

Senior Preferred Stock Purchase Agreement: the FHFA and Treasury

Daniel Thompson¹

October 20, 2017

Abstract

Two Government Sponsored Enterprises (GSE)s, the Federal National Mortgage Association (Fannie Mae) and The Federal Home Loan Mortgage Corporation (Freddie Mac), dominated the secondary mortgage market during the U.S. housing crisis, holding or assuring over \$5 trillion combined. As the crisis escalated in the last two quarters of 2007, these two GSEs began to report billion-dollar losses. Given their size and importance in the secondary mortgage market, Fannie Mae and Freddie Mac's potential insolvencies threatened to destabilize the entire financial system. On July 30, 2008 the government passed the Housing and Economic Recovery Act (HERA), which created a new regulator, the Federal Housing Finance Agency (FHFA), and provided Treasury with emergency powers to rescue the GSEs. On September 7, 2008, the FHFA and Treasury entered into an indefinite Senior Preferred Stock Purchase Agreement (SPSPA). The SPSPA marked one part of a four-part government intervention to stabilize the GSEs and maintain their solvency. The SPSPA has been amended three times, which has placed additional restrictions and obligations on the GSEs. The 3rd amendment (2012) altered the SPSPA's dividend formula, sweeping their net income to Treasury. As of this case's publication, the SPSPA's are still in effect and Fannie Mae and Freddie Mac remain in conservatorship. This case, which evaluates the purpose and efficacy of the SPSPA, finds that the agreement accomplished its emergency goal of maintaining a positive net worth for both GSEs. However, the agreement's variable dividend formula, which was implemented in 2013, has been debated by academics and challenged by shareholders.

Keywords: GSEs, Senior Preferred Stock Agreement, Secondary Mortgage Market, Fannie Mae, Freddie Mac, FHFA, Treasury, Liquidity, Housing Crisis

¹ Research Associate, New Bagehot Project. Yale Program on Financial Stability. daniel.thompson@yale.edu

Treasury Senior Preferred Stock Purchase Agreement (SPSPA)

At a Glance

Concurrent with the housing market's collapse, the Federal National Mortgage Association (Fannie Mae) and The Federal Home Loan Mortgage Corporation (Freddie Mac) posted annual losses of \$2.1 billion (Fannie Mae's first loss since 1985) and \$3.1 billion (Freddie Mac's first loss ever) in 2007. Given their importance in the secondary mortgage market, the potential insolvency of either of the GSEs threatened to destabilize the entire housing market and further threatened the financial system.

On July 30, 2008 the government passed the Housing and Economic Recovery Act (HERA), which created a new GSE regulator, the Federal Housing Finance Agency (FHFA), and provided Treasury with emergency powers to bail out the GSEs. The FHFA and Treasury enacted the Senior Preferred Stock Purchase Agreement (SPSPA) on September 7, 2008—which was the second component in a four-part rescue plan to stabilize the GSEs.

The government implemented this four-part intervention to stabilize the GSEs and allow them to continue supplying the secondary mortgage market. The primary mission of the SPSPA was to ensure that Fannie Mae and Freddie Mac maintained a positive net worth. As conservator of the GSEs, the FHFA requested draws from Treasury to offset any losses in a quarter. In return, Treasury purchased \$1 billion in GSE Senior Preferred Stock (superior to all other stock) along with a warrant to purchase up to 79.9% of the GSEs' common stock. Draws provided by the Treasury increased the liquidation preference, which was required to be paid down in certain circumstances.

The SPSPA obligated the GSEs to pay a quarterly dividend fee, calculated using 10% (or 12%) of the stock's liquidation preference, effective immediately. The GSEs were also mandated to pay a periodic commitment fee, but Treasury waived and then later suspended this fee. The SPSPA also established limits for the GSEs' debt and portfolios. The SPSPA was amended three times. The 1st and 2nd amendments adjusted the GSEs' debt and portfolio limits. The 3rd amendment (08/17/2012) changed dividend payments from 10% to a net sweep of GSE profits. The 3rd amendment also mandated that the GSEs decrease their capital reserves by \$600 million each year, beginning with \$3 billion in 2013, until they reach zero in 2018. As of this case's publication, the SPSPA is still in effect. The GSEs have not requested a draw from Treasury since 1st quarter 2012 but continue to pay dividends under the new dividend formula.

