

NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS

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Submitted via e-mail at
RegComments@FHFA.gov

September 3, 2010

Edward J. DeMarco
Acting Director
Federal Housing Finance Agency
1700 G Street, N.W.
Washington, D.C. 20552-0003

Alfred M. Pollard
General Counsel
Attn: Comments/RIN 2590-AA23
Federal Housing Finance Agency
Fourth Floor
1700 G. Street, N.W.
Washington DC 20552

Re: Proposed Regulation RIN 2590-AA23

Dear Director DeMarco and Mr. Pollard:

We are writing to express our serious concerns regarding the recently published proposed regulation of the Federal Housing Finance Agency (FHFA) regarding the conservatorship and receivership of Fannie Mae and Freddie Mac.¹ We believe the proposed rule will deprive millions of pension plan participants of restitution for losses suffered by their pension plans as a result of wrongdoing by executives of these agencies and would obstruct the policy objectives of ERISA and various state fiduciary standards drafted to protect the interests of plan participants by requiring plan fiduciaries to pursue actions against those whose actions have diminished the retirement security of plan participants.

The NCCMP is a non-profit, non-partisan national advocacy organization incorporated under Section 501(c)(4) of the Internal Revenue Code. It is the only national organization devoted exclusively to protecting the interests of the approximately ten million active and retired workers whose retirement benefits are provided by the 1,500 multiemployer defined benefit pension plans. NCCMP's purpose is to assure an environment in which multiemployer plans can effectively continue their vital role in providing benefits to working men and women in industries characterized by highly mobile workforces partisan organization, with members, plans, and plan sponsors in every major segment of the multiemployer plan universe, including in the airline, entertainment, health care, hospitality, longshore, manufacturing, sales and distribution, building services and trucking industries.

¹ RIN 2590-AA23, Conservatorship and Receivership, 75 Fed. Reg. 39462 (July 9, 2010).

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The Proposed Rule would thwart the ability of millions of pensioners throughout the United States from prosecuting their currently pending securities fraud claims against Fannie Mae and Freddie Mac through resolution in a court of law. The proposed rule would effectively insulate Fannie Mae and Freddie Mac from accountability for their past alleged fraudulent acts by relegating securities claims, even those based on fraud, to the lowest priority in receivership. Further, the Proposed Rule would prohibit, except where permitted by the Director of FHFA, Fannie Mae and Freddie Mac from paying securities litigation claims while they are in conservatorship. We find this result to be untenable.

As you know, pension funds across the country that invested in Fannie Mae securities have a pending securities fraud class action against Fannie Mae and certain of its former senior officers. Participants in these pension funds include millions of active and retired fire fighters, police officers, teachers, health care providers, transportation workers, other public service employees and workers represented by multiemployer defined benefit pension plans spanning a range of industries across the economy. The fraudulent acts alleged in the lawsuit occurred from 2001 through 2004, long before FHFA placed Fannie Mae into conservatorship. Indeed, FHFA (through its predecessor OFHEO) published two comprehensive reports of its investigation of Fannie Mae, detailing the egregious misconduct of the former senior officers of Fannie Mae during that period, and ultimately entered into settlement agreements with Fannie Mae and certain senior officers pursuant to which Fannie Mae and those senior officers paid civil money penalties to FHFA. Thus, we find it difficult to understand why FHFA would knowingly propose a rule that could leave millions of aggrieved teachers, police officers, fire fighters and other working Americans throughout the 50 states without similar redress for the harm visited upon them by Fannie Mae and Freddie Mac - the very entities that the Proposed Rule seeks to protect.

The plaintiffs' ability to exercise their fiduciary duties to the millions of participants whose benefits have been adversely affected by the actions of these agencies by pursuing their pending securities fraud claims must be protected and we are deeply troubled by the fact that protecting corporate fraud appears to be a higher priority to the FHFA than ensuring that millions of aggrieved pensioners have their day in court. I call upon you to ensure that this does not happen.

Thank you for your attention to this matter.

Sincerely,



Randy G. DeFrehn
Executive Director