FEDERAL HOUSING FINANCE AGENCY
OFFICE OF INSPECTOR GENERAL

FHFA's Conservator Approval Process for Fannie Mae and Freddie Mac Business Decisions

Audit Report: AUD-2012-008

September 27, 2012

AT A GLANCE

FHFA's Conservator Approval Process for Fannie Mae and Freddie Mac Business Decisions

Why FHFA-OIG Did This Audit

The Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) lost billions of dollars when the housing market collapsed in 2007 and 2008. In response, Congress enacted the Housing and Economic Recovery Act of 2008 (HERA), which created the Federal Housing Finance Agency (FHFA or the Agency) to regulate Fannie Mae and Freddie Mac (collectively, the Enterprises) in order to ensure their safety and soundness and facilitate a stable and liquid mortgage market.

On September 6, 2008, the Enterprises entered into conservatorships supervised by FHFA. As conservator, FHFA has extensive authority over the Enterprises' operations. However, in November 2008, the Agency broadly delegated most of its conservatorship authority back to the Enterprises. As part of the delegation, the Agency required the Enterprises to obtain Agency approval for selected business decisions, such as those involving legal settlements over $50 million and risk limit increases. FHFA's Office of Inspector General (FHFA-OIG) audited FHFA's process for approving these non-delegated Enterprise business decisions.

What FHFA-OIG Found

FHFA-OIG concluded that the Agency can better accomplish its oversight mission by proactively exerting greater control over its conservator approval process.

FHFA-OIG found that FHFA did not require conservatorship approval for various major business decisions such as reviewing and approving Fannie Mae's single family underwriting standards and its High Touch Servicing Program, which involved multiple transfers of mortgage servicing rights for over 700,000 loans with an unpaid principal balance in excess of $130 billion. FHFA should revisit the authorities delegated to the Enterprises to ensure that the Agency, in its role as conservator, is involved in their major business decisions.

Moreover, even when conservatorship approval of Enterprise business decisions is required, FHFA cannot be assured that the Enterprises always request such approval. FHFA has informed the Enterprises which actions remain under FHFA's authority, but the Agency primarily relies on the Enterprises to decide when to seek approval for their actions. As a consequence, Enterprise requests for approval have been inconsistent. For example, FHFA-OIG determined that Fannie Mae executed seven insurance settlement discounts totaling over $306 million that should have been approved by FHFA in advance. By contrast, Freddie Mac executed similar settlements after seeking FHFA's approval. FHFA-OIG also found that over a three-year period Fannie Mae took over 4,500 actions to increase the Enterprise's counterparty risk limits without first obtaining conservator approval. Freddie Mac, by contrast, had a process for requesting and receiving approval for risk limit increases from the conservator.

Additionally, the Agency can improve how it processes requests for conservatorship decisions and follows up on the decisions it makes. FHFA-OIG determined that FHFA has not established criteria or policies to ensure rigorous review of Enterprise business decisions. FHFA-OIG also found that FHFA does not have a formal process to verify that the Enterprises abide by conservatorship decisions, but instead has relied on informal conversations and unrelated reviews (e.g., routine examinations) to assess compliance.

FHFA-OIG believes that strengthening control over the Agency's conservator approval process will help FHFA achieve its goals of preserving and conserving Enterprise assets.

What FHFA-OIG Recommends

Overall, FHFA has taken some positive steps as conservator by retaining authority over certain Enterprise business decisions. However, the Agency can further improve its performance as conservator by establishing controls to accomplish its intended outcomes. Specifically, FHFA-OIG recommends that the Agency: (1) revisit FHFA's non-delegated authorities to ensure that significant Enterprise business decisions are sent to the conservator for approval; (2) guide the Enterprises to establish processes to ensure that actions requiring conservator approval are properly submitted for consideration; (3) properly analyze, document, and support conservator decisions; and (4) confirm compliance by the Enterprises with conservator decisions. FHFA agreed with most of FHFA-OIG's recommendations.

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ABBREVIATIONS

CGC	Conservatorship Governance Committee
Treasury	Department of the Treasury
DEPS	Division of Examination Programs and Support
DER	Division of Enterprise Regulation
Enterprises	Fannie Mae and Freddie Mac
Fannie Mae	Federal National Mortgage Association
FHFA	Federal Housing Finance Agency
FHFA-OIG	Federal Housing Finance Agency Office of Inspector General
Freddie Mac	Federal Home Loan Mortgage Corporation
HERA	Housing and Economic Recovery Act of 2008
OCO	Office of Conservatorship Operations
OGC	Office of General Counsel
OPAR	Office of Policy Analysis and Research

Federal Housing Finance Agency
Office of Inspector General
Washington, DC

PREFACE

HERA, which amended the Inspector General Act, created FHFA-OIG and authorized it to conduct audits, evaluations, investigations, and other law enforcement activities pertaining to FHFA's programs and operations.[1] FHFA-OIG also recommends policies that promote economy and efficiency, and works to prevent and detect fraud and abuse.

This audit report supports FHFA-OIG's mission to promote the economy and efficiency of FHFA's programs and operations. It also furthers FHFA-OIG's first strategic goal to help FHFA support the Enterprises and to understand the conservatorships' causes and costs.[2] Specifically, the report is intended to add value with respect to FHFA's role as conservator and its oversight of the Enterprises' business decisions. The report also reinforces FHFA-OIG's commitment to prioritize projects related to FHFA's conservatorships and oversight of Fannie Mae and Freddie Mac.[3] Along these same lines, FHFA-OIG has recently released a white paper addressing FHFA's role as conservator and the challenges faced by the Agency in managing the conservatorships.[4]

FHFA-OIG appreciates the cooperation of everyone who contributed to the audit, including officials at Fannie Mae, Freddie Mac, and FHFA. This audit was led by Laura Benton, Audit Director; Kevin Carson, Audit Director; and Scott H. Smith, Auditor-in-Charge.

Russell A. Rau
Deputy Inspector General for Audits

[1] HERA (Public Law No. 110-289); the Inspector General Act (Public Law No. 95-452).

[2] *See* FHFA-OIG, *Strategic Plan: Fiscal Years 2012-2014* ("Strategic Goal 1—Adding Value," p. 10).

[3] *See* FHFA-OIG, *Audit, Evaluation, and Survey Plan: FY 2012* ("Key Areas of FHFA-OIG Audit, Evaluation, and Survey Focus," p. 4).

[4] *See* FHFA-OIG, *FHFA-OIG's Current Assessment of FHFA's Conservatorships of Fannie Mae and Freddie Mac*, WPR-2012-001, March 28, 2012.

BACKGROUND

HERA was enacted on July 30, 2008, and created FHFA to supervise and regulate the Enterprises in order to ensure their safety and soundness, and, by doing so, to facilitate a stable and liquid mortgage market. Six weeks later, the Enterprises were placed into conservatorships overseen by FHFA. To stave off insolvency, the U.S. Department of the Treasury (Treasury) simultaneously began to support the Enterprises with significant capital investments of taxpayer funds (totaling $187.5 billion as of June 30, 2012).[5] When the conservatorships were created, they were regarded as temporary measures. The then-Treasury Secretary described the conservatorships as a temporary "time-out" to allow policymakers to further consider the future role of the federal government and the Enterprises in the housing finance system.[6] But more than four years have elapsed since that action was taken—likely far more time than anyone anticipated—and the conservatorships remain in place.

As conservator, FHFA's objective is to conserve and preserve Enterprise assets. FHFA is empowered to operate Fannie Mae and Freddie Mac and conduct their business, but has broadly delegated authority back to each Enterprise.[7] FHFA's approach to operating the conservatorships has been for the Enterprises to "continue to be responsible for normal business activities and day-to-day operations," and "not to manage every aspect of the Enterprises' operations."[8] For example, FHFA generally does not make decisions about individual mortgages, property sales, or foreclosures because "the Enterprises each have a review process to look into situations that arise involving their mortgages or property transactions."[9] The Agency, though, retains the right to review and reverse any delegated action.

FHFA retains its authority as conservator over selected Enterprise business decisions. FHFA has identified eight categories of Enterprise actions that require conservator approval. FHFA also has established the Office of Conservatorship Operations (OCO) to ensure that the Agency is involved in, and exercises final approval over, the Enterprises' major business decisions. OCO

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[5] HERA expanded Treasury's authority to provide financial support to the Enterprises, which it has done by purchasing the Enterprises' preferred stock pursuant to Senior Preferred Stock Purchase Agreements.

[6] *See* FHFA-OIG, *FHFA-OIG's Current Assessment of FHFA's Conservatorships of Fannie Mae and Freddie Mac*, WPR-2012-001, March 28, 2012.

[7] For FHFA's authority as conservator, *see* P.L. 110-289 § 1145(b)(2) "General Powers;" for FHFA's delegation of this authority *see* Letter from James B. Lockhart III, Director, FHFA, "RE: Instructions for the Board of Directors for Order No. 2008-0006" (November 24, 2008).

[8] Letter from FHFA's Acting Director Edward J. DeMarco to Chairman Christopher Dodd and Ranking Minority Member Richard C. Shelby, U.S. Senate Committee on Banking, Housing, and Urban Affairs; and to Chairman Barney Frank and Ranking Minority Member Spencer Bachus, U.S. House of Representatives (February 2, 2010).

[9] *See* "What FHFA's Role is …" on FHFA's website (http://www.fhfa.gov/Default.aspx?Page=369, accessed: September 20, 2012).

offers advice if the Enterprises ask, but otherwise the Enterprises generally determine which actions require conservator approval.

The sections that follow summarize the types of Enterprise actions that require FHFA approval, how the Enterprises request (and the Agency grants) approval, and what process FHFA has in place to oversee Enterprise requests and approvals.