Summary of Key Terms	
Purpose:	To maintain a positive net worth for the housing GSEs and to allow them to continue supplying the secondary mortgage market.
Announcement Date	September 7, 2008
Operational Date	September 7, 2008
Expiration Date	Indefinite (Not announced)
Amendments	May 6, 2009 December 24, 2009 August 17, 2012
Legal Authority	HERA §1117
Peak Utilization (Draws)	Fannie Mae- \$19 billion (1st quarter 2009) Freddie Mac- \$30.6 billion (4th quarter 2008)
Cumulative Utilization (Draws)	Fannie Mae- \$116.1 billion Freddie Mac- \$71.3 billion
Aggregate Dividends Paid (as of 3rd quarter 2017)	\$275.89 billion
Participants	U.S. Department of the Treasury (as Financier) The Federal Housing Finance Agency (FHFA; as GSE conservator)

Summary Evaluation

The SPSPA was essential to maintaining the GSEs' positive net worth throughout the crisis. Despite this success, the variable dividend formula in the 3rd amendment has generated controversy within the academic community and has led shareholders to file lawsuits.

Contents

I. Overview	1
II. Key Design Decisions	10
1. The passage of the Housing and Economic Recovery Act (HERA) on July 30, 2008 provided the legal authority to establish the SPSPA	10
2. The SPSPA enabled Treasury to continue to fund the GSEs after December 31, 2009. 10	
3. Treasury capped the GSEs’ portfolios to \$850 billion (later increased to \$900 billion) and mandated gradual portfolio reduction.....	11
4. The SPSPA capped the GSEs’ debt at 110% of their pre-crisis debt, then raised the debt limit to 120% of their portfolios, mandating a gradual reduction to begin in 2010. 11	
5. In addition to the caps on debt and portfolios, the SPSPA required the GSEs to abide by certain covenants restricting their operations.....	12
6. The SPSPA included a periodic commitment fee (PCFee) but Treasury waived it and never collected it.	12
7. The 3 rd amendment, which was entered into on August 17, 2012, switched dividend payments from a fixed rate to a variable rate	12
8. While 3 rd Amendment required a reduction in the GSEs’ capital reserves to zero, the December letter agreement raised the capital reserves to \$3 billion for an indefinite period of time.	13
9. Treasury received a warrant to purchase up to 79.9% of GSE stock at any point during the warrant’s twenty-year lifetime.....	13
10. Treasury and the FHFA operated the SPSPA with transparency to assure GSE bondholders, the market, and American taxpayers.....	14
III. Evaluation	14
IV. References	15
V. Key Program Documents	18
VI. Appendix	23

I. Overview

Background

Through 2007 and 2008, as the housing market experienced an unprecedented correction, two Government Sponsored Enterprises (GSE)s, the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), continued to buy and guarantee loans, which provided the secondary mortgage market with much needed liquidity. The GSEs' continued purchases increased their share of mortgage originations to 75% by the 4th quarter of 2007. That year, the GSEs' less liquid assets, particularly their subprime and nonprime loans, resulted in an annual net loss of \$2.1 billion for Fannie Mae (first since 1985) and \$3.1 billion for Freddie Mac (first ever) (Congressional Report 04/15/2009). The contracting mortgage market and the GSEs' recognized instability also made it difficult for the two companies to raise capital (FCIC 2011).

By September 2008, when the government intervened, the GSEs' outstanding guaranteed mortgage-backed securities (MBS) and debt totaled over \$5 trillion (FCIC 2011). Recognizing Fannie Mae and Freddie Mac's importance to the contracted mortgage market, federal officials aimed to preserve GSE operations, particularly since many investors believed that the GSEs were backed by an implicit guarantee from the federal government (FCIC 2011). Officials understood that the GSEs' insolvency would have geo-economic repercussions, since foreign institutions (mostly central banks) held \$1 trillion in GSE debt and MBS (Paulson 2010).

Fannie Mae and Freddie Mac's worsening health increased decades-old concerns that their regulator, OFHEO and the Housing and Urban Development (HUD), might not be able to properly stabilize the GSEs, even after adjusting portfolio caps and capital surplus requirements (FCIC 2011). Congress passed the Housing and Economic Recovery Act (HERA) on July 30, 2008, which created a new GSE regulator, the Federal Housing Finance Agency (FHFA), and enabled it to take control of Fannie Mae and Freddie Mac, if necessary (HERA). Section 1117 of the bill gave Treasury emergency powers, expiring on December 31, 2009, to "purchase any obligations and other securities issued by [Fannie Mae and Freddie Mac]" (HERA). Treasury Secretary Paulson hoped that the government commitment to preserve the GSEs could keep both companies in operation (FCIC 2011).

