

United States Senate

WASHINGTON, DC 20510

September 7, 2010

Alfred M. Pollard
General Counsel
Federal Housing Finance Agency
1700 G Street, N.W., Fourth Floor
Washington, DC 20552

Attention: Comments/RJN 2590-AA23

Dear Mr. Pollard:

We write to express our concerns regarding the Federal Housing Finance Agency's (FHFA) recently published notice of proposed rulemaking titled "Conservatorship and Receivership."¹ These proposed regulations would establish a framework for dissolution of Fannie Mae and Freddie Mac, the Government-Sponsored Enterprises currently placed in FHFA-administered conservatorship. The proposed rule would relegate securities claims, including those based on securities fraud, to the lowest priority in receivership.² It would also prohibit Fannie Mae and Freddie Mac from paying securities litigation claims while they are in conservatorship, except where the FHFA Director determines it is "in the interest of the conservatorship."³

Pension funds that invested in Fannie Mae securities are currently seeking to hold Fannie Mae accountable in court for its alleged fraudulent actions dating back as far as 2001. These pension funds have been constituted from investments made by millions of active and retired fire fighters, police officers, teachers, nurses, transportation workers, and other public service employees. The proposed rule would effectively insulate Fannie Mae from accountability for *all* of their alleged fraudulent acts during the pendency of the conservatorship, including alleged conduct that occurred long before the FHFA placed Fannie Mae into conservatorship.

While we take no position regarding the merits of the plaintiffs' claims in any of the pending law suits, we believe that the aggrieved pensioners should have the opportunity to pursue their claims in a court of law. FHFA's proposed rule would prohibit this. It would provide Fannie Mae with immunity from liability for any wrongdoing, leaving millions of innocent pensioners to pay for the economic loss caused by Fannie's management. This result would be untenable to us, and to approximately 30 million aggrieved teachers, police officers, and fire fighters throughout the 50 states.

FHFA allowed Fannie to use \$20 billion a month in taxpayer dollars to purchase underperforming mortgage bonds from banks. FHFA also allowed U.S. taxpayers' money to

¹ Conservatorship and Receivership, 75 Fed. Reg. 39462 (July 9, 2010).

² See *id.*, at § 1237.9(a)(4).

³ *Id.*, at § 1237.13(a).

be used to pay Fannie's three top former executives' legal bills related to claims of accounting impropriety. The implications of these actions in combination with this proposed rule strike against basic notions of fairness. Namely, that the FHFA is avoiding serious allegations of corporate fraud and assuming the burden of troubled assets held by Wall Street banks, while at the same time preventing teachers, transit workers, nurses, police officers, fire fighters and other alleged victims from having their day in court.

We do not agree that FHFA, rather than an impartial judge, should determine the outcome of these claims. Accountability, in addition to financial well being will be essential to the ongoing viability of these entities. Thank you for considering our views on this important matter.

Sincerely,



Sherrod Brown
United States Senator



Patrick Leahy
United States Senator

Cc: Edward J. DeMarco, Acting Director, Federal Housing Finance Agency