Enterprise Actions That Require FHFA's Approval

By letters dated November 24, 2008, FHFA informed the Enterprises' respective boards of directors which actions—out of a "broad delegation of functions"—require Agency approval (also referred to as the Agency's "non-delegated authorities" or "letters of instruction to the Enterprises").[10]

Specifically, the Enterprises must seek FHFA's approval for the following:

1. Actions involving capital stock, dividends, the Senior Preferred Stock Purchase Agreements, increases in risk limits, material changes in accounting policy, and reasonably foreseeable material increases in operational risk;[11]

2. Creation of any subsidiary or affiliate or any substantial transaction between the Enterprise and any of its subsidiaries or affiliates, except for transactions undertaken in the ordinary course of business;

3. Matters that relate to conservatorship, such as the initiation and material actions in connection with significant litigation addressing the actions or authority of the conservator, repudiation of contracts, qualified financial contracts in dispute due to conservatorship status, and counterparties attempting to nullify or amend contracts due to conservatorship status;

4. Actions involving hiring, compensation, and termination benefits of directors and officers at the executive vice president level and above;

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[10] Letters to the Enterprises from James B. Lockhart III, Director, FHFA, "RE: Instructions for the Board of Directors for Order No. 2008-0006" (November 24, 2008).

[11] Treasury provides the Enterprises with financial support through the Senior Preferred Stock Purchase Agreements. These agreements were designed to ensure each Enterprise maintains positive net worth. Currently, the terms of the agreements require a 10% reduction in the Enterprises' retained investment portfolios each year. The only material additions to these portfolios come from delinquent mortgages pulled out of Enterprise mortgage-backed securities after being four months delinquent. Under these agreements, each Enterprise is required to pay Treasury a quarterly dividend equal to 10% of the total amount drawn under their respective agreements. However, on August 17, 2012, the agreements were amended. As of January 1, 2013, the dividend will be replaced by a sweep of each Enterprises' net worth and the retained portfolios will be reduced by 15% each year.

5. Actions involving the retention and termination of external auditors and law firms serving as consultants to the Enterprises' respective boards of directors;

6. Settlements in excess of $50 million of litigation, claims, regulatory proceedings, or tax-related matters;

7. Any merger with (or purchase or acquisition of) a business involving over $50 million; and

8. Actions that in the reasonable business judgment of the Enterprises' respective boards of directors are likely to cause significant reputational risk.

FHFA's authority as conservator is not limited to these eight areas. FHFA retains broad authority to review any activity or transaction at any time. Further, the Enterprises may contact OCO for help in determining which actions require approval, but FHFA does not require them to do so. Instead, FHFA generally allows each Enterprise to decide whether or not particular actions warrant seeking Agency approval. As a result, the Agency also reviews actions and renders conservatorship decisions for actions that fall outside the eight non-delegated areas.

How the Enterprises Ask for FHFA's Approval

In FHFA's November 2008 letters discussed above, the Agency made the Enterprises' respective boards of directors responsible for implementing measures to coordinate with FHFA and for ensuring "appropriate regulatory approvals" are received.[12] In turn, the boards delegated this responsibility down and spread decision-making authority out to senior managers in their various business units (e.g., Counterparty Risk Management, and Housing and Community Development). These managers determine if FHFA's prior approval should be obtained for a proposed action. If they decide that a proposed action meets FHFA's criteria for conservator approval, a request is submitted to FHFA, a decision is received from the Agency, and the managers are supposed to ensure their units comply with FHFA's decision.

Prior to May 2011, neither Enterprise had implemented any formal policies or procedures for coordinating with FHFA on approval requests. In the third quarter of 2009, FHFA requested Freddie Mac's assistance in tracking items requiring FHFA approval and implemented a framework for reporting and tracking these requests. On May 17, 2011, Freddie Mac established procedures to compile, track, and update the status of its requests. Pursuant to these procedures, Freddie Mac, on a weekly basis, updates the list of outstanding requests and their status by soliciting relevant data from the responsible business units. Unlike Freddie Mac, Fannie Mae

[12] Letter from James B. Lockhart III, Director, FHFA, "RE: Instructions for the Board of Directors for Order No. 2008-0006" (November 24, 2008).

has established no written procedures but, since 2009, it has provided FHFA with a weekly update to a list of outstanding requests for conservatorship approval.

Both Enterprises continue to take a decentralized approach to seeking FHFA's approval for actions that fall under the conservator's authority. When the Enterprises determine that conservatorship approval is necessary, requests are formulated and forwarded to FHFA. Before December 2011, the Enterprises' individual business unit managers generally would submit requests for conservator approval to OCO, but they also could submit requests to other offices within FHFA.[13] OCO, however, was not always apprised of the requests submitted to other FHFA offices.

In December 2011, OCO notified the Enterprises of the establishment of a "one-entry" notification system, thereby eliminating any potential confusion regarding where to submit a request for conservatorship action. FHFA instructed the Enterprises that beginning immediately all issues—with the exception of executive compensation items and certain legal questions—requiring conservatorship approval must be submitted to OCO through a designated electronic mailbox. Issues involving individual executive compensation must be submitted through another designated electronic mailbox. The Enterprises were also informed that approval requests submitted to FHFA through any other means are not considered items requiring FHFA action until they are properly submitted to FHFA through the appropriate electronic mailbox. Further, communications (i.e., approvals) from FHFA that are not processed in this manner are not considered binding or valid decisions of the conservator.

How FHFA Determines Whether to Approve Enterprise Requests

FHFA's conservatorship review and approval process varies depending on the type of request. For example, OCO has the authority to approve requests based on guidance received from the FHFA Acting Director. It can decide a matter itself, assign the matter to another office, or work directly with a lead FHFA office on the matter in order to take advantage of the lead office's expertise. For more significant requests, OCO utilizes a "red folder" process in which OCO establishes a lead office to review the request while also obtaining input from other FHFA offices. OCO compiles an approval package that includes a memorandum approving or disapproving the Enterprise's request based on the input received from the various FHFA offices. The decision memorandum is then circulated in a red folder with a sign-off sheet for each of the involved FHFA offices. After each participating office reviews and signs off on the decision memorandum, it is submitted to the FHFA Acting Director for review and a final

[13] Requests involving compensation issues were forwarded directly to FHFA's Office of Policy Analysis and Research. In addition, requests that involved litigation or legal issues were typically sent directly to the Office of General Counsel. The Enterprises also occasionally submitted requests directly to other offices within FHFA.

conservatorship decision. OCO relies on expertise throughout FHFA to evaluate issues and provide recommendations regarding the conservatorship.

Enterprise requests that are submitted to the Office of Policy Analysis and Research (OPAR)—compensation-related issues—or Office of General Counsel (OGC)—legal-related questions—are reviewed independently of OCO. When Enterprise requests are submitted in this manner, OPAR and OGC may consult FHFA's Acting Director and others before making a decision, or they may decide internally with no further discussion. In either case, OPAR and OGC can send their decisions back to the requesting Enterprise unit without apprising OCO of the request or decision made.[14]

FHFA's Oversight of the Request and Approval Processes

FHFA has not centralized information summarizing all requests for conservator approval from the Enterprises. For example, OCO's tracking spreadsheet is not complete because FHFA offices such as OPAR and OGC do not always apprise OCO of conservatorship approval requests. In addition, although the tracking spreadsheet includes Enterprise requests and FHFA's resulting recommendations and decisions, OCO may not be aware of actions requiring conservator approval that were not submitted by the Enterprises.[15]

The requesting Enterprise updates the tracking spreadsheet weekly and submits it to OCO, which reviews the spreadsheet and modifies it in turn as necessary.[16] As of May 17, 2012, OCO had received and subsequently tracked (using the tracking spreadsheet) a total of 611 conservatorship action requests from the Enterprises. Requests remain open until a decision is made or the request is withdrawn by the applicable Enterprise. As of May 17, 2012, a total of 583 requests had been closed (this total includes Agency decisions and informational requests concerning actions that did not need conservator approval), see Figure 1 below.[17]

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[14] According to OCO, beginning in 2012, all communication from OPAR is centralized through a dedicated portal and OPAR copies OCO on all decisions. OGC copies OCO on conservatorship related issues, as it deems appropriate.

[15] The OCO tracking spreadsheet also includes actions submitted by the Enterprises that do not require conservatorship approval.

[16] Beginning in 2012, based on the establishment of the "one entry" notification system discussed above, OCO asserts that it receives all approval requests, and the manual process of updating the spreadsheets on a weekly basis has been replaced by an automated system.

[17] The number of approval requests, some of which did not require conservator approval, was compiled from OCO's tracking spreadsheets and is approximate. The 28 pending conservator approval requests is the difference between the number received and the number closed and outstanding as of May 17, 2012. Also, policy requests, which OCO began tracking in January 2012, were not included in these figures because they were tracked on a separate spreadsheet for policy matters rather than on the conservatorship approval request spreadsheet.

Figure 1: OCO's Tracked Requests for Conservator Approval

Fannie Mae

Year	No. Received	Closed
2009	46	26
2010	94	90
2011	104	105
2012 (as of 5/17)	64	69
Total	308	290

Freddie Mac

Year	No. Received	Closed
2009	68	46
2010	108	104
2011	74	84
2012 (as of 5/17)	53	59
Total	303	293

Since Enterprise requests involving compensation and legal issues can bypass OCO and are not tracked by OPAR and OGC, the tracking spreadsheet does not achieve its purpose of recording, tracking, and monitoring all "requests made to, and actions taken by the FHFA."[18] But the tracking spreadsheet's limitations are somewhat mitigated by a group of Agency executives who meet regularly to review Enterprise requests and Agency approvals.

Enterprise requests for conservator approval may be reviewed by FHFA's Conservatorship Governance Committee (CGC). The CGC commenced operation in mid-2009 and is comprised of senior FHFA executives.[19] The CGC's purpose is to provide an executive level review of decisions related to the Agency's role as conservator. For each committee meeting, OCO provides the CGC with the tracking spreadsheet and identifies any entries that may significantly affect the Enterprises or FHFA (e.g., safety and soundness challenges, reputational risk issues, etc.). The CGC provides broad oversight on issues that cut across individual offices and enables FHFA to coordinate on issues that span Agency responsibilities "so that multiple viewpoints can be raised and considered."[20] The CGC's recommendations go directly to FHFA's Acting Director for final decisions. The CGC governance document indicates that the committee will meet at least weekly, and the agenda will include new business, status reports on issues not yet closed, and final recommendations for OCO to FHFA's Acting Director.

In addition to the CGC meetings, OCO staff indicated that there are other meetings held internally and with the Enterprises that provide the Agency with oversight control of Enterprise

[18] *OCO Status Report Protocol*, p. 1 (October 2010). Note: Figure 1 was compiled using the information contained in the OCO tracking spreadsheets.

