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July 29, 2009

Alfred M. Pollard, General Counsel
Attention: Comments/RIN 2590-AA08
Federal Housing Finance Agency
Fourth Floor
1700 G Street, NW
Washington, DC 20552

Re: Comments of Fannie Mae on Indemnification Payments,
Proposed Rule Published on June 29, 2009 (RIN 2590-AA08)

Dear Mr. Pollard:

Fannie Mae appreciates the opportunity to comment on the Federal Housing Finance Agency's ("FHFA") current proposed amendment to the indemnification payments amendment to the interim final regulation on golden parachute and indemnification payments, 12 CFR Part 1231 (the "Proposed Amendment").¹ The indemnification payments amendment was first proposed on November 14, 2008 (the "2008 Amendment").²

Both the Proposed Amendment and the 2008 Amendment describe prohibited and permissible indemnification payments by a regulated entity to an entity-affiliated party in connection with an administrative proceeding or civil action instituted by FHFA. The Amendments also specify when the rule on indemnification payments applies. The 2008 Amendment provides, in section 1231.4(a)(1), that the rule applies "only after an administrative proceeding or civil action has been instituted by FHFA *through issuance of a notice of charges under regulations issued by the Director.*"³ The Proposed Amendment would remove the italicized "notice of charges" clause.⁴

We understand that FHFA's purpose in seeking to remove the italicized language is to recognize its inapplicability to civil actions, because civil actions are initiated by filing a complaint, without a notice of charges. However, the italicized language remains

¹ 74 Fed. Reg. 30975 (June 24, 2009).

² 73 Fed. Reg. 67424 (Nov. 14, 2008).

³ *Id.* at 67426 (emphasis added).

⁴ 74 Fed. Reg. at 30980.

appropriate for administrative proceedings, which are instituted through issuance of a notice of charges.

We also understand that the Proposed Amendment is not intended to alter the notice of charges “trigger” set by the 2008 Amendment with respect to administrative proceedings, which is consistent with the practice of the Federal Deposit Insurance Corporation (“FDIC”). FHFA has indicated that the Proposed Amendment is substantially similar to both the 2008 Amendment and to the FDIC regulation that limits indemnification by insured depository institutions to institution-affiliated parties.⁵

While the proposed language is consistent with the FDIC regulation, the FDIC also elaborated in its preamble that “a formal administrative action [is] commenced by the issuance of a ‘Notice of Charges’”⁶ FHFA’s Proposed Amendment does not include a similar elaboration. While we believe that FHFA’s intent in this regard is the same as the FDIC’s, a similar elaboration would be helpful to confirm that intent. Accordingly, Fannie Mae requests confirmation that, with respect to an administrative proceeding, the regulation applies only after a notice of charges has been issued.

Thank you for the opportunity to comment and for your consideration of these views. Please contact the undersigned at (202) 752-6928 should you have any questions or need additional information.

Sincerely,



Julie Katzman
Vice President & Deputy General Counsel

⁵ *Id.* at 30976 (citation omitted).

⁶ 61 Fed. Reg. 5926, 5930 (Feb. 16, 1996).