**CastleOak Securities**

September 15, 2015

Federal Housing Finance Agency
Office of Budget and Financial Management,
400 7th St., SW
Washington, DC 20024

## Re: FHFA Strategic Plan: Fiscal Years 2015-2019

Ladies and Gentlemen,

We are thankful for the opportunity to respond to the above referenced Strategic Plan (the "Plan") and do hope that our comments will be helpful to your process of adopting rules, regulations and processes to implement the applicable law.

Our firm, and associated members of our firm, have followed the issues of diversity and inclusion as they relate to Fannie Mae and Freddie Mac (the "GSEs") since the issue was highlight legislatively in Section 1216 of FIRREA in 1989. That landmark legislation provided that federal finance-related agencies, including the FDIC, the Resolution Trust Corporation and the Comptroller of the Currency, "prescribe regulations to establish and oversee minority outreach program[s] within each such agency to *ensure* (emphasis added) inclusion to the maximum extent possible" of minorities, women and businesses owned by minorities and women ("MBEs") in the management of their public missions and of the assets related to such. The GSEs, on the other hand were mandated to put in place "affirmative action" employment plans. Each of said agencies, including the GSEs, were required to provide a single report to Congress, within six months of the effective date of the legislation, on the progress that they had made in meeting these mandates.

When each of the GSEs was subsequently questioned by Congress regarding its progress regarding contracting with MBE firms, the GSEs responded that they were not covered by FIRREA's mandate to contract with MBE firms. Whether the GSEs' exclusion from this requirement was an oversight on the part of Congress, a lobbying coup, or the result of a well-measured incremental approach by Congress on the issue, Congress decided to eliminate it in 1992. In the Housing and Economic Development Act of 1992, Congress explicitly mandated, in Section 1329A of said Act, that each GSE:

> ..."establish a minority outreach program to *ensure* [emphasis added] the inclusion (to the maximum extent possible) in contracts entered into by the enterprises of minorities and women and businesses owned by minorities and women, including financial institutions, investment banking firms, underwriters, accountants, brokers, and providers of legal services.

Again, this legislation contained a one-time reporting provision, requiring the GSEs to report to Congress regarding the progress they had made in implementing Section 1329A (a).

Implementation of these provisions were met with much fanfare at the GSEs, and with much hope in the MBE community. But, in the end, the fanfare turned out to be a lot of "sound and fury signifying [nearly] nothing", and the hopes of real progress in the utilization of MBE's by the GSEs were dashed.

For fifteen years Congress did not legislate again on this issue. In 2008, Congress finally acted again in the context of more thoroughly regulating the GSEs. However, by this time, the GSEs, in no small part because of real and perceived federal subsidies, had become two of the largest corporate entities in the world (at one point Fannie Mae was issuing more debt than any other entity in the world other than the United States federal government, and was even experimenting with issuing its own benchmark securities meant to rival, if not supplant, treasury securities in that function). This time when Congress acted, our nation was in the midst of the financial crisis later to be called The Great Recession; therefore, Congress adopted the Housing and Economic Recovery Act of 2008 ("HERA"), which, among other things, created the FHFA. In addition, Section 1116 of HERA continued the progressive movement of Congress to get the GSEs to act in a substantive manner on MBE inclusion. HERA mandated the creation of an Office of Minority and Women Inclusion ("OMWI") within each GSE to manage diversity and inclusion issues; it once again instructed the GSEs to develop and implement standards and procedures to "ensure" MBE inclusion to the maximum extent possible. This time Congress was more explicit by expanding the types of firms and the types of transactions that the inclusion mandate envisioned. But Congress didn't stop there on the issue, HERA made the reporting of progress on MBE inclusion an annual mandate, and focused on the GSEs disclosing of the amounts spent as a whole on services provided by third party service providers and the percentages of such amounts spent on such services provided by MBE firms. It is reasonable to assume that Congress understood that the way to achieve the appropriate level of MBE inclusion, was to create transparency on the issue so that the GSEs would have to tell the American people, in general, and the financial community, in particular, how their dollars were being spent.

