

**FHFA'S PROPOSED RULE FOR THE CONSERVATORSHIP AND RECEIVERSHIP  
OPERATIONS OF THE GSEs WILL PROTECT CORPORATE FRAUD AT THE  
EXPENSE OF OUR NATION'S PUBLIC SERVANTS**

- On July 9, 2010, the Federal Housing Finance Agency (FHFA) published a proposed rule (Proposed Rule) that would establish a framework for the conservatorship and receivership operations of Fannie Mae, Freddie Mac, and the Federal Home Loan Banks (the GSEs or Regulated Entities),<sup>1</sup> which appears to contradict the express provisions of, and go beyond the authority given to the FHFA in, the Housing and Economic Recovery Act of 2008 (HERA).
- Congress has not yet addressed GSE reform, and the Proposed Rule would permit the FHFA to establish policy related to a critical aspect of GSE reform – the operations of the Regulated Entities in conservatorship and receivership – without Congressional involvement. Further, it is noteworthy that the Proposed Rule, with potentially far reaching ramifications, has been promulgated by an Acting Director not yet confirmed by the Senate.
- The Proposed Rule directly insulates the Regulated Entities from accountability for fraudulent acts perpetrated against taxpayers:
  - The Proposed Rule would relegate securities claims, even those based on fraud, to the lowest priority in receivership (below the Wall Street firms that own guaranteed debt of the GSEs), contrary to the express provisions of HERA.
  - Further, except where permitted by the Director of the FHFA, the Proposed Rule would prohibit the payment of valid securities litigation claims while a Regulated Entity is in conservatorship, even if a court judgment is obtained.
- The pension funds of our nation's public servants invested heavily in securities issued by Fannie Mae and Freddie Mac prior to the conservatorship. These pension funds have suffered severe losses as a result of the fraudulent accounting practices engaged in by Fannie Mae and Freddie Mac's former executives in the years prior to conservatorship.
  - For example, there is currently pending a 2004 securities fraud class action law suit against Fannie Mae and its former top three officers related to fraudulent misrepresentations by Fannie Mae that led to the Securities Exchange Commission ordering Fannie Mae to restate its financial statements. Fannie Mae's 2006 restatement of financial position wiped out over \$10 billion of its previously reported earnings and the firm admitted to accounting violations in over 30 areas.
- Fannie Mae's former executives received millions of dollars in compensation linked to these fraudulent misrepresentations while over one million potential class members, including the nation's public, union, and private pension funds were damaged. The beneficiaries of these funds include over 30 million active and retired fire fighters, police officers, teachers, health care providers, transportation workers, judges, and other public service employees.
- The Proposed Rule would prevent these pensioners, as well as the millions of pensioners who have pending lawsuits against Freddie Mac, to fully pursue claims filed before the institution of the conservatorship, having the perverse effect of protecting the fraudulent acts of Fannie Mae and Freddie Mac's former executives at the expense of our nation's public servants.

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<sup>1</sup> Conservatorship and Receivership, 75 Fed. Reg. 39462 (July 9, 2010).