[19] This includes the Acting FHFA Director as the Chairman; OCO's Senior Associate Director as the Vice-Chairman; the Deputy Director of Enterprise Regulation; the Associate Director for the Office of Policy Analysis and Research; the Senior Associate Director for Congressional Affairs and Communications; the General Counsel; the Deputy General Counsel responsible for conservatorship issues; the Deputy Director for Housing, Mission, and Goals; and the Special Advisor to the Director.

[20] "CGC Committee Overview," *OCO Status Report Protocol*, Exhibit A, p. A-3 (October 2010).

requests for conservator approval. These include meetings between Agency senior management; OCO and FHFA's Acting Director; the Enterprises' boards of directors and FHFA officials; and the Enterprises' Chief Executive Officers and FHFA's Acting Director. According to OCO, these meetings can provide forums for learning about and discussing Enterprise activities that involve conservator approval.

After FHFA informs an Enterprise about its decision concerning a particular request, the Agency does not have policies or procedures to follow up to ensure compliance with the decision. Instead, OCO closes out the particular item in the tracking spreadsheet and informs the Division of Enterprise Regulation (DER) about the decision. In general, DER evaluates the Enterprises' finances and their regulatory compliance through yearly onsite examinations and other periodic visits. However, DER does not have a specific examination program related to the Enterprises' compliance with conservator decisions. If the decisions happen to relate to an examination topic, they may be included in DER's review at its staff's discretion.

In the findings that follow, FHFA-OIG discusses how FHFA can strengthen the system it set up to ensure that the Enterprises seek conservator approval, to determine whether to grant Enterprise requests, and to ascertain whether the Enterprises comply with conservator decisions.

FINDINGS

FHFA-OIG finds that:

1. FHFA's Non-Delegated Authorities and Procedures Are Outdated and Allow Certain Major Business Decisions to Avoid Conservator Approval

OCO may not have been involved in a number of major business decisions because they are not specified within the eight categories of non-delegated authorities. For example, OCO was not involved in the review and approval of Fannie Mae's single-family underwriting standards or its High Touch Servicing Program in which, to date, there have been multiple transfers of mortgage servicing rights totaling more than $1.5 billion. Given the now long duration (i.e., four years) of the conservatorships, OCO should consider reassessing the non-delegated authorities to ensure that FHFA is involved in all of the Enterprises' major business decisions.

Single-Family Underwriting Standards

FHFA-OIG recently issued a report that addresses Fannie Mae's single-family underwriting standards. The report finds that the Agency's oversight of underwriting is limited.[21] It also highlights the importance of underwriting standards: "[o]versight of underwriting standards is significant given that such standards control which loans Fannie Mae buys, and, thus, they comprise the lynchpin of a principal business activity valued at $605 billion in 2010 and $427 billion in 2011 (as of October 31, 2011)."[22] As conservator, FHFA has a responsibility to ensure that the Enterprises' underwriting standards appropriately balance credit risk and return. FHFA can further fulfill its conservator responsibility by ensuring sound oversight of underwriting standards through more active involvement and detailed guidance governing its review process.

High Touch Servicing Program

In late 2008, Fannie Mae's High Touch Servicing Program was initiated to help avoid credit losses. The program involves transferring mortgage servicing rights to specialty servicers and, to date, the value of such transfers is approximately $1.5 billion. The overall program has not been reviewed or approved by FHFA as conservator. Additionally, FHFA did not review or approve the overwhelming majority of transactions (i.e., transactions involving over 700,000 loans with

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[21] *See* FHFA-OIG, *FHFA's Oversight of Fannie Mae's Single-Family Underwriting Standards*, AUD-2012-003 (March 22, 2012), available at http://www.fhfaoig.gov/Content/Files/AUD-2012-003.pdf.

[22] *Id.*

an unpaid balance in excess of $130 billion),[23] but FHFA was advised of and had "no objection" to one transaction.[24]

Given the magnitude and importance of these business decisions—for which the Enterprises were not required to request conservator approval—FHFA should consider, as part of its recent initiative to reassess the list of non-delegated authorities,[25] whether additional categories of business decisions should be included in the list of non-delegated authorities and therefore expressly require conservatorship approval.

2. FHFA's Procedures Governing the Conservatorship Approval Process Are Not Sufficiently Detailed and They Do Not Require a Single Point of Contact for Approval Requests

Although FHFA has directed the Enterprises to seek FHFA's approval for certain kinds of business decisions, it did not establish sufficient internal controls to ensure that the Enterprises comply with the directive. In addition, although FHFA created OCO as the main office administering its conservator responsibilities and made it available to answer the Enterprises' questions, the Agency did not make OCO the central point of contact for all conservatorship approval requests.

Accordingly, Enterprise requests for approval have been inconsistent. For example, FHFA-OIG determined that Fannie Mae agreed to seven insurance settlements during 2009 and 2010 that resulted in settlement discounts totaling $306 million. These settlements were in excess of $50 million each and should have been approved in advance by FHFA—because they constitute non-delegated authorities. By contrast, Freddie Mac settled similar claims but first sought FHFA's approval. FHFA has not taken adequate steps to ensure that approvals are consistently handled across both Enterprises.

In another example found by FHFA-OIG, the Enterprises were inconsistent with respect to their requests for conservator approval for counterparty risk limit increases (i.e., the maximum credit risk exposure that the Enterprises permit for a particular counterparty). The Agency identified

[23] *See* FHFA-OIG, *Evaluation of FHFA's Oversight of Fannie Mae's Transfer of Mortgage Servicing Rights from Bank of America to High Touch Servicers,* EVL-2012-008 (September 18, 2012), available at http://www.fhfaoig.gov/Content/Files/EVL-2012-008.

[24] OCO also reviewed and had "no objection" to a Fannie Mae request to utilize a specialty servicer in October 2009, but this transaction did not involve the transfer of mortgage servicing rights.

[25] In January 2011, OCO assembled a working group to reassess and provide further clarification of FHFA's expectations regarding the types of business decisions that require FHFA approval. The latest versions of the revised delegations and letter of instruction were produced in March, April, and June of 2012; were circulated among various FHFA offices and the Enterprises for review and comment; and, as of September 2012, have not been formally issued or adopted.

through an examination that Fannie Mae did not request conservator approval for risk limit increases even though risk limit increases are expressly included among the non-delegated authorities. Freddie Mac, by contrast, requested and received approval for risk limit increases from the conservator. Again, FHFA has not taken adequate steps to ensure that approvals in this area are consistently handled.

As a Federal agency, FHFA is subject to internal control standards that help it meet responsibilities and minimize risk associated with its programs and operations. The Government Accountability Office's *Standards for Internal Control in the Federal Government* defines internal control activities as the policies, procedures, techniques, and mechanisms that help ensure an agency's objectives are met.[26] Further, as specified in the Office of Management and Budget's Circular A-123, it is management's responsibility to develop and maintain effective internal controls.[27] As FHFA develops and re-engineers its programs and operations, it should design management structures to help ensure accountability for results, such as ensuring that FHFA and the Enterprises have comprehensive policies and procedures to guide the conservatorship approval process.

FHFA Has Neither Issued Sufficient Guidance nor Updated Its November 2008 Directives Concerning Conservatorship Approvals

Although the Enterprises have been in conservatorship for more than four years, FHFA has not updated the non-delegated authorities, issued supplemental directives, or clarified its expectations under the November 2008 letters of instruction.[28] Additionally, based on interviews with the Chief Compliance Officers for each Enterprise, other than the November 2008 letters, the Enterprises have not received adequate guidance with respect to what actions require conservatorship approval.

Moreover, one of the Enterprises commented that, in its opinion, FHFA wants the Enterprise to be broad in its interpretation of what might require conservatorship approval and to err on the side of asking for approvals that may not be needed. FHFA-OIG further found, through discussions with FHFA and Enterprise officials, that if a transaction is deemed to be "ordinary course of business" or qualifies as "loss mitigation," it is generally understood not to require conservatorship approval. However, neither FHFA nor the Enterprises have published any guidance to clarify, explain, or illustrate the meanings of these terms.

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[26] *Standards for Internal Control in the Federal Government*, "Definition and Objectives," p. 4 (November 1999).

[27] OMB Circular A-123, *Management's Responsibility for Internal Control*, "Introduction," p. 4.

[28] *See* footnote 25. Also, based on discussions with OCO and other key offices involved with reviewing conservatorship action approval requests, FHFA generally provides feedback in response to specific conservatorship action approval requests. Further, in June 2012, OCO issued a Settlement Policy and Settlement Procedural Guide to provide direction, context, and an established process for the Enterprises to pursue settlements with counterparties.

The lack of comprehensive guidance has led to inconsistent interpretations of FHFA's order and letters of instruction. For example, unlike Freddie Mac, Fannie Mae has never sought FHFA approval before increasing counterparty risk limits. In Freddie Mac's case, the Enterprise submits to its board of directors for approval changes in counterparty risk limits on an aggregate basis that cover counterparty risk limits across multiple business units. For instance, in July 2009, Freddie Mac requested an aggregate increase of $8 billion in total counterparty exposure across eleven counterparties. Following board of director approval, Freddie Mac submitted these actions for FHFA conservator approval.

Freddie Mac's approach of submitting requests for risk limit increases that aggregate counterparty risk limits across the organization appears to satisfy FHFA's rules for conservatorship approval. As of March 2012, FHFA has approved nine Freddie Mac requests for approval of board-level risk limit increases. By contrast, Fannie Mae does not submit counterparty risk limit changes to its board of directors for approval, does not aggregate requests across business units, and does not submit risk limit increase requests to FHFA for conservator approval. FHFA-OIG found that Fannie Mae staff handled 4,543 counterparty risk limit increases totaling $515 billion between November 25, 2008, and January 27, 2012.[29] None of these increases were presented to FHFA for approval.

Fannie Mae's risk limit increases were identified through a DER targeted examination, which found that Fannie Mae did not obtain its board of directors' or FHFA's approval for increases in exposure limits for mortgage insurers during June 2011. Accordingly, in January 2012, DER issued a deficiency notice to request that the Enterprise seek board and conservator approvals. Furthermore, OCO informed FHFA-OIG that it was not aware of these risk limit increases until DER brought them to its attention.