Once more, in the two years between the adoption of HERA, and the passage of the Dodd-Frank Act, progress was minimal, but it exceeded disclosure. It exceeded disclosure because the GSEs did not disclose such amounts and percentages as require by law. And to the extent such information was disclosed to the FHFA, the FHFA did not relay that information to the public, thereby removing HERA's most innovative tool for ensuring compliance: transparency.

It is in this context of progressive emphasis by Congress and minimalist compliance by the GSEs that Section 342 of the Dodd-Frank Act was adopted. Once again, Congress focuses on having the FHFA and in this instance the Director of the OMWI Office to "develop and implement standards and procedures to *ensure* [emphasis added] the inclusion and utilization of minorities, women and

MBE firms in all the business and activities of the FHFA. It also charges the FHFA to assess the diversity and inclusion programs of the GSEs.

Finally, in 2010 FHFA published its own Final Rule – Minority and Women Inclusion ("The Final Rule"), which outlined the diversity and inclusion requirements for the GSEs. The Final Rule requires the GSEs to "promote diversity and *ensure*, (emphasis added) to the maximum extent possible in balance with financially safe and sound business practice, the inclusion and utilization of minorities, women, individuals with disabilities, and minority-, women-, and disabled-owned businesses at all levels, in management and employment, in all business and activities, and in all contracts for services of any kind"

In light of the history of GSE inaction in the face of Congressional inclusion mandates, and in light of the plain meaning of the words used repeatedly by the Congress over a period of nearly twenty years, and in light of the wording used by the FHFA itself in the Final Rule, we believe it difficult not to conclude that an FHFA Strategic Plan that seeks to "promote" minority and women inclusion at the GSEs as opposed to *ensuring* it fails to meet the repeated Congressional mandates, not to mention its own Final Rule, and is in fact a step in the opposite direction.

There is a chasm of difference between "promoting" and "ensuring." We are a regulated broker-dealer, and as such are subject to the oversight of the Securities and Exchange Commission, and our self-regulatory organization, FINRA. FINRA rules mandate that broker-dealers adopt processes to "establish, maintain and review policies reasonably designed to achieve compliance with FINRA rules...modify such policies and procedures as....changes dictate; and to test the effectiveness of such policies and procedures on a periodic basis." (FINRA Rule 3130 (c)(1)(A)-(C)). We believe that a similar approach taken by the FHFA with the GSEs regarding Congressional mandates, in general, and inclusion mandates, in particular, would be much more effective than simply having the GSEs "promote" diversity and inclusion. To the extent we as broker-dealers undertook to adopt procedures merely to "promote" the integrity of our public markets, as opposed to adopting procedures designed to *ensure* such, our markets could not function. We believe such to be the case with the GSEs inclusion efforts, i.e, the lack of ensurance has resulted in the lack of substantive functioning.

Therefore, we suggest the following additions to the proposed FHFA Strategic Plan, in the section entitled "Strategic Goal 2—Means and Strategies", in order to reflect the language of the legislation and the Final Rule:

**"Promote internal diversity and ensure, to the maximum extent possible, the inclusion and utilization of women and minorities in all activities of FHFA and the regulated entities.** The Safety and Soundness Act and the Dodd-Frank Wall Street Reform and Consumer Protection Act require FHFA, Fannie Mae, Freddie Mac, and the FHLBanks to promote diversity and ensure, to the maximum extent possible, the inclusion and utilization of minorities, women, and minority- and women-owned businesses at all levels, in management and employment, in all business and

activities, and in all contracts for services of any kind. FHFA will provide technical assistance to, and oversight of, the regulated entities in their supplier diversity, board diversity and workforce diversity compliance activities. This will include developing innovative initiatives to expand outreach to advance inclusive access and participation in all aspects of the business activities of the agency, the Enterprises, the FHL Banks, and the Office of Finance."

To the extent that you have any questions regarding the above, please do not hesitate to contact us. We are at your disposal.

Respectfully Submitted,

CASTLEOAK SECURITIES, L.P.

Name: Nathaniel H. Christian III
Title: Managing Director, General Counsel