizabeth.Hosford@usdoj.gov

Washington, DC 20530

July 28, 2015

By E-mail

Vincent J. Colatriano
Cooper & Kirk, PLLC
1523 New Hampshire Ave. NW
Washington, D.C. 20036
202-220-9656

Re: *Fairholme Funds, Inc. et al., v. United States*, No. 13-465C (Fed. Cl.)

Dear Mr. Colatriano,

In a letter dated July 10, 2015, we notified you that the Government intended to assert privilege over certain documents that were inadvertently produced to plaintiffs during the course of discovery, and we requested that plaintiffs destroy or delete any copies of the identified documents pursuant to paragraph 13 of the Protective Order. The purpose of this letter is to notify you of our intent to modify our position with regard to certain documents identified in the July 10, 2015 letter.

First, the Government withdraws its privilege assertions with respect to the following documents:

UST00421805
UST00741710-15
UST00471716-41
UST00497679-714

We will provide you with copies of the documents listed above.

- 2 -

Second, with respect to the remaining documents identified in our July 10, 2015 letter and listed below, enclosed please find a revised privilege log detailing the basis for our privilege claims. To the extent that portions of those documents are not privileged, we will provide copies of those documents in redacted form.

UST00472610 - UST00472614¹
UST00497476 - UST00497487
UST00511655 - UST00511656
UST00511673 - UST00511674

If you have any questions, please do not hesitate to contact me.

Very truly yours,

/s/ Elizabeth Hosford
Elizabeth Hosford
Assistant Director
Commercial Litigation Branch

Enclosure

¹ Two other documents, UST00503121 - UST00503125 and UST00420634 - UST00420638, are identical or nearly identical to UST00472610 - UST00472614. Although these documents were initially withheld in full, we have identified non-privileged portions and will provide you with redacted versions.

EXHIBIT 7

From: Vince Colatriano
Sent: Wednesday, August 12, 2015 2:53 PM
To: Hosford, Elizabeth (CIV)
Cc: David Thompson; Brian Barnes; Howard Nielson; Pete Patterson; Bezak, Reta E. (CIV); Schiavetti, Anthony F. (CIV); Laufgraben, Eric E. (CIV)
Subject: RE: Fairholme -- Privilege Logs
Attachments: Privilege Log Excerpts Prepared on 8-11-15.pdf; 5-21-14 Ltr to Scwhind re Discovery.pdf

Liz –

Good afternoon. I hope you enjoyed your vacation. I'm writing to follow up on a couple of items we discussed on July 29 regarding our ongoing review of the Government's final privilege logs:

- Could you let me know where things stand in the Government's review of our list of the 2700-plus documents (discussed in the below email) that have been withheld for privilege but do not appear on either of the final privilege logs?
- As you'll recall, we discussed during the July 29 call our thoughts regarding a way to begin to tee up for resolution at least some of the concerns we have regarding the Government's privilege assertions. Specifically, we thought it made sense to prepare a list of withheld documents appearing on the privilege log, from a discrete time period near the official adoption of the net worth sweep, that raise issues regarding the Government's assertions of deliberative process privilege. We have therefore prepared the attached excerpt from the Government's privilege logs that focuses primarily (though not exclusively) on documents created during the period August 7-13, 2012. Please note the following regarding this effort:
 - We believe the documents on this list raise such issues as (1) the adequacy of the privilege logs' document descriptions (for example, many of the log entries contain only very vague descriptions noting simply that the documents reflect "predecisional deliberations concerning proposed modifications to PSPAs"); (2) the applicability in this case of the deliberative process privilege to documents that are likely probative of the Government's motivations in implementing the net worth sweep; and (3) whether, even assuming that the Government may be entitled to assert the deliberative process privilege with respect to any such documents, our evidentiary need for such documents may outweigh any harm to the Government that might result from production of the documents. We therefore believe that resolving (either through negotiation or an appropriate motion) the privilege issues regarding these documents may provide a template for the resolution of many of the Government's other assertions of this privilege. It may also provide guidance

for the resolution of other Government assertions of qualified privileges (such as the bank examination and presidential communications privileges).