[29] Fannie Mae also reduced its counterparty risk limits 2,947 times between November 24, 2008, and January 30, 2012, for a total of $731 billion. Thus, risk limits in total were not increased during this period. FHFA's letters of instruction to the Enterprises do not require them to seek approval of risk limit decreases.

Notably, many of these risk limit increases are significant: 160 of them were for amounts greater than or equal to $1 billion. Figure 2, below, lists Fannie Mae's ten largest risk limit increases.

Figure 2: Fannie Mae's Ten Largest Risk Limit Increases (in $Billions)

Date	Counterparty	Old Limit	New Limit	Increase
7-May-10	Counterparty 1	$9.7	$39.3	$29.6
8-Aug-11	Counterparty 2	16.7	31.7	15
6-May-10	Counterparty 3	11	22	11
5-Nov-09	Counterparty 4	3.3	14	10.7
5-Nov-09	Counterparty 5	2.4	10.5	8.1
5-Nov-09	Counterparty 6	2.4	10	7.6
18-Dec-08	Counterparty 7	–	7.6	7.6
5-May-10	Counterparty 2	9.3	16.7	7.4
5-May-10	Counterparty 8	7.9	15	7.1
19-June-09	Counterparty 9	9	16	7

Following DER's issuance of the deficiency notice, OCO took the position that the risk limit increases were not required to be approved by FHFA because Fannie Mae's board of directors had delegated the authority to approve these risk limits to its Chief Executive Officer. OCO's explanation, however, appears to be inconsistent with the letters of instruction, which clearly retain for FHFA's exclusive approval (i.e., do not delegate to the Enterprises) "actions involving … increase in risk limits." Additionally, OCO in its own policies and procedures identifies increases in risk limits as an example of a non-delegated action that requires conservator approval. Further, neither the letters of instruction nor OCO's written procedures state that FHFA's (i.e., the conservator's) consideration of any action is contingent upon approval by Fannie Mae's board of directors.

Notwithstanding its assertions, OCO has begun to work with Fannie Mae's risk management team to establish and set appropriate board-level counterparty risk limits similar to the governance structure existing at Freddie Mac. When this work is completed, Fannie Mae should be able to increase its counterparty risk limits and seek conservator approval without the significant administrative burden of requesting them on a case-by-case basis.

FHFA has exerted some effort to clarify its original directives. During January 2011, OCO assembled a working group comprised of six senior FHFA executives to reassess and provide further clarification of the letters of instruction regarding the types of business decisions that require FHFA approval. But as of September 2012, the revised letters of instruction have not been formalized.

Until Recently FHFA Had Not Established Procedures to Centralize the Intake of Conservatorship Approval Requests

FHFA did not have procedures to establishing a central point of entry for conservatorship approval requests. FHFA-OIG found that conservatorship approval requests were not always routed to OCO, the main office responsible for administering FHFA's conservator responsibilities. For example, conservatorship approval requests involving executive compensation issues were reviewed exclusively by another FHFA office, OPAR, and requests involving legal issues were reviewed by OGC, a different FHFA office. Other FHFA offices, including the Credit Risk Division, the Office of the Chief Accountant, and the Office of Housing and Regulatory Policy, also occasionally received conservatorship action approval requests.

FHFA-OIG also found that, although approval requests received by OCO were routinely tracked, OCO was not always aware of and could not track approval requests received by other FHFA offices. Consequently, OCO was unable to maintain accountability for all conservatorship approval requests submitted to FHFA.

Notably, FHFA-OIG found that FHFA's decentralized process contributed to Fannie Mae engaging in non-delegated actions without requesting or receiving conservatorship approval. For example, Fannie Mae claims that it believed that the seven insurance settlements (i.e., mortgage insurance pool policy commutations) referenced above that resulted in $306 million in discounts did not require conservatorship approval. On the contrary, under FHFA's delegation of authority, each Enterprise is obliged to seek conservatorship approval for settlements greater than $50 million. OCO was not aware of the settlements.[30]

By way of background, a mortgage insurance pool policy commutation transaction is a settlement between an insured (e.g., Fannie Mae) and a mortgage insurer in which the mortgage insurer agrees to make a lump sum payment to the insured to terminate all or a portion of its mortgage insurance policy on a pool of insured mortgages. Commutations are typically executed at a discount to the remaining amount of insurance coverage on the mortgage pool, and this benefits the mortgage insurer. From Fannie Mae's perspective, the termination of this type of insurance coverage results in premium savings and the immediate use of funds received from the mortgage insurer. Additionally, Fannie Mae's receipt of an up-front payment, rather than waiting for insurers to make claims payments over time, enables it to mitigate the potential risk of having the insurers either go out of business or making partial payments due to an insurer's declining financial condition. In fact, before the first pool policy commutation reviewed by FHFA-OIG was executed in July 2009, Fannie Mae sent an email to FHFA's Credit Risk

[30] Although the Agency's Credit Risk Division was aware of the settlements, it was not asked for, nor did it provide, approval for them.

Division indicating that if the deal was consummated it would provide some capital relief to the subject mortgage insurer, which would enable it to continue to write new business.[31]

From July 2009 through June 2010, Fannie Mae executed without FHFA approval seven mortgage insurance pool policy commutations with an estimated remaining amount of insurance in force of $1.239 billion for a fee of $933 million. FHFA, in its role as conservator, was therefore not in a position to determine whether the $306 million settlement discounts effectively preserved and conserved Fannie Mae's assets. For example, because FHFA did not review these transactions, it did not have an opportunity to assess the adequacy of the model(s) and assumptions used by Fannie Mae to determine the amount of insurance risk in force; calculate fair value of the mortgage pool policies and premiums forgone; or analyze and validate the settlement discounts of $306 million (risk in force minus fee charged). FHFA also lost the opportunity to assess whether certain mortgage insurers were viable sources of future insurance coverage for the Enterprise.

In contrast to Fannie Mae's handling of mortgage insurance pool policy commutations, Freddie Mac submitted to OCO two approval requests related to commutations: the first, for commutations generally; and the second, for a specific commutation.[32] In response to the first request, OCO advised Freddie Mac that it should seek conservator guidance for each individual settlement valued at more than $50 million. FHFA's Credit Risk Division responded to the second request, but copied OCO, indicating that the second transaction was within Freddie Mac's delegated authority because the settlement amount was less than $50 million.[33]

In October 2011, Fannie Mae presented FHFA's Credit Risk Division with a proposal for another mortgage insurance pool policy commutation settlement. This proposal identified the seven unapproved settlements discussed above. In November 2011, OCO learned of these unapproved settlements and, through FHFA's OGC, FHFA notified the Enterprises that insurance settlements require Agency consent if they are over $50 million in value. The directive not only required the Enterprises to inform OCO of proposed settlements, but also served to close a potential loophole by requiring Agency approval for any group of settlements with one party that have an aggregate value of $50 million or more. Such FHFA directives are

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[31] In some states, if a mortgage insurer does not meet a required minimum policyholders' position or exceeds a maximum permitted risk-to-capital ratio (generally 25 to 1), it may be prohibited from writing new business until its policyholders' position meets the minimum or its risk-to-capital ratio falls below the limit, as applicable.

[32] Additionally, Freddie Mac's requests indicated that Fannie Mae was engaging in similar transactions involving mortgage insurance pool policy commutations, but OCO did not follow up with Fannie Mae to determine the extent of its settlement transactions in this area.

[33] In July 2011, Freddie Mac notified FHFA that the settlement amount for that matter was estimated to be $15 million, which is below the approval threshold of $50 million. Later in November 2011, OCO worked with OGC to clarify formally that insurance settlements over $50 million require FHFA's advance approval.

examples of good internal controls that help the Agency achieve its intent of reserving conservator authority over major business decisions.

FHFA Should Take a Greater Role to Ensure That the Enterprises Have Put in Place Adequate Policies, Procedures, and Governance Structures Concerning Conservatorship Approvals

As part of its efforts to review and clarify the November 2008 letters of instruction, FHFA needs to take a more proactive role as conservator to ensure that the Enterprises have put in place sufficient internal controls, including policies and procedures and governance structures, to comply with FHFA's letters of instruction. FHFA's November 2008 Instructions for the Board of Directors (Order No. 2008-0006) acknowledges that the non-delegated authorities are broad and states that the boards should implement appropriate measures to coordinate with FHFA as the regulator and conservator of the Enterprises.

FHFA-OIG found that OCO had not determined whether the Enterprises had implemented policies and procedures for complying with the non-delegated authorities. After FHFA-OIG raised the issue in October 2011, OCO contacted both Enterprises and learned that Freddie Mac had established written policies and procedures related to conservatorship decisions,[34] but Fannie Mae had not. However, FHFA-OIG notes that, to date, OCO has not reviewed the sufficiency of Freddie Mac's policies.

FHFA-OIG believes that FHFA should ensure that Fannie Mae develops a process to confirm compliance with the Agency's approval requirements.[35] As conservator and regulator, FHFA has the responsibility to provide for the Enterprises' safety and soundness and preserve and conserve their assets by taking a more proactive role in developing policies, procedures, and governance processes that are adequate and appropriately structured to secure FHFA's approval of major business decisions.

[34] On September 13, 2012, OCO provided to FHFA-OIG Fannie Mae's policies and procedures, effective August 1, 2012, for complying with the non-delegated authorities. OCO, however, has not reviewed the sufficiency of those policies and procedures.

[35] FHFA's examiner-in-charge for Fannie Mae concurs in this belief. *See* Letter from FHFA's Division of Examination and Regulation, *RE: Delegations of Authority to the board of directors of the Federal National Mortgage Association* (FNM-DER-2012-005, January 1, 2012).

