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# FEDERAL HOUSING FINANCE AGENCY



## STATEMENT

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### **Federal Housing Finance Agency Statement on Recent Lawsuits Filed**

Upon review of media coverage of the lawsuits FHFA filed on Friday, September 2, FHFA is providing this statement to clarify certain matters pertaining to these suits and to provide a fuller statement of purpose for these filings.

FHFA has a statutory responsibility as conservator of Fannie Mae and Freddie Mac (the Enterprises) to “take such action as may be necessary to put the regulated entity in a sound and solvent condition and appropriate to carry on the business of the regulated entity and preserve and conserve the assets and property of the regulated entity (12 USC 4617(b)(2)(B).” As FHFA has noted on numerous occasions, with taxpayers providing the capital supporting the Enterprises’ operations, this “preserve and conserve” mandate directs us to minimize losses on behalf of taxpayers.

FHFA’s news release announcing the 17 suits described the purpose of these filings in the following way:

“As conservator of Fannie Mae and Freddie Mac, FHFA is charged with preserving and conserving these companies’ assets and does so on behalf of taxpayers. The complaints filed today reflect FHFA’s conclusion that some portion of the losses that Fannie Mae and Freddie Mac incurred on private-label mortgage-backed securities (PLS) are attributable to misrepresentations and other improper actions by the firms and individuals named in these filings. Based on our review, FHFA alleges that the loans had different and more risky characteristics than the descriptions contained in the marketing and sales materials provided to the Enterprises for those securities.

“FHFA filed the complaints under the broad authority granted to it by the Housing and Economic Recovery Act of 2008. The U.S. legal system provides for addressing such alleged misrepresentations through the nation’s securities laws and traditional common law. FHFA is following those legal remedies in filing these complaints and seeks to recover on losses to the Enterprises that are the legal responsibilities of others.”

In the several years prior to conservatorship, each Enterprise bought hundreds of billions of dollars in PLS packaged and sold by large financial institutions. To be clear, Fannie Mae and Freddie Mac were investors in these PLS, not the originators of those securities.

The mortgages backing the PLS sold to the Enterprises were often a part of a larger pool of mortgages and the securities sold to the Enterprises were often customized for their purchase

because of the conforming loan requirements of their charters. Like other PLS investors, the Enterprises did not have access to the loans underlying these securities and each Enterprise ultimately relied upon the security issuer to accurately describe the mortgages backing the security in the marketing and sales materials, as required under federal securities laws.

At the heart of the suits is FHFA's conclusion that the actual mortgages backing many of the securities had characteristics that differed in a material way from what had been represented in securities filings. Under the securities laws at issue here, it does not matter how "big" or "sophisticated" a security purchaser is, the seller has a legal responsibility to accurately represent the characteristics of the loans backing the securities being sold.

The nation's financial system cannot function if sellers of securities fail to fulfill this legal responsibility. Our laws provide legal remedies through challenges such as the ones FHFA has brought. FHFA has consistently made clear its intention to seek recoveries on losses that are the legal responsibility of others and FHFA has sought remedies short of filing formal legal complaints. Now, however, FHFA has taken this action to carry out its legal responsibility as conservator. Any recoveries resulting from these efforts will reduce taxpayers' ultimate losses from the Enterprises' financial difficulties.

Another important clarification regarding these suits is in order. FHFA has not filed suit against every issuer, nor on every PLS purchased by the Enterprises. FHFA has filed suit where it believes it has evidence of violations substantial enough to warrant such remedies. FHFA seeks recoveries for losses associated with securities laws violations and other improper actions set forth in the complaints. **Actual recoveries will be determined based on filings by the parties, evidence and judicial findings.** At this time, it would be premature and potentially misleading to estimate the size of any potential recoveries. However, press reports that FHFA is seeking nearly \$200 billion in damages or recoveries are excessive; such numbers reflect the original amount of such securities purchased, not the losses incurred or the potential recoveries at the end of this process. In particular, use of original unpaid principal balance as a measure of potential recoveries is incorrect as it does not equate with the losses incurred and it does not reflect the repayments of principal that have already occurred or the remaining value of the securities.

Some have claimed that these suits will disrupt economic recovery, or endanger the targeted banks, or increase their cost of capital. While everyone is concerned with these important issues, the long-term stability and resilience of the nation's financial system depends on investors being able to trust that the securities sold in this country adhere to applicable laws. We cannot overlook compliance with such requirements during periods of economic difficulty as they form the foundation for our nation's financial system. Therefore, through these lawsuits, FHFA turns to the courts to adjudicate the violations that it has alleged in its complaints.

Finally, these suits are unrelated to the ongoing investigations by the state attorneys general. While FHFA cannot speak for the attorneys general, the focus of their efforts has been the alleged failures of mortgage servicers to follow state law, particularly as it related to foreclosure processing. While those investigations cover servicing of loans that may be in the securities identified in FHFA suits, these are quite different matters. FHFA is pursuing claims pertaining to the disclosures in securities filings whereas the attorneys general are focused on foreclosure processing of delinquent mortgages. Each is a valid but separate concern, leading to separate and distinct claims for recompense.

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*The Federal Housing Finance Agency regulates Fannie Mae, Freddie Mac and the 12 Federal Home Loan Banks. These government-sponsored enterprises provide more than \$5.7 trillion in funding for the U.S. mortgage markets and financial institutions.*