- o We have attempted to narrow the attached list down to a fairly manageable number of documents, but it is still fairly lengthy. We strongly suspect, however, that many of the documents on this list are duplicates or near-duplicates of each other. We are hopeful that it should be fairly easy for the Government to identify such duplicates and near-duplicates so that we can come up with a more manageable list of documents that can, if necessary, be submitted to the Court for *in camera* review in the likely event that the parties need the Court's assistance in resolving this issue.
- o Once you've had a chance to review this list, it probably makes sense for us to convene a short conference call early next week to discuss possible next steps.

Finally, I wanted to raise one other discovery matter. As you may recall, we had discussions, primarily with Gregg Schwind, about the Government's search for and production of "hard copy" documents that were responsive to our discovery requests. We first raised this issue, and discussed examples of the kinds of documents we were thinking of, in a May 21, 2014 letter to Gregg, a copy of which is attached, although we subsequently followed up on several occasions. It was our understanding that the Government was not limiting its document production efforts to its searches of ESI, but was instead also searching for, and would produce, responsive hard copy documents. In fact, at the January 28 status conference, Gregg reported that such hard-copy documents had been identified and loaded onto the Government's document review platform. Now that the Government has completed its document productions, we wanted to raise some concerns we have about the production of such hard copy documents. Based on our review of the productions and the privilege logs, it appears that at least some of the examples of hard copy documents we had identified were neither produced nor withheld as privileged. [REDACTED]

[REDACTED] We would appreciate it if you could look into this and let us know (1) which categories of hard copy documents were gathered by the Government and loaded onto its document review platform; and (2) why some of the hard copy materials we requested were not produced.

As always, please let me know if you have any questions.

Thanks

Vince

Vincent J. Colatriano
Cooper & Kirk, PLLC

1523 New Hampshire Ave. NW
Washington, D.C. 20036
202-220-9656
www.cooperkirk.com

From: Vince Colatriano
Sent: Thursday, July 30, 2015 10:20 AM
To: 'Hosford, Elizabeth (CIV)' <Elizabeth.Hosford@usdoj.gov>
Cc: David Thompson <dthompson@cooperkirk.com>; Brian Barnes <BBarnes@cooperkirk.com>; Howard Nielson <hnielson@cooperkirk.com>; Pete Patterson <ppatterson@cooperkirk.com>; Bezak, Reta E. (CIV) <Reta.E.Bezak@usdoj.gov>; Schiavetti, Anthony F. (CIV) <Anthony.F.Schiavetti@usdoj.gov>; Laufgraben, Eric E. (CIV) <Eric.E.Laufgraben@usdoj.gov>
Subject: RE: Fairholme -- Privilege Logs

Liz –

Good morning. As a follow-up to our discussion of yesterday afternoon, I'm attaching a list identifying those documents that have been withheld for privilege but that do not appear on either of the Government's final privilege logs. As we discussed, because these lists were compiled from the results of our searches, in the Government's document productions, for the phrase "withheld for privilege," it's possible that the lists are under-inclusive, *i.e.*, that they may not identify every withheld document that did not make it onto a final privilege log. The document is password-protected. I will send you the password in a separate email.

As we discussed, we have been assuming that the documents on this list were initially withheld for privilege but that the Government ultimately decided that they were not privileged. If that is the case, we request that the documents be produced as soon as possible. In any event, we would appreciate it if you could let us know the status of these documents at your earliest opportunity.