3. FHFA Has Not Established Criteria or Policies to Ensure Rigorous Review of Enterprise Business Decisions and Has Not Maintained a Central Repository for Documentation Supporting Conservator Decisions

FHFA-OIG acknowledges that FHFA has devoted significant resources to meeting its conservator mission. In particular, FHFA has established OCO as its main administrative arm for the Enterprises' conservatorships. In turn, OCO has implemented intake, tracking, and decision-making processes for Enterprise requests. FHFA-OIG, however, found that FHFA can improve its oversight by ensuring that it: develops review procedures that include testing and validation of conditions asserted in support of approval requests; centrally tracks and maintains documentation of its decision-making; and educates the Enterprises regarding FHFA's decision-making processes. Without sound and auditable decision-making processes, the Agency may have difficulty justifying conservatorship decisions.

FHFA Sometimes Relies upon Information Provided by the Enterprises Without Independently Verifying It or Performing a Business Case Analysis

A number of FHFA-OIG published reports show that FHFA sometimes relies on the Enterprises' determinations without independently testing and validating them, thereby giving undue deference to Enterprise decision-making. For example, at the end of 2010, FHFA approved a $1.35 billion settlement of mortgage repurchase claims that Freddie Mac asserted against Bank of America.[36] In approving the settlement, FHFA relied on Freddie Mac's analysis of the settlement without testing the assumptions underlying the Enterprise's existing loan review process. An FHFA-OIG report found that FHFA did not act timely or test concerns raised by an FHFA senior examiner about limitations in Freddie Mac's existing loan review process for mortgage repurchase claims.[37]

Similarly, in 2009 and 2010, the Enterprises awarded their top six officers over $35 million in compensation.[38] FHFA reviewed and approved these compensation awards based primarily on the Enterprises' determinations and recommendations. An FHFA-OIG report found that FHFA did not test or validate the means by which the Enterprises calculated their recommended

[36] The mortgage repurchase settlement, as a settlement of a claim exceeding $50 million, required pre-approval by the conservator.

[37] *See* FHFA-OIG, *Evaluation of the Federal Housing Finance Agency's Oversight of Freddie Mac's Repurchase Settlement with Bank of America* (September 27, 2011), available at http://www.fhfaoig.gov/Content/Files/EVL-2011-006.pdf. FHFA-OIG also issued a follow-up report on this topic. *See* FHFA-OIG, *Follow-up on Freddie Mac's Loan Repurchase Process,* EVL-2012-007 (September 13, 2012), available at http://www.fhfaoig.gov/Content/Files/EVL-2012-007.

[38] These payments, as compensation decisions relating to personnel at or above the executive vice president level, required pre-approval by the conservator.

compensation levels and did not consider factors that might have resulted in reduced executive compensation costs.[39]

In another example found by FHFA-OIG during the course of this audit, FHFA unduly relied on information provided by Fannie Mae when it issued a "no objection" response to the Enterprise's request to make an additional investment of between $55 million and $70 million in order to protect an existing $40 million investment.

On May 26, 2010, Fannie Mae forwarded an email request to OCO for approval to purchase a senior mezzanine loan made to a large business entity by another lender, in order to protect an existing $40 million junior loan to the same entity. The request explained, "… we have the potential to become $150 million underwater on the senior loan and if someone else buys the senior mezzanine loan, we could have our $40 million junior mezzanine position foreclosed out from under us, so [there is] a total of about $190 million of taxpayer money riding on this." Attached to the email chain was a *Bloomberg* article, which provided additional details about the joint venture. The request was also supported by an internal Fannie Mae memorandum, which recommended that Fannie Mae purchase the $85 million senior mezzanine loan from another lender for a purchase price of between $55 million and $70 million.

On the same day the request was made, OCO informed Fannie Mae it had "no objection" as follows:

> We have received your request regarding the purchase of the … senior mezzanine position. You have represented that the failure to purchase this portion will jeopardize your existing $40 million junior lien … You have indicated that your actions are designed to mitigate a potential loss, the proposed actions are in the best interest of Fannie Mae, and are being undertaken in a manner consistent with existing loss mitigation practices.
>
> Given the complex nature of this transaction and the short time in which a decision must be made, it is not possible for us to assess the reasonableness of this proposal. However, based on your representation that the proposed transaction is necessary to mitigate loss, we have no objections to your plans as described.

Fannie Mae subsequently advised FHFA that "shareholders/taxpayers made $56 million" on the transaction.

[39] *See* FHFA-OIG, *Evaluation of the Federal Housing Finance Agency's Oversight of Fannie Mae's and Freddie Mac's Executive Compensation Programs*, (March 31, 2011) available at http://www.fhfaoig.gov/Content/Files/Exec%20Comp%20DrRpt%2003302011%20final,%20signed.pdf.

This example suggests that FHFA may be unduly deferring to Enterprise decision-making in cases in which the Enterprises make requests to approve complex transactions at the last minute.[40] Although there may be circumstances when such approval is warranted, FHFA may be in a position to satisfy better its conservatorship responsibilities by imposing deadlines for submission of approval requests so that it has enough time to evaluate complex transactions.

The foregoing suggests that FHFA needs to increase the rigor of its approval process by taking a more active role investigating the underlying facts rather than passively accepting the account thereof supplied by the Enterprises.

OCO Does Not Centrally Maintain or Track Documentation Supporting Final Conservatorship Decisions

OCO does not maintain complete records of FHFA's final conservatorship decisions. FHFA-OIG also found that OCO does not centrally maintain detailed documentation to support conservatorship decisions when the documentation supporting a decision has been prepared by an FHFA office other than OCO.

According to OCO, it maintains some of the final decisions for calendar year 2009, the majority of the final decisions for 2010, and all of the final decisions for 2011. These files in many instances, however, do not include the initial Enterprise request or documentation supporting the FHFA analysis that took place in connection with evaluating the request. OCO explained that its revised protocols as of August 2011 do not require OCO to maintain any documentation supporting its analysis of the request. Rather, FHFA's minimum documentation requirements provide merely that the applicable office must compile and maintain the initial request, routing communications, and the final communication and review package. It was further explained that the lead FHFA office (such as OCO, OPAR, or OGC) owns the documentation pertinent to the conservatorship approval requests it reviews. Consequently, FHFA-OIG found inconsistencies with the documentation in OCO's files and that some of OCO's files include only the final decision.

The absence of a central repository for conservatorship approval documents heightens the risk that such documents—the record of the request and FHFA's deliberations surrounding the request—are or may become lost. This issue is compounded by the fact that under FHFA's previous decentralized structure (i.e., prior to December 2011) OCO was not the central clearinghouse for all conservatorship approval requests. The Enterprises would at times send issues directly to other FHFA offices without OCO's knowledge and without entering the data onto OCO's Status Report Tracking Spreadsheet. In addition, OCO did not require these other

[40] In response to the draft audit report, FHFA noted that Fannie Mae was not required to seek conservatorship approval of the purchase of the senior mezzanine loan.

FHFA offices to maintain separate tracking systems or to report information on conservatorship actions on a routine basis.

FHFA-OIG also confirmed through discussions with OPAR and OGC that these FHFA offices did not maintain separate tracking spreadsheets. As a result, OCO could not readily provide FHFA-OIG with summary data on all approval requests and related dispositions during the 2009-2011 timeframe. Further, FHFA-OIG learned that entries made on the approval request tracking spreadsheets—the primary mechanism used by FHFA to track approval requests—were sometimes made after the fact when OCO learned of a request from another FHFA office or from the Enterprises.

In December 2011, OCO narrowed the number of channels through which conservatorship requests may be submitted and revised its protocols to place responsibility on the lead office for maintaining detailed documentation to support conservatorship decisions. Despite this improvement, FHFA-OIG believes that OCO should be responsible for establishing and maintaining a central repository for all documentation supporting conservatorship decisions. FHFA should also reconsider its decision not to require OCO to compile and maintain documentation supporting FHFA's decisions. This will help FHFA increase the transparency and defensibility of its conservatorship decisions. It will also help ensure that documentation is readily available for external review.

The Enterprises May Not Sufficiently Understand FHFA's Conservatorship Action Approval Process

FHFA-OIG also found during the course of this audit that the Enterprises may not sufficiently understand FHFA's decision-making process for their approval requests. For example, Freddie Mac's Chief Compliance Officer believes that there is no definitive structure or method for the conservatorship decision-making process, and she does not have a clear understanding of why certain requests get approved while others are denied. Freddie Mac's Chief Compliance Officer advised that Freddie Mac would like more clarity on what FHFA's decision-making process is and who makes the decisions. The Chief Compliance Officer of Fannie Mae stated that there were times when FHFA and the Enterprise had differences of opinion or different philosophical viewpoints regarding what issues require conservatorship approvals.

4. FHFA Has Not Established a Formal Process to Follow Up on Significant Conservator Decisions to Ensure the Enterprises Comply with Them

FHFA-OIG found that once a conservatorship decision is made and communicated to the Enterprises, OCO does not have a formalized process to follow up to ensure that the decision is adhered to. This is true regardless of the dollar value or potential implications of the decision. Instead, OCO forwards conservator decisions to DER to consider—in its discretion—in its annual examination cycle. OCO does not believe the responsibility for follow-up on conservatorship decisions rests with its office.

FHFA-OIG tested the effectiveness of this procedure by obtaining a judgmental sample of ten conservatorship approval decisions. Based on the responses from DER, OGC, and the Office of Housing and Regulatory Policy, only two of the ten sampled decisions appear to have been followed up, and even in those two instances the follow-up was not sufficiently documented.

FHFA-OIG also confirmed through interviews with DER and Division of Examination Programs and Support (DEPS) management that there is not a specific examination program in place to review the Enterprises' compliance with conservatorship decisions. DER and DEPS learn of conservatorship approvals and decisions through weekly senior management meetings with OCO and review of the conservatorship approval tracking spreadsheets. According to DEPS management, targeted examinations may include the review of conservatorship directives depending on the topic. If the subject matter of a targeted examination intersects with the topic of a directive, then the examiner will determine if the directive was followed.

FHFA-OIG requested information from DEPS pertaining to specific conservatorship decisions made during 2010 and 2011 that FHFA followed up on pursuant to its examination programs. Although the information provided by DEPS shows that FHFA has performed some conservatorship-related examination work, this work appears to have been performed primarily for specific examinations, rather than ensuring that the Enterprises adhered to conservatorship decisions related to specific approval requests. Further, DEPS acknowledged the need to take a more systematic approach in 2012 to review, prioritize, and follow up on conservatorship directives through examinations. Therefore, OCO, in conjunction with DEPS and DER, should develop a formalized risk-based follow-up plan specifically to review conservatorship decisions.