Program Description

On September 6, 2008, the FHFA took the GSEs under conservatorship as part of a four-part program designed to stabilize Fannie Mae and Freddie Mac.² The Senior Preferred Stock Purchase Agreements (SPSPA) were entered into the next day. While Fannie Mae and Freddie Mac each signed a separate agreement with Treasury (with the FHFA acting on behalf of the GSEs as conservator), the agreements were substantially the same and so we discuss them as one herein. The SPSPA was established pursuant to Treasury's authority under HERA (Thompson 2017).

Figure 1: SPSPAs Key Program Features Timeline

Compiled by Daniel Thompson

Date	Name	GSEs	Treasury ¹
09/07/2008, 09/26/2008	Warrant & Amended and Restated SPSPA	<p>Draws: Quarterly draws count against commitment and increase liquidation preference of senior preferred stock</p> <p>Dividends: Pay 10% on senior preferred stock Liquidation Preference (quarterly)</p> <p>Commitment fee: To begin 2010</p> <p>Portfolio Limitation: Capped at \$850 billion with 10% reductions annually (to begin 2010)</p> <p>Debt Limitations: 110% of GSE debt in June 30, 2008</p>	<p>Stock received: 1 million shares of senior preferred stock purchased for \$1,000 (aggregate \$1 billion)</p> <p>Warrant received: Warrant to purchase 79.9% of Common Stock for a nominal price (original exercise price of \$0.0001)</p> <p>Commitment: \$100 billion</p>
05/06/2009	1 st Amendment	<p>Portfolio limitation: Raised to \$900 billion with 10% reductions annually (to begin 2010)</p> <p>Debt Limitation: 120% of current portfolio</p>	Commitment: \$200 billion
12/24/2009	2 nd Amendment		Commitment: Unlimited for 2010, 2011, 2012; return to \$200 billion commitment in 2013
08/17/2012	3 rd Amendment	<p>Dividend: Variable; all net income less capital reserves to Treasury</p> <p>Commitment fee: Suspended</p> <p>Portfolio: 15% reductions annually (not below \$250 billion)</p> <p>Capital reserves: Capped at \$3 billion (2013); decreased annually by \$600M until reaching zero</p>	

Note: If the above topics were not amended, assume that they remained unchanged

¹ For each GSE

² See Thompson and Wiggins 2017 for more discussion of the conservatorship. See also Vergara 2017 for discussion of the Credit Facility and Zanger-Tishler and Wiggins 2017 for discussion of the GSE Purchase Program, the other components of the rescue plan.

Under the SPSPA, the GSEs agreed to sell certain Senior Preferred Stock (SPS) and a warrant to Treasury in exchange for Treasury's commitment (the Commitment) to provide funds to the GSE from time to time in amounts needed to offset any losses that it incurred, originally up to \$100 billion for each GSE. If the FHFA concluded that a GSE's net worth was less than zero, it requested a draw from Treasury equal to the GSE's net deficit. Specifically, each quarter the GSE could request the amount by which (a) its total liabilities exceeded (b) its total assets (excluding the Commitment and any unfunded amounts thereof), as reflected on the balance sheet of the GSE and prepared in accordance with GAAP (the Deficient Amount) (Stock Agreement). Treasury would pay the Deficient Amount within sixty days of such request if the amount requested and all previous draws did not equal or exceed the Maximum Amount. If the Deficient Amount and previous draw exceeded the Maximum Amount, Treasury was obligated to provide such lesser amount that was available. The Liquidation Preference of the SPS automatically increased by the amount of any draws from Treasury to the GSE (Ibid).

The FHFA was given three different timing windows to request a draw. The FHFA could request a draw every quarter (Certificate). The FHFA could request an immediate draw if it decided to take the GSEs into receivership. The FHFA could request an immediate draw if it decided to liquidate the firms. In this case, the FHFA would calculate the draw based on the GSEs' liquidation date balance sheet (Ibid). The draws allowed the GSEs to maintain a positive net worth every calendar quarter, allowing them to fulfill senior and subordinated debt obligations and to guarantee their MBS during the crisis (MMN 10-1).

In exchange for its funding commitment pursuant to the SPSPA (as an Initial Commitment Fee), each GSE sold to Treasury (a) one million shares of SPS with an initial liquidation preference of \$1,000 per share (\$1 billion liquidation preference in aggregate) and (b) a warrant to purchase common stock representing 79.9 % of the common stock of the GSE on a fully-diluted basis for \$0.0001 per share. The GSEs also agreed to adhere to (c) additional obligations and restrictions set by Treasury (Stock Agreement).