Thanks very much

Vince

Vincent J. Colatriano
Cooper & Kirk, PLLC
1523 New Hampshire Ave. NW
Washington, D.C. 20036
202-220-9656
www.cooperkirk.com

From: Hosford, Elizabeth (CIV) [<mailto:Elizabeth.Hosford@usdoj.gov>]
Sent: Wednesday, July 29, 2015 1:28 PM
To: Vince Colatriano <vcolatriano@cooperkirk.com>

Cc: David Thompson <dthompson@cooperkirk.com>; Brian Barnes <BBarnes@cooperkirk.com>; Howard Nielson <hnielson@cooperkirk.com>; Pete Patterson <ppatterson@cooperkirk.com>; Bezak, Reta E. (CIV) <Reta.E.Bezak@usdoj.gov>; Schiavetti, Anthony F. (CIV) <Anthony.F.Schiavetti@usdoj.gov>; Laufgraben, Eric E. (CIV) <Eric.E.Laufgraben@usdoj.gov>
Subject: RE: Fairholme -- Privilege Logs

Great. Thanks.

From: Vince Colatriano [<mailto:vcolatriano@cooperkirk.com>]
Sent: Wednesday, July 29, 2015 11:18 AM
To: Hosford, Elizabeth (CIV)
Cc: David Thompson; Brian Barnes; Howard Nielson; Pete Patterson; Bezak, Reta E. (CIV); Schiavetti, Anthony F. (CIV); Laufgraben, Eric E. (CIV)
Subject: RE: Fairholme -- Privilege Logs

Here's the call-in info for today's call.

Date: Wednesday, July 29, 2015
Time: 03:00 PM Eastern Daylight Time
Dial-in No.: 1-800-567-5900
Access Code: 2359207

Thanks

Vince

Vincent J. Colatriano
Cooper & Kirk, PLLC
1523 New Hampshire Ave. NW
Washington, D.C. 20036
202-220-9656
www.cooperkirk.com

From: Vince Colatriano
Sent: Wednesday, July 29, 2015 6:30 AM
To: Hosford, Elizabeth (CIV) <Elizabeth.Hosford@usdoj.gov>
Cc: David Thompson <dthompson@cooperkirk.com>; Brian Barnes <BBarnes@cooperkirk.com>; Howard Nielson <hnielson@cooperkirk.com>; Pete Patterson <ppatterson@cooperkirk.com>; Bezak, Reta E. (CIV) <Reta.E.Bezak@usdoj.gov>; Schiavetti, Anthony F. (CIV) <Anthony.F.Schiavetti@usdoj.gov>; Laufgraben, Eric E. (CIV) <Eric.E.Laufgraben@usdoj.gov>
Subject: Re: Fairholme -- Privilege Logs

Liz -- I think 3 pm should work for us. We'll set up a call-in number. Thanks

Vince

Sent from my iPhone

On Jul 28, 2015, at 5:01 PM, Hosford, Elizabeth (CIV) <Elizabeth.Hosford@usdoj.gov> wrote:

Vince: Are you all available at 1:30 or 3 tomorrow?

Thanks.

Liz

From: Vince Colatriano [<mailto:vcolatriano@cooperkirk.com>]
Sent: Sunday, July 26, 2015 9:43 PM
To: Hosford, Elizabeth (CIV)
Cc: David Thompson; Brian Barnes; Howard Nielson; Pete Patterson; Bezak, Reta E. (CIV); Schiavetti, Anthony F. (CIV)
Subject: RE: Fairholme -- Privilege Logs

Liz –

Unfortunately, Monday no longer works on our end for a call. Would it be possible to reschedule it for Wednesday?

Apologies for the change in plans.

Take care

Vince

Vincent J. Colatriano
Cooper & Kirk, PLLC
1523 New Hampshire Ave., NW
Washington, D.C. 20036
www.cooperkirk.com

From: Hosford, Elizabeth (CIV) [<mailto:Elizabeth.Hosford@usdoj.gov>]
Sent: Wednesday, July 22, 2015 3:48 PM
To: Vince Colatriano <vcolatriano@cooperkirk.com>
Cc: David Thompson <dthompson@cooperkirk.com>; Brian Barnes <BBarnes@cooperkirk.com>; Howard Nielson <hnielson@cooperkirk.com>; Pete Patterson <ppatterson@cooperkirk.com>; Bezak, Reta E. (CIV) <Reta.E.Bezak@usdoj.gov>; Schiavetti, Anthony F. (CIV) <Anthony.F.Schiavetti@usdoj.gov>
Subject: RE: Fairholme -- Privilege Logs

Let's do 3 p.m.