FHFA Has Not Ensured that the Enterprises Have a Sound Follow-up Process in Place

Like FHFA, the Enterprises also do not routinely follow up on conservator decisions to ensure that their component parts that are responsible for implementing the decisions have done so. FHFA-OIG found that the internal audit functions within the Enterprises have not conducted any audits or reviews pertaining to the conservatorship action process or specific conservatorship requests.

For example, Fannie Mae's internal auditors stated that the conservatorship action approval process is FHFA's responsibility and not within the scope of the internal audit function. Fannie Mae's internal audit reviews are primarily focused on the company's risk profile to support Fannie Mae's lines of business. Similarly, Freddie Mac's internal auditors informed FHFA-OIG that they had no knowledge of the conservatorship approval tracking spreadsheets and related processes; therefore, the conservatorship process or any specific transactions that required conservatorship approval were not included in their audit universe unless they were reviewed incidentally pursuant to a Corporate New Business Initiatives audit.

Additionally, FHFA has not required the Enterprises to develop formal policies and procedures to ensure adherence to FHFA's delegations of authority, including the conservatorship approval process and actions taken with regard to FHFA conservatorship decisions. The Enterprises have taken the non-delegated authorities outlined in the letters of instruction and disseminated them across their respective business units. Each business unit has the responsibility to comply with them but, based on the perception that the conservatorship process does not have an impact on the Enterprises' risk profiles, Fannie Mae and Freddie Mac have not reviewed compliance by their business units.

An Example of Non-Compliance with an FHFA Conservatorship Decision

During the course of this audit, FHFA-OIG identified an example of a situation in which an Enterprise did not comply with a conservatorship decision. In August 2010, the Enterprise requested FHFA's approval to pay a termination benefit to one of its employees at the vice president level. Although this action did not require conservator approval, FHFA management reviewed the request, which detailed the amount of the termination benefit (i.e., six months salary) the employee would receive and the benefits the employee would forfeit upon termination (i.e., a $40,000 retention bonus). FHFA advised the Enterprise that it had "no objection." Months later, FHFA-OIG found that the Enterprise had in fact paid the former vice president twelve months of salary and the $40,000 retention bonus. The Enterprise did not apprise FHFA of its payments of an additional six months' salary and the retention bonus.

As this example demonstrates, FHFA should consider issuing a directive to the Enterprises prohibiting deviations from its conservatorship decisions and requiring them to monitor actively compliance with those decisions, even in cases like this where prior approval is not necessary and the amount of money at issue is relatively small. FHFA also should independently follow up on such compliance. FHFA will be in a stronger position to express confidence in its conservator achievements by confirming that the Enterprises are complying with its decisions. Verification policies and procedures and regular examinations will also help FHFA monitor the effectiveness of its decision-making and adjust its business case analyses accordingly.

CONCLUSION

FHFA's role as conservator of Fannie Mae and Freddie Mac is critical to mitigating instability in the nation's housing finance markets and ensuring that the Enterprises operate safely and soundly. FHFA-OIG's work demonstrates that strengthening control over the Agency's conservatorship approval process will help FHFA achieve its goals and also protect taxpayers from having to provide further financial support.

Towards that end, FHFA-OIG recommends that FHFA: revisit its non-delegated authorities to ensure that significant Enterprise business decisions are sent to the conservator for approval; establish a system capable of ensuring that the Enterprises request approval when it is required; improve how it processes these requests, including intake, tracking, and decision-making; and install a mechanism for confirming that the Enterprises have complied with its decisions.

RECOMMENDATIONS

FHFA-OIG recommends that FHFA:

1. Reassess the non-delegated authorities to ensure sufficient FHFA involvement with major business decisions.

2. Evaluate the internal controls established by the Enterprises, including policies and procedures, to ensure they communicate all major business decisions requiring approval to the Agency.

3. Evaluate Fannie Mae's mortgage pool policy commutations to determine whether these transactions were appropriate and in the best interest of the Enterprise and taxpayers. This evaluation should include:

    a. An assessment of Fannie Mae's methodology used to determine the economic value of the seven mortgage pool policy commutations. This assessment should include a documented review of Fannie Mae's analysis, the adequacy of the model(s) and assumptions used by Fannie Mae to determine the amount of insurance in force, fair value of the mortgage pool policies, premiums forgone, any other factors incorporated into Fannie Mae's analysis, and the accuracy of the information supplied to FHFA; and

    b. A full accounting and validation of <u>all</u> of the cost components that comprise each settlement discount (risk in force minus fee charged), such as insurance premiums and time value of money applicable to each listed cost component.

4. Develop a methodology and process for conservator review of proposed mortgage pool policy commutations to ensure that there is a documented, sound basis for any pool policy commutations executed in the future.

5. Complete actions to establish a governance structure at Fannie Mae for obtaining conservator approval of counterparty risk limit increases.

6. Establish a clear timetable and deadlines for Enterprise submission of transactions to FHFA for conservatorship approval.

7. Develop criteria for conducting business case analyses and substantiating conservator decisions.

8. Issue a directive to the Enterprises requiring them to notify FHFA of any deviation to any previously reviewed action so that FHFA may consider these changes and revisit its conservatorship decision.

9. Implement a risk-based examination plan to review the Enterprises' execution of and adherence to conservatorship decisions.

SCOPE AND METHODOLOGY

This performance audit's objective was to assess FHFA's process for approving non-delegated actions of the Enterprises under conservatorship. Specifically, FHFA-OIG assessed FHFA's procedures for approving activities proposed by the Enterprises and the Agency's actions to ensure that the Enterprises have implemented appropriate measures to comply with its conservator approval requirements.

FHFA-OIG performed its fieldwork for this audit from November 2011 through March 2012. The audit was conducted at FHFA's offices located in Washington, DC. Computer processed information was not used during this audit.

To achieve its objective, FHFA-OIG:

- Reviewed FHFA's and the Enterprises' policies and procedures related to the conservator approval process;
- Assessed FHFA's and the Enterprises' controls to ensure that actions requiring Agency consent received conservator consideration and that the Enterprises complied with conservator decisions;
- Interviewed FHFA and Enterprise officials regarding their views of the approval process and their controls over it, and the transactions FHFA-OIG selected;
- Selected five judgmental samples to test the conservator approval process; selection was based on diversity of subject matters, review processes, FHFA divisions, and potentially significant dollar amounts; and
- Selected ten judgmental samples to test FHFA's follow-up to ensure compliance with conservator decisions; selection was based on those in the original sample that had decisions (three) and those that were readily available on OCO's status report (seven).

FHFA-OIG assessed the internal controls related to its audit objectives. Internal controls are an integral component of an organization's management that provide reasonable assurance that the following objectives are achieved:

- Effectiveness and efficiency of operations;
- Reliability of financial reporting; and
- Compliance with applicable laws and regulations.

Internal controls relate to management's plans, methods, and procedures used to meet its mission, goals, and objectives, and include the processes and procedures for planning, organizing, directing, and controlling program operations as well as the systems for measuring, reporting, and monitoring program performance. Based on the work completed on this performance audit, FHFA-OIG considers its findings on FHFA's approval process for conservatorship actions to be significant deficiencies within the context of the audit objectives.

FHFA-OIG conducted this performance audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that audits be planned and performed to obtain sufficient, appropriate evidence to provide a reasonable basis for FHFA-OIG's findings and conclusions based on the audit objective. FHFA-OIG believes that the evidence obtained provides a reasonable basis for the findings and conclusions included herein, based on the audit objective.

APPENDIX A

FHFA's Comments on Findings and Recommendations

Federal Housing Finance Agency

MEMORANDUM

TO: Russell Rau, Deputy Inspector General for Audit, FHFA-OIG

FROM: Jeffrey Spohn, Senior Associate Director, Office of Conservatorship Operations
Jon Greenlee, Deputy Director, Division of Enterprise Regulation

SUBJECT: FHFA Response – OIG Audit 2011-018, *FHFA's Conservator Approval Process for Fannie Mae and Freddie Mac Business Decisions*

DATE: September 12, 2012

This memorandum transmits the Federal Housing Finance Agency's (FHFA) management response to the recommendations resulting from the evaluation performed by your staff from November 2011 to March 2012. As stated in FHFA-OIG's report, the objective of the audit was to assess FHFA's process for approving non-delegated actions of the Enterprises under conservatorship. We appreciate the intent of this report to help FHFA identify areas to strengthen controls in its conservatorship decision-making for non-delegated matters. We believe that the approach we are taking to govern conservatorship decision-making is effective, and this approach remains appropriate given the size, complexity, and length of the conservatorships.

To set the context for the important matters covered by the report, it is important to provide a broad perspective on the agency's approach to the conservatorships. FHFA clearly stated long ago that, after changing the boards, CEOs, and other executives at the start of the conservatorships, it was delegating most business decisions back to the two companies. FHFA views part of its "preserve and conserve" mandate to include preserving the entities as private companies with the capacity and responsibility to make business decisions following normal corporate governance procedures. This requires a careful balance between FHFA being informed of all key decisions and selectively asserting FHFA's right to review or alter decisions, whether delegated or not, and encouraging the companies themselves to make sound decisions in light of broad conservatorship goals. This balancing has existed since the beginning of the conservatorships and will continue.

The letters of instruction referenced in the report are a key guidepost for delineating items that require conservatorship approval. Still, the letters are only one piece of how FHFA has established with each company the communications necessary to consult, formally or informally, on a wide range of business activities, whether delegated or not. While FHFA will soon be updating these letters, by themselves the letters could never be written to cover all possible issues involving such large, complex organizations. Inevitably, judgment will be required and differences of interpretation could reasonably arise. In view of that, FHFA believes that the letters alone are necessary but insufficient guideposts and daily engagement with company management is essential to the successful execution of FHFA's conservatorship responsibilities.