(a) Senior Preferred Stock. The GSEs set the SPS senior to all other stock and private equity, but junior to preferred and subordinate debt (Frame et al. 2015). **The SPS was perpetual and thus had no specified date of maturity (Jester et al. 2018).** Per Treasury's initial purchase, the Liquidation Preference of SPS was set to \$1,000 per share (Certificate). As discussed herein and noted in Figure 2, three factors could increase the value of the Liquidation Preference: draws from Treasury, failure to pay previous dividends, and failure to pay a commitment fee. Drawing from Treasury increased the aggregate Liquidation Preference by the total value of the draw and constituted the main source of increases over time. Failing to pay previous dividend payments increased aggregate Liquidation Preference by the unpaid dividend amount. Failing to pay a commitment fee resulted in the same outcome, however, Treasury never requested a commitment fee. The GSEs could pay down the liquidation preference, but not below the initial value of \$1,000 per share (Ibid). As of July 2017, Fannie Mae's liquidation preference was valued at \$117.1 billion and Freddie Mac's was valued at \$72.3 billion (8-K GSEs 08/2017).

Figure 2: Fees and Accumulations under the SPSA (\$B)

	Fannie Mae	Freddie Mac
Unpaid Dividends	0	0
Unpaid PCFees	-	-
Cumulative Draws	\$116.1 ¹	\$71.3 ¹
Original Aggregate Liquidation Preference	\$1	\$1
Total Aggregate Liquidation Preference	\$117.1	\$72.3
	\$189.4	

Sources: Certificate, 8-K GSEs 08/2017

¹As of 3rd quarter 2017

The SPS was to pay a quarterly dividend in arrears based on the dividend rate multiplied by the then liquidation preference. The standard dividend rate was 10%. If the GSE failed to pay a dividend on time (i) the unpaid dividend would be added to and increase the liquidation preference, and (ii) the dividend rate would rise to 12% and remain at that increased rate until the GSE paid all cumulative but unpaid dividends (including dividends added to the liquidation preference) (Certificate). With respect to dividends and distributions upon dissolution, liquidation or winding up, the SPS ranked prior the GSE's common stock, all other outstanding preferred stock, and all other capital stock to be issued.

The GSEs also were required to pay a periodic commitment fee (PCFee), accruing from January 1, 2010 and payable quarterly beginning March 31, 2010, to compensate Treasury for its ongoing commitment under the SPSA after December 31, 2009 (Stock Purchase). The FHFA and Treasury—in consultation with the Fed—decided the amount of the PCFee, which would be applicable for a five-year period (and reset every five years) (Ibid). Treasury could in its discretion waive the PCFee at the beginning of year based on adverse conditions in the mortgage market (Ibid). The GSE could at its discretion chose not to pay the PCFee but have it added to the aggregate liquidation preference (Ibid). Treasury, however, waived the commitment fee for each quarter beginning in March 2010 until it suspended the fee in the 3rd amendment. Since Treasury never collected a commitment fee, the dividend constituted the GSEs' sole cash transfer to Treasury. The quarterly dividend payments began to accrue September 8, 2008, the day after the enactment of the SPSA (Certificate).

(b) The Warrant. In addition to the purchase of the SPS, Treasury also immediately purchased from each firm a warrant to purchase up to 79.9% of the firms' common stock. The warrant had a twenty-year term with an initial exercise price of \$0.00001 per share

(Warrant). If the market price for a single share was greater than the exercise price at the time of exercise, then the FHFA would issue stock according to the formula: $X = \frac{Y(A-B)}{A}$ where X was the number of shares issued; Y the number of shares that Treasury could purchase; A the market price of one share of common stock; B the exercise price (Ibid). As of this case's writing, Treasury has not exercised the warrant option.

(c) Additional Guidelines and Restrictions. The SPSPA required the GSEs and the FHFA to adhere to additional operational guidelines and restrictions, most importantly portfolio and debt limits. The SPSPA set the GSE portfolio cap at \$850 billion, which required a 10% annual reduction that began in 2010. However, the GSEs did not have to reduce their portfolio below \$250 billion. The GSEs could not increase their debt levels to more than 110% of their debt on June 30, 2008, which was \$859.9 billion for Fannie Mae and \$956.5 billion for Freddie Mac (Fannie Mae Monthly Summary 12/2008 and 8-K Freddie Mac 1/23/2009).

Without Treasury's approval, the FHFA could not end the conservatorship, unless it moved the GSEs into receivership (Certificate). In addition to debt and portfolio limits, the SPSPA required the GSEs to seek Treasury approval to: issue or purchase stock, pay any dividends (apart from those owed to Treasury