Liz

From: Vince Colatriano [<mailto:vcolatriano@cooperkirk.com>]
Sent: Wednesday, July 22, 2015 12:04 PM
To: Hosford, Elizabeth (CIV)
Cc: David Thompson; Brian Barnes; Howard Nielson; Pete Patterson; Bezak, Reta E. (CIV); Schiavetti, Anthony F. (CIV)
Subject: RE: Fairholme -- Privilege Logs

Liz – That should work. Any time after 2:30 or so should work on our end. Let me know what time works for you.

Thanks

Vince

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From: Hosford, Elizabeth (CIV) [<mailto:Elizabeth.Hosford@usdoj.gov>]
Sent: Wednesday, July 22, 2015 8:46 AM
To: Vince Colatriano
Cc: David Thompson; Brian Barnes; Howard Nielson; Pete Patterson; Bezak, Reta E. (CIV); Schiavetti, Anthony F. (CIV)
Subject: RE: Fairholme -- Privilege Logs

Vince - Friday doesn't work for us, but we can do a call on Monday afternoon.

Liz

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: Vince Colatriano <vcolatriano@cooperkirk.com>
Date: 07/21/2015 11:40 AM (GMT-05:00)
To: "Hosford, Elizabeth (CIV)" <EHosford@CIV.USDOJ.GOV>
Cc: David Thompson <dthompson@cooperkirk.com>, Brian Barnes <BBarnes@cooperkirk.com>, Howard Nielson <hnielson@cooperkirk.com>, Pete Patterson <ppatterson@cooperkirk.com>, "Bezak, Reta E. (CIV)" <rbezak@CIV.USDOJ.GOV>
Subject: Fairholme -- Privilege Logs

Liz –

Good morning. Although we are continuing to review the privilege logs that we were sent on July 10, we should soon be in a position to talk about some issues raised by those logs that we believe it may make sense to either seek to resolve or to tee up for the Court. We would therefore like to schedule a conference call for Friday of this week to discuss privilege issues. (We can also meet in person if you think that would be more efficient, though even then, some folks on our end will need to participate by phone). Please let us know as soon as you can whether Friday works for you.

Thanks very much

Vince

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Washington, D.C. 20036
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EXHIBIT 8

From: Hosford, Elizabeth (CIV) <Elizabeth.Hosford@usdoj.gov>
Sent: Monday, August 17, 2015 4:29 PM
To: Vince Colatriano
Cc: David Thompson; Brian Barnes; Howard Nielson; Pete Patterson; Bezak, Reta E. (CIV); Schiavetti, Anthony F. (CIV); Laufgraben, Eric E. (CIV); Koprowski, Agatha M. (CIV)
Subject: RE: Fairholme -- Privilege Logs
Attachments: Copy of 2015.08.17 Responsive Duplicate Identification.xlsx

Vince - In response to your inquiry, below, regarding approximately 2,700 documents that were initially withheld for privilege, but did not appear on our final privilege log, the documents you identified fall into four broad categories:

1. The bulk of the documents you identified (approximately 1,800) were excluded from our productions because they are exact duplicates of other documents in the production. This occurred because one custodian's documents were inadvertently loaded into the database twice. For your convenience, we have provided a list of all of these documents and identify their duplicates, all of which either appear on the privilege log or have been produced to you in full or redacted form.
2. Approximately 600 documents were inadvertently left off of our final privilege log, due to a technical error. We will provide a revised privilege log that adds those documents at the end of the list, for ease of review.
3. Several documents (approximately 45) are responsive to the Court's February 26, 2014 order regarding the scope of discovery, and the Government has withdrawn, in whole or in part, its initial privilege designation. Approximately 10 of those documents were produced to Fairholme in the Government's July 20, 2015 UST Document Replacement production. The remaining documents were not included in an image replacement production, due to a technical error, and will be produced to Fairholme. We will provide a list of the documents that will be included in a future production. The documents that appeared in the July 20 production are the following:

UST00511484
UST00511490
UST00511499
UST00511505
UST00511511
UST00511516
UST00511527
UST00512792
UST00537232
UST00547778

4. Approximately 250 documents were determined to be non-responsive to the Court's February 26, 2014 order regarding the scope of discovery. Due to the rolling nature of our productions and privilege logs, these determinations were made after the documents had been included in a production (as slip-sheets). We will provide a list of these documents.

Please let me know if you have any additional questions regarding these documents.

Liz

From: Vince Colatriano [mailto:vcolatriano@cooperkirk.com]
Sent: Thursday, July 30, 2015 10:20 AM
To: Hosford, Elizabeth (CIV)
Cc: David Thompson; Brian Barnes; Howard Nielson; Pete Patterson; Bezak, Reta E. (CIV); Schiavetti, Anthony F. (CIV); Laufgraben, Eric E. (CIV)
Subject: RE: Fairholme -- Privilege Logs

Liz –

Good morning. As a follow-up to our discussion of yesterday afternoon, I'm attaching a list identifying those documents that have been withheld for privilege but that do not appear on either of the Government's final privilege logs. As we discussed, because these lists were compiled from the results of our searches, in the Government's document productions, for the phrase "withheld for privilege," it's possible that the lists are under-inclusive, *i.e.*, that they may not identify every withheld document that did not make it onto a final privilege log. The document is password-protected. I will send you the password in a separate email.

As we discussed, we have been assuming that the documents on this list were initially withheld for privilege but that the Government ultimately decided that they were not privileged. If that is the case, we request that the documents be produced as soon as possible. In any event, we would appreciate it if you could let us know the status of these documents at your earliest opportunity.

Thanks very much

Vince

Vincent J. Colatriano
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Washington, D.C. 20036
202-220-9656
www.cooperkirk.com

From: Hosford, Elizabeth (CIV) [mailto:Elizabeth.Hosford@usdoj.gov]
Sent: Wednesday, July 29, 2015 1:28 PM
To: Vince Colatriano <vcolatriano@cooperkirk.com>
Cc: David Thompson <dthompson@cooperkirk.com>; Brian Barnes <BBarnes@cooperkirk.com>; Howard Nielson <hnielson@cooperkirk.com>; Pete Patterson <ppatterson@cooperkirk.com>; Bezak, Reta E. (CIV) <Reta.E.Bezak@usdoj.gov>; Schiavetti, Anthony F. (CIV) <Anthony.F.Schiavetti@usdoj.gov>; Laufgraben, Eric E. (CIV) <Eric.E.Laufgraben@usdoj.gov>
Subject: RE: Fairholme -- Privilege Logs

Great. Thanks.

From: Vince Colatriano [<mailto:vcolatriano@cooperkirk.com>]
Sent: Wednesday, July 29, 2015 11:18 AM
To: Hosford, Elizabeth (CIV)
Cc: David Thompson; Brian Barnes; Howard Nielson; Pete Patterson; Bezak, Reta E. (CIV); Schiavetti, Anthony F. (CIV); Laufgraben, Eric E. (CIV)
Subject: RE: Fairholme -- Privilege Logs

Here's the call-in info for today's call.