The Office of Conservatorship Operations (OCO) was set up to coordinate and facilitate communications and decision-making, for delegated and non-delegated matters alike. We believe that FHFA is appropriately involved with each company and its corporate decision-making, as the following should make clear:

- The Acting Director meets at least bi-weekly (and currently weekly) with each CEO to review key business activities and upcoming issues;
- The Acting Director meets with the board of directors at every board meeting to review the state of the conservatorship and review key business issues.
- The Office of Conservatorship Operations
  - Attends every board meeting at each company
  - Attends every weekly management committee meeting at each company
  - Meets with each CEO at least weekly and frequently with many other senior officers of each corporation
- FHFA policy offices support the Acting Director and the Office of Conservatorship Operations by engaging in a detailed way with the two companies on a wide range of business activities, particularly key conservatorship matters such as loss mitigation (e.g., loan modifications and HARP refinances), and on business policy decisions such as the recently announced changes to the companies' representation and warranties framework.
- Specialized issues, such as executive compensation and litigation matters, are the responsibility of particular offices at FHFA and, because of the sensitive nature of these topics, are not managed or controlled in the same way as routine business matters.
- FHFA's Conservatorship Governance Committee, in place since 2009, meets weekly to ensure FHFA executive leaders responsible for these different areas keep each other informed of relevant developments and collaborate in working through challenging conservatorship issues.

In addition, the Division of Enterprise Regulation (DER) exercises FHFA's statutory authority and fulfills the obligation to oversee the Enterprises' safe and sound operation. FHFA's supervision staff does not participate in corporate decision-making or management functions, but maintains a detailed, current understanding of Enterprise business operations and risk management and brings a supervisory perspective to bear in engaging with the Enterprises and FHFA conservatorship staff. FHFA strives to strike a balance so that supervision and conservatorship activities are sufficiently separate to ensure supervisory independence, but Division staff coordinates to an appropriate degree so that there is the benefit of intra-agency collaboration on significant risk matters impacting the Enterprises.

In two companies with $5 trillion in assets, well over one thousand counterparties, and roughly 12,000 employees, the volume of daily business decisions, big and small, is staggering. Collectively, the activities and engagements just listed keep FHFA informed of key business activities and permit early consultation on emerging issues. What has evolved over these four years of conservatorship is an environment that encourages discussion, analysis, debate, and resolution of issues, many of which are unique and complex.

While FHFA has long had a tracking system for conservatorship decision requests from the Enterprises, we regret that OIG largely has relegated to footnotes the significant changes in that system made last year, some of which directly respond to concerns OIG raises about older practices. That said, as described below, FHFA agrees with many of the recommendations made in the report and will strive to implement them in an effort to strengthen further the agency's tools and processes for ensuring sound business decisions that support the goals of the conservatorships.

Specific recommendations and FHFA management's response are detailed below. For each, the response notes whether responsibility for the particular recommendation rests with the Office of Conservatorship Operations or the Division of Enterprise Regulation.

OIG Recommendations:

1. Reassess the non-delegated authorities to ensure sufficient FHFA involvement with major business decisions.

   OCO Response: Agree

   FHFA agrees with the recommendation and has already completed the reassessment of non-delegated authorities. Revised letters of instruction will be issued by December 31, 2012.

   It is important to note that the decisions rendered by FHFA as conservator do clarify the November 2008 non-delegated authorities. In many cases the decisions provide clarifying rationale for future reference. A clear example of FHFA using communications or decisions to clarify or interpret the letter of instruction is the communication to both Enterprises in 2011 clarifying that mortgage insurance commutations were considered settlements. Following that November 2011 communication, both Enterprises began submitting these issues to FHFA for approval if the amounts and other conditions of the letter of instruction are triggered.

   While concurring with the recommendation, FHFA has a different view than OIG regarding some of the examples cited. In particular, servicing transfers do not require conservator approval per the letters of instruction and FHFA decisions rendered. Using discretionary authority, FHFA has periodically reviewed certain mortgage servicing transfer transactions as conservator. FHFA believes these transactions are long-standing ordinary course business transactions, governed appropriately within the Enterprises, consummated within contract terms with the counterparty, and thus fall within the delegated authorities. FHFA has been well aware of the Enterprises' strategy and continues to support both Enterprises transferring the servicing from poorly performing entities to those with better capabilities. (See also FHFA's response to SUR-2011-023.)

2. Evaluate the internal controls established by the Enterprises, including policies and procedures, to ensure they communicate all major business decisions requiring approval to the Agency.

DER Response: Agree

FHFA agrees with the recommendation as we believe it is appropriate to periodically review the Enterprises' compliance processes. FHFA identified the assessment of the Enterprises compliance with directives as one of our key areas of supervisory focus in the 2012 supervisory plan for both Enterprises. While FHFA will do this predominantly through ongoing monitoring by our core team examiners, compliance with specific conservatorship decisions will be reviewed, as applicable, during targeted reviews of selected areas during the second half of 2012. With the completion of the FY 2012 examination cycle, FHFA will consider this recommendation closed.

3. Evaluate Fannie Mae's mortgage pool policy commutations to determine whether these transactions were appropriate and in the best interest of the Enterprises and taxpayers. This evaluation should include:

   a. An assessment of Fannie Mae's methodology used to determine the economic value of the seven mortgage pool policy commutations. This assessment should include a documented review of Fannie Mae's analysis, the adequacy of the model(s) and assumptions used by Fannie Mae to determine the amount of insurance in force, fair value of the mortgage pool policies, premiums foregone, any other factors incorporated into Fannie Mae's analysis, and the accuracy of the information supplied to FHFA; and
   b. A full accounting and validation of <u>all</u> of the cost components that comprise each settlement discount (risk in force-fee charged), such as insurance premiums, and time value of money applicable to each listed cost component.

OCO Response: Partially Agree

FHFA partially agrees with the recommendation. FHFA has articulated to the Enterprises that all settlements in excess of $50 million require conservator approval. FHFA also, through an intra-agency working group, engages in ongoing communication of all mortgage insurance related issues. These processes have been in place and ensure FHFA's oversight and conservator approval, as needed, on commutations. Thus, we agree with the concept of monitoring commutation practices and approving these settlements greater than $50 million.

Regarding the historical transactions, we do not agree that additional work needs to be completed. FHFA clarified for the Enterprises in November 2011 that it considered these types of transactions settlement of claims. Prior to FHFA clarification, both Enterprises considered the transactions within their delegated authority, but each company continued to keep FHFA informed. Questions from the FHFA intra-agency working group arose, alerting OCO and ultimately resulting in FHFA's general counsel interpretation over-riding the Enterprises' interpretations.

FHFA, including OCO and other divisions within FHFA, have supporting documentation and analysis from Fannie Mae on the transactions that occurred prior to FHFA's clarification, have discussed the analysis with Fannie Mae, and determined that no further action is warranted by FHFA. FHFA has reviewed the models and the analysis supporting these transactions and does not disagree with the analysis or facts presented. FHFA believes the settlements were appropriate and in the best interest of Fannie Mae and the taxpayer. Documentation supporting that position has been provided to the OIG. Fannie Mae's models further demonstrate that commuting the policies has resulted in millions more than would have been received if the policies were not commuted. Given this, FHFA has determined it is not the best use of agency resources to more fully document decisions that cannot be reversed, especially since the decision process has since been changed.

4. Develop a methodology and process for conservator review of proposed mortgage pool policy commutations to ensure that there is a documented sound basis for any pool policy communications executed in the future.

OCO Response: Agree/Completed

On June 27, 2012, FHFA issued and communicated to the Enterprises a *Settlement Policy* and accompanying *Settlement Procedural Guide*. This document is applicable to mortgage insurance commutations over $50 million, following the November 2011 decision communicated by FHFA's Office of General Counsel. For commutations less than this amount, FHFA has determined that conservator approval is not required. The intra-agency working group's ongoing communication with the Enterprises regarding all mortgage insurance issues keeps FHFA apprised of transactions and alerts FHFA to changing circumstances.

5. Complete actions to establish a governance structure at Fannie Mae for obtaining conservator approval of counterparty risk limit increases.

OCO Response: Partially Agree

As a result of findings from supervisory examinations of business practices at the company, FHFA's conservatorship office is working with Fannie Mae to ensure the board has established risk limits, with FHFA approval, where required. Then, future changes to these board limits will be submitted to FHFA for approval. These changes in practice will also comport the process to the long-standing practices at Freddie Mac. Once Fannie Mae's governance processes surrounding the change are complete, FHFA will opine and consider the item closed.

While FHFA agrees that there was an absence of certain board-approved risk limits at Fannie Mae, we do not agree that a governance process for risk management did not exist or that FHFA or the board were not informed of risk exposures. If Fannie Mae had board limits similar to Freddie Mac's, there may have been up to a dozen or so risk limit changes requiring board and FHFA approval, not the 4,583 risk limit changes noted in the report.

While not germane to the recommendation, it is worth noting here that, for the period covered in the OIG report, risk limit decreases were greater than the increases, most increases were less than $10 million, and counterparty exposure was reduced significantly during this period.

6. Establish a clear timetable and deadlines for Enterprise submission of transactions to FHFA for conservatorship approval.

   OCO Response: Partially Agree

   FHFA believes that the current draft Conservatorship Decision Protocols, which establish control processes, including appropriate governance for the notification and submission of non-delegated items to FHFA, satisfies the intent of the OIG recommendation. FHFA agrees to finalize the protocols by December 31, 2012. FHFA does not believe that setting specific timelines and deadlines for Enterprise submission of transactions is necessary or that it would enhance the process of sound decision-making. The myriad of decisions and potential decisions that may be sent to FHFA, as conservator, do not fall neatly into one bucket. Rather, some business decisions must occur quickly; others require a more thorough notification and analysis process that can take months.

7. Develop criteria for conducting business case analyses and substantiating conservator decisions.

   OCO Response: Agree/Completed

   OCO has had in place "documentation protocols" since July 2010; these were last updated in April 2012. These protocols show that OCO shall maintain a copy of the "decision record" for conservatorship decisions, and supporting work papers if work is performed by OCO. Consistent with FHFA's general record-keeping requirements, the work of each FHFA office is the responsibility of that office to maintain.

   The pending draft Conservatorship Procedures document sets forth what other FHFA offices should send to OCO for recordkeeping. It also states "OCO will retain copies of all conservatorship determination and supporting materials, including approval documentation and recommendation memos, as appropriate." Also, the pending draft procedures have "guidance for recommendation memorandum" and also delineate individual office responsibilities. We have been following this practice for those items that require FHFA approval in advance of the draft procedures being finalized. We anticipate the procedures will be finalized by December 31, 2012.

