

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

FAIRHOLME FUNDS, INC, ON BE-
HALF OF ITS SERIES, THE FAIR-
HOLME FUND, et al.,

Plaintiffs-Appellees,

v.

FEDERAL HOUSING FINANCE
AGENCY, IN ITS CAPACITY AS
CONSERVATOR OF THE FEDERAL
NATIONAL MORTGAGE ASSOCI-
ATION AND THE FEDERAL HOME
LOAN MORTGAGE CORPORA-
TION, et
al.,

Defendants-Appellants.

Case No. 25-5113 (consolidated
with nos. 25-5121, 25-5154, and 25-
5155)

JOINT PROPOSAL ON BRIEFING FORMAT

Pursuant to this Court’s order of June 4, 2025, the parties in the above-captioned case, Defendants-Appellants the Federal Housing Finance Agency (“FHFA” or “Conservator”) in its capacity as Conservator of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association (“Fannie Mae”), and the Federal Home Loan Mortgage Corporation (“Freddie Mac,” together with Fannie Mae, the “Enterprises”); and Joseph Cacciapalle in his individual capacity and as class

representative of the Fannie Preferred Class and the Freddie Preferred Class, Barry P. Borodkin in his individual capacity and as class representative of the Fannie Preferred Class, and Michelle M. Miller and Timothy J. Cassell as class representatives of the Freddie Common Class (collectively “Class Plaintiffs”), and Plaintiffs-Appellees/Cross-Appellants Berkley Insurance Company, Acadia Insurance Company, Admiral Indemnity Company, Admiral Insurance Company, Berkley Regional Insurance Company, Carolina Casualty Insurance Company, Midwest Employers Casualty Insurance Company, Nautilus Insurance Company, and Preferred Employers Insurance Company (collectively, “the Berkley Plaintiffs”), jointly submit the following proposed briefing format.

Document	Word Count	Deadline
Defendants’ Principal Brief	13,000 words	September 12, 2025
Plaintiffs’ Response Brief	13,000 words	November 6, 2025
Plaintiffs’ Principal Cross-Appeal Brief <i>(The Berkeley Plaintiffs shall file an unconditional cross-appeal brief which the Class Plaintiffs shall join on a conditional basis and which may incorporate by reference the Statement of the Case from Plaintiffs’ Response Brief).</i>	6,000 words	November 6, 2025
Defendants’ Combined Response and Reply Brief	12,500 words	January 9, 2026

Plaintiffs' Reply Brief on Cross-Appeal	3,000 words	February 20, 2026
---	-------------	-------------------

Under this briefing format, Defendants' briefs do not exceed the standard word allotment and Defendants do not propose to file any separate briefs.

Defendants agreed to the above word limits for Plaintiffs' briefs on their opposition to the appeal and cross-appeal as part of an overall compromise on the structure and timing of the briefing in this appeal and cross-appeal. Plaintiffs proposed a separate brief for the cross-appeal because the cross-appeal by the Berkley Plaintiffs raises a discrete legal issue that in Plaintiffs' view is best addressed in a standalone brief, in part because the Class Plaintiffs intend to join that cross-appeal on a conditional basis only. Defendants agreed to those separate briefs and word limits so long as Defendants could file a consolidated response and reply, and Plaintiffs agreed to Defendants' schedule, which provided more days between briefs than Plaintiffs proposed given the length of time that has elapsed since the verdict and final judgment in this case (August 2023 and March 2024, respectively).

Dated: July 7, 2025

Respectfully submitted,

s/ John P. Elwood

John P. Elwood

R. Stanton Jones

Anthony J. Franze

Orion de Nevers

ARNOLD & PORTER

KAYE SCHOLER LLP

601 Massachusetts Avenue, NW

Washington, DC 20001

T: (202) 942-5000

F: (202) 942-5999

John.Elwood@arnoldporter.com

Stanton.Jones@arnoldporter.com

Anthony.Franze@arnoldporter.com

Orion.deNevers@arnoldporter.com

*Counsel for Appellant Federal
Housing Finance Agency*

/s/ Michael J. Ciatti

Michael J. Ciatti

KING & SPALDING LLP

1700 Pennsylvania Ave. N.W.

Washington, DC 20006

Tel: (202) 661-7828

Fax: (202) 626-3737

mciatti@kslaw.com

Counsel for Appellant Freddie Mac

/s/ Meaghan VerGow

Meaghan VerGow

O'MELVENY & MYERS LLP

1625 Eye Street, N.W.

Washington, DC 20006

Tel: (202) 383-5300

Fax: (202) 383-5414

mvergow@omm.com

Counsel for Appellant Fannie Mae

CERTIFICATE OF COMPLIANCE

I certify, pursuant to Federal Rule of Appellate Procedure 32(a)(7)(B), that the foregoing brief contains 415 words, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f). I further certify that the document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365, in 14-point Times New Roman font.

Dated: July 7, 2025

s/ John P. Elwood
John P. Elwood

CERTIFICATE OF SERVICE

I hereby certify, pursuant to Rule 25(c) of the Federal Rules of Appellate Procedure, that on July 7, 2025, I filed the foregoing document using the Court's CM/EFC system, which will electronically serve all counsel of record registered to use the CM/ECF system.

Dated: July 7, 2025

s/ John P. Elwood
John P. Elwood