Date: Wednesday, July 29, 2015
Time: 03:00 PM Eastern Daylight Time
Dial-in No.: 1-800-567-5900
Access Code: 2359207

Thanks

Vince

Vincent J. Colatriano
Cooper & Kirk, PLLC
1523 New Hampshire Ave. NW
Washington, D.C. 20036
202-220-9656
www.cooperkirk.com

From: Vince Colatriano
Sent: Wednesday, July 29, 2015 6:30 AM
To: Hosford, Elizabeth (CIV) <Elizabeth.Hosford@usdoj.gov>
Cc: David Thompson <dthompson@cooperkirk.com>; Brian Barnes <BBarnes@cooperkirk.com>; Howard Nielson <hnielson@cooperkirk.com>; Pete Patterson <ppatterson@cooperkirk.com>; Bezak, Reta E. (CIV) <Reta.E.Bezak@usdoj.gov>; Schiavetti, Anthony F. (CIV) <Anthony.F.Schiavetti@usdoj.gov>; Laufgraben, Eric E. (CIV) <Eric.E.Laufgraben@usdoj.gov>
Subject: Re: Fairholme -- Privilege Logs

Liz -- I think 3 pm should work for us. We'll set up a call-in number. Thanks

Vince

Sent from my iPhone

On Jul 28, 2015, at 5:01 PM, Hosford, Elizabeth (CIV) <Elizabeth.Hosford@usdoj.gov> wrote:

Vince: Are you all available at 1:30 or 3 tomorrow?

Thanks.

Liz

From: Vince Colatriano [<mailto:vcolatriano@cooperkirk.com>]
Sent: Sunday, July 26, 2015 9:43 PM
To: Hosford, Elizabeth (CIV)
Cc: David Thompson; Brian Barnes; Howard Nielson; Pete Patterson; Bezak, Reta E. (CIV); Schiavetti, Anthony F. (CIV)
Subject: RE: Fairholme -- Privilege Logs

Liz –

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Apologies for the change in plans.

Take care

Vince

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Vince

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Subject: Fairholme -- Privilege Logs

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EXHIBIT 9
REDACTED

EXHIBIT 10



REK:KMD:EHosford
154-13-465

U.S. Department of Justice

Civil Division
Telephone: (202) 616-0332
Elizabeth.Hosford@usdoj.gov

Washington, DC 20530

September 1, 2015

By Email and U.S. Mail

Vincent J. Colatriano
Cooper & Kirk, PLLC
1523 New Hampshire Ave. NW
Washington, D.C. 20036
(202) 220-9656

Re: *Fairholme Funds, Inc. et al., v. United States*, No. 13-465C (Fed. Cl.)

Dear Mr. Colatriano,

We write in response to your August 12, 2015 email and the attached list of privilege log entries reflecting documents, dated August 7 to August 13, 2012 (August 7-13, 2012 List). Although our privilege justifications satisfy the requirements of Rule 26 of the Rules of this Court, we believe that the following information addresses the concerns expressed in your email and should obviate the need for motion practice concerning the entries identified on the August 7-13, 2012 List. This response, however, should not be construed as a “template” for addressing questions plaintiffs may have with respect to other entries on our privilege log.

The documents on the August 7-13, 2012 List are emails and/or attachments that fall into one of the categories listed below.

- I. Draft Versions Of Final Documents
 - A. Drafts Of The August 17, 2012 Press Release

The nineteen documents identified below are drafts—in email or MS Word format—of the August 17, 2012 press release that announced the execution of the Third Amendment. These documents contain predecisional deliberations and are protected from disclosure by the deliberative process privilege. You have the final version of the press release. See *Fairholme Compl.* ¶ 11.

UST00061143	UST00536473
UST00061144	UST00536480
UST00463120	UST00536488
UST00504257	UST00550298
UST00504272	UST00550300

- 2 -

UST00504288	UST00550302
UST00504420	UST00550309
UST00506237	UST00555015
UST00506241	UST00555025
UST00520416	

B. Briefing Materials Prepared For The Secretary In Advance Of Treasury Meetings With Fannie Mae and Freddie Mac Executives

The thirteen documents identified below are drafts of briefing materials prepared for the Secretary in advance of planned meetings with Fannie Mae and Freddie Mac executives. These briefing materials include: a briefing memorandum; a summary review of the proposed changes to the PSPAs; and a list of anticipated questions from Fannie Mae and Freddie Mac executives along with proposed answers. The drafts contain predecisional deliberations concerning proposed modifications to the PSPAs and are protected from disclosure by the deliberative process privilege. The final briefing materials were produced at UST00393810–UST00393814.