8. Issue a directive to the Enterprises requiring them to notify FHFA of any deviation to any previously reviewed action so that FHFA may consider these changes and revisit its conservatorship decision.

OCO Response: Partially Agree

FHFA will incorporate within its draft Conservatorship Decision Protocols the requirement that material deviations to a previously reviewed action, or new information arising post-decision that would have materially affected the decision-making process, should be brought to FHFA's attention by the Enterprise.

During 2012 FHFA has developed a risk-based process to follow-up on conservatorship decisions, including a review of processes during the supervisory examination cycle. FHFA believes this recent enhancement satisfies the OIG objective and will prove more beneficial at finding and correcting issues, if they exist, than issuing a directive reliant on the Enterprises to convey non-compliance. Also, our supervisory standards have led each Enterprise to ensure that their compliance and/or audit functions oversee their company's fulfillment of all our conservatorship-directed actions.

9. Implement a risk-based examination plan to review the Enterprises' execution and adherence to conservatorship decisions.

DER Response: Agree

FHFA agrees that DER's supervisory evaluation of Enterprise risk management should continue to review the Enterprises' processes for tracking and executing directives issued by FHFA as conservator. As noted in the FHFA-OIG report, FHFA has done such reviews in connection with specific examinations.

DER will continue to perform examination work related to conservatorship directives and will have coverage of those issues in the supervisory planning process beginning with the 2012 exam cycle. To ensure that timely execution of directives is effectively reviewed, DER will need to regularly obtain a current, comprehensive list from OCO of outstanding and completed conservatorship directives. OCO is in the process of incorporating directives and other conservatorship decisions into the automated tracking system for ongoing access by other FHFA offices.

As the FHFA-OIG report notes, it is unclear whether the Enterprises routinely follow up on conservator directives to ensure implementation by appropriate business units and review by internal audit. Supervision work by DER will include not only a risk-based review of particular directives, but also a review of the policies, processes and controls in place at the Enterprises that govern compliance with directives issued pursuant to conservator authority. The Enterprises' processes should be comprehensive, consistent, well-documented, and reviewed by internal audit.

APPENDIX B

FHFA-OIG's Response to FHFA's Comments

On September 12, 2012, FHFA provided comments to a draft of this report. FHFA agreed with Recommendations 1, 2, 4, 7, and 9, and partially agreed with Recommendations 3, 5, 6, and 8. FHFA-OIG has attached FHFA's full response as Appendix A, and considered it where appropriate in finalizing this report. Appendix C provides a summary of the Agency's response to FHFA-OIG's recommendations and the status of agreed-to corrective actions.

FHFA-OIG considers FHFA's responses to Recommendations 1, 2, 4, 5, and 9 to be sufficient to resolve these recommendations, which will remain open until FHFA-OIG determines that agreed-to corrective actions are completed and responsive to the recommendations. Concerning Recommendation 5, although FHFA partially agrees with this recommendation, it disputes FHFA-OIG's assertion that a governance process for risk management did not exist and that FHFA and the board of directors were not informed of risk exposure increases. FHFA-OIG maintains its position that Fannie Mae's governance structure was not adequate in that it allowed risk limit increases to be executed without conservator approval. In fact, if an examination by DER had not identified the issue of a lack of board of directors and conservator approval for certain counterparty risk limit increases, this flaw in Fannie Mae's corporate governance structure may not have been noted, potentially allowing the Enterprise to continue to execute unapproved risk limit increases. Nonetheless, FHFA-OIG considers OCO's recent actions to establish and implement board level counterparty risk limits at Fannie Mae to be responsive to the recommendation.

Below, FHFA-OIG summarizes its evaluation of FHFA's comments to the four recommendations (i.e., Recommendations 3, 6, 7, and 8) for which FHFA-OIG concludes that the Agency's comments are not responsive and the recommendations unresolved. FHFA-OIG requests that FHFA reconsider its position on these four recommendations and provide additional comments within 30 days of this report.

Recommendation 3

Although FHFA partially agreed with this recommendation, it disagreed with FHFA-OIG that additional work was needed to validate Fannie Mae's mortgage insurance pool policy commutations. FHFA states that it has reviewed the Enterprise's models and its analysis supporting these transactions and does not disagree with Fannie Mae's analysis or facts presented. Despite FHFA's position, it has been unable to produce documentation to show that it has performed any level of analysis on these transactions beyond merely relying on data provided by Fannie Mae. Accordingly, FHFA-OIG maintains its position that FHFA should independently assess the methodology underlying the analysis and validate the results of this analysis for the historical transactions. Such analysis will also help FHFA identify any needed improvements in the evaluation of future mortgage insurance pool policy commutations.

Consequently, FHFA-OIG considers FHFA's comments to Recommendation 3 to be nonresponsive and the recommendation unresolved.

Recommendation 6

Although FHFA partially agreed with this recommendation, it does not believe that setting specific timelines and deadlines is necessary or enhances the process of sound decision-making. FHFA also indicates that the myriad of requests for decisions it receives may in some cases require a quick decision or an analysis process that can take months. Although FHFA-OIG appreciates the variety and breadth of requests that OCO receives from the Enterprises, FHFA-OIG believes that establishing overall timetables and deadlines will enable FHFA to evaluate appropriately Enterprise requests without being pressured to rely on Enterprise decision-making to approve requests at the last minute.

Consequently, FHFA-OIG considers FHFA's comments to Recommendation 6 to be nonresponsive and the recommendation unresolved.

Recommendation 7

Although FHFA agreed with this recommendation, its proposed actions to address the recommendation focus on the issue of maintaining copies of decision records and recordkeeping issues rather than developing criteria for conducting business case analyses. FHFA-OIG continues to believe that FHFA needs to develop criteria for conducting business case analyses and substantiating conservator decisions. Such criteria will help ensure that a common set of principles is applied to all conservatorship decisions and that adequate support exists to demonstrate that conservatorship decisions are sound.

Consequently, FHFA-OIG considers FHFA's comments to Recommendation 7 to be nonresponsive and the recommendation unresolved.

Recommendation 8

FHFA partially agreed with this recommendation and will require the Enterprises to bring material deviations to previously reviewed actions or new information arising post-decision that may affect the decision-making process to FHFA's attention through its draft Conservatorship Decision Protocols. Although inclusion of such language in the draft Conservatorship Decision Protocols is a positive step, FHFA-OIG maintains that the protocols are internal procedures governing FHFA's process for approving requests related to non-delegated actions. In FHFA-

OIG's view, procedures governing the Enterprises' reporting deviations from conservator decisions should be separately documented to emphasize the importance of the reporting requirement.

Consequently, FHFA-OIG considers FHFA's comments to Recommendation 8 to be nonresponsive and the recommendation unresolved.

APPENDIX C

Summary of Management's Comments on the Recommendations

This table presents FHFA's management response to FHFA-OIG's report and the recommendations' status when the report was issued.

Rec. No.	Corrective Action: Taken or Planned	Expected Completion Date	Monetary Benefits	Resolved[a] Yes or No	Open or Closed[b]
1.	FHFA agrees with the recommendation and has completed the reassessment of non-delegated authorities. The revised letters of instruction will be issued by December 31, 2012.	12/31/12	$0	Yes	Open
2.	FHFA agrees with the recommendation and has identified the assessment of the Enterprises' compliance with directives as one of its key areas of supervisory focus in the 2012 supervisory plan for both Enterprises. FHFA will consider this recommendation closed with the completion of the FY 2012 examination cycle.	5/30/2013	$0	Yes	Open
3.	FHFA partially agrees with this recommendation but does not agree that additional work should be completed to assess and validate Fannie Mae's analysis and underlying methodologies used to determine the settlement discounts for the seven mortgage insurance pool policy commutation transactions.	N/A	$0	No	Open
4.	FHFA agrees with this recommendation and issued a Settlement Policy and accompanying Settlement Procedural Guide on June 27, 2012. FHFA-OIG will evaluate this guide.	6/27/12	$0	Yes	Open
5.	FHFA partially agrees with this recommendation. OCO is working with Fannie Mae to ensure the board has established risk limits with FHFA approval where required.	12/31/2012	$0	Yes	Open

Rec. No.	Corrective Action: Taken or Planned	Expected Completion Date	Monetary Benefits	Resolved[a] Yes or No	Open or Closed[b]
6.	FHFA partially agrees with this recommendation and is going to finalize the Conservatorship Decision Protocols by December 31, 2012. However, FHFA does not believe that setting specific timelines and deadlines for Enterprise submission of approval requests is necessary or enhances the process of sound decision-making.	N/A	$0	No	Open
7.	Although FHFA agrees with this recommendation, its response does not address FHFA-OIG's recommendation to develop criteria for conducting business case analyses. Instead, FHFA's response addresses the issue of maintaining copies of decision records and recordkeeping issues.	N/A	$0	No	Open
8.	FHFA partially agrees with this recommendation and will incorporate within its Conservatorship Decision Protocols the requirement that material deviations to a previously reviewed action, or new information arising post-decision that would have materially affected the decision-making process, should be brought to FHFA's attention by the Enterprises. FHFA has also developed a risk-based process to follow up on conservatorship decisions in 2012 and believes that this will be more beneficial at finding and correcting issues than issuing a directive reliant on the Enterprises to convey non-compliance.	N/A	$0	No	Open
9.	FHFA agrees with this recommendation and confirmed that DER's supervisory evaluation of Enterprise risk management will continue to review and perform examination work relating to the Enterprises' processes for tracking and executing directives issued by FHFA as conservator.	5/30/2013	$0	Yes	Open

(a) Resolved means: (1) Management concurs with the recommendation and the planned, ongoing, or completed corrective action is consistent with the recommendation; (2) Management does not concur with the recommendation, but alternative action meets the intent of the recommendation; or (3) Management agrees to the FHFA-OIG monetary benefits, a different amount, or no ($0) amount. Monetary benefits are considered resolved as long as management provides an amount.

(b) Once FHFA-OIG determines that the agreed-upon corrective actions have been completed and are responsive to the recommendations, the recommendations can be closed.

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