UST00061136	UST00503885
UST00061139	UST00504254
UST00462981	UST00504261
UST00462985	UST00504267
UST00463433	UST00504292
UST00463475	UST00504307
UST00490438	

C. Discussions Of And Drafts Of Q&As Regarding The Third Amendment

Sixty-nine documents on the August 7-13, 2012 List identified below reflect the preparation of a list of questions and answers (Q&As) regarding the Third Amendment to the PSPAs. These documents are emails discussing the Q&As or drafts of the Q&A document. They contain predecisional deliberations and are protected from disclosure by the deliberative process privilege. We will produce the final version of the Q&A document, which was logged as UST00554581.

UST00406498	UST00504332	UST00506290
UST00406517	UST00505989	UST00506303
UST00406531	UST00505991	UST00521731
UST00406545	UST00505993	UST00554911
UST00406559	UST00505999	UST00554923
UST00463059	UST00506013	UST00554938
UST00463080	UST00506018	UST00554944
UST00490468	UST00506032	UST00554950
UST00504310	UST00506037	UST00554956
UST00504322	UST00506051	UST00554962

- 2 -

UST00504332	UST00506056	UST00554967
UST00504344	UST00506061	UST00554973
UST00504350	UST00506072	UST00554976
UST00504356	UST00506077	UST00554979
UST00504365	UST00506082	UST00554982
UST00504370	UST00506193	UST00554984
UST00504373	UST00506198	UST00554996
UST00504376	UST00506203	UST00554998
UST00504389	UST00506251	UST00555000
UST00504391	UST00506254	UST00555002
UST00504393	UST00506257	UST00555004
UST00504403	UST00506260	UST00555019
UST00504408	UST00506288	UST00555023

II. Documents Discussing Proposed Modifications To The PSPAs

A. Proposed Modification To The Transfer Of Assets Covenant

The following ten documents are emails that contain predecisional deliberations concerning proposed modifications to Section 5.4 of the PSPAs (Relating to Transfer of Assets) and are, thus, protected from disclosure by the deliberative process privilege.

UST00061151	UST00517840
UST00504450	UST00517842
UST00504475	UST00550304
UST00517835	UST00550306
UST00517838	UST00550308

B. July 22, 2012 Attachment Discussing Key Points Regarding Proposed Modifications To The PSPAs

One document on the August 7-13, 2012 List, identified as UST00550331, is an attachment to an email, dated July 22, 2012, concerning key points regarding proposed modifications to the PSPAs. The cover email, produced as UST00550330, indicates that the attachment reflects the collective thoughts of certain Treasury officials concerning reasons for amending the PSPAs. The document contains predecisional deliberations and is protected from disclosure by the deliberative process privilege.

III. Documents Protected By Both The Attorney Client And Deliberative Process Privileges

A. Email Chain Concerning Action Memorandum for Secretary

One document on the August 7-13, 2012 List, identified as UST00506118, is an email chain concerning a draft action memorandum prepared for the Secretary in connection with

- 3 -

proposed modifications to the PSPAs. The emails contain predecisional deliberations and reflect requests for and the provision of legal advice by Peter Bieger, Treasury's Assistant General Counsel for Banking and Finance. They are protected from disclosure by the attorney client and deliberative process privileges.

B. Email Chains Concerning An August 8, 2012 Presentation Prepared For OMB

The August 7-13, 2012 List identifies four email communications that reflect requests for and the provision of legal advice by Chris Weideman, who was at the time Treasury's Deputy General Counsel, and Mr. Bieger, regarding an August 8, 2012 presentation prepared for the Office of Management and Budget.

UST00536490 UST00536494
UST00536492 UST00536496

The email communications sent to and from Mr. Weideman and Mr. Bieger contain both legal advice and predecisional deliberations regarding the August 8, 2012 presentation. They are protected from disclosure by the attorney client and deliberative process privileges. We note, however, that a copy of the final August 8, 2012 presentation is included in the district court administrative record. *See* AR 3896 (Treasury's Capital Support For The GSEs Summary Review and Key Considerations).

IV. Documents The Government Will Produce

A. August 8, 2012 Presentation

The August 7-13, 2012 List identifies two copies of the presentation, dated August 8, 2012, referenced above. *See* AR 3896. These documents are marked "Pre-Decisional, Market-Sensitive," but they appear to be identical copies of the final presentation that was released as part of the administrative record and, as such, we will produce these documents.

UST00504414 UST00521886
UST00504447

In addition, we will produce UST00503876, which attaches a copy of the August 8, 2012 presentation and does not otherwise contain pre-decisional deliberations.

B. July 2012 Presentation

The August 7-13, 2012 List identifies UST00061170, which is a copy of a presentation, dated July 2012, and titled "Illustrative Financial Forecasts - Fannie Mae Base Case & Stress Scenarios," that was included in the administrative record. *See* AR 3884. Although this presentation is marked "Market Sensitive and Pre-Decisional," we have compared it to the presentation included in the administrative record and it appears to be identical. Accordingly, we will produce this document.

- 4 -

Moreover, we will produce two documents identified on the August 7-13, 2012 List, which are spreadsheets that were included on slides in the July 2012 presentation at AR 3900.

UST00061172

UST00504492

C. Procedural Checklists

Fifteen documents on the August 7-13, 2012 List are internal checklists, contained in emails and attachments, detailing the process prior to executing the Third Amendment on August 17, 2012. We have reconsidered our assertions of privilege, and we will produce the checklists and redact material in the emails that is protected from disclosure by the deliberative process privilege.

UST00393874	UST00504337
UST00393875	UST00504339
UST00463228	UST00504341
UST00504270	UST00504361
UST00504295	UST00504362
UST00504328	UST00554929
UST00504330	UST00554931
UST00504335	

In addition to the checklists, the August 7-13, 2012 List identifies fifteen communications concerning certain steps of the process prior to executing the Third Amendment, such as obtaining approval from OMB and “reaching out to SEC.” One email in the chain reflects a conversation with Mr. Bieger and Mr. Weideman. Because these communications reflect both predecisional deliberations and legal advice regarding the Third Amendment as well as non-deliberative material, we will produce the following documents with the privileged material redacted:

UST00556713	UST00556734
UST00556716	UST00556736
UST00556719	UST00556738
UST00556722	UST00556742
UST00556724	UST00556745
UST00556726	UST00556749
UST00556729	UST00556753
UST00556732	

- 5 -

D. Draft Responses To Questions From Marketwatch

The August 7-13, 2012 List identifies two documents that reflect comments to draft answers to questions from Marketwatch. It appears that the substance of the documents has been communicated publicly and, as such, we will produce the following email and attachment:

UST00397876

UST00397879

E. Capital Reserve Amount Powerpoint Slide

The August 7-13, 2012 List identifies one document comprised of two Powerpoint slides. UST00393966. The first slide contains factual information obtained from quarterly and annual financial statements from the GSEs; the second slide reflects predecisional deliberations concerning various scenarios regarding capital reserve amount proposals under consideration prior to the execution of the Third Amendment. Accordingly, we will produce the first slide and redact the second slide because it is protected from disclosure by the deliberative process privilege.

* * *

In addition to the topics above, as discussed on our August 21, 2015 phone call, we will produce Federal Housing Finance Oversight Board meeting minutes under separate cover.

Please let me know if you have additional questions or comments.

Very truly yours,

/s/ Elizabeth Hosford
Elizabeth Hosford
Assistant Director
Commercial Litigation Branch

EXHIBIT 11
REDACTED

EXHIBIT 12
REDACTED

EXHIBIT 13
REDACTED

EXHIBIT 14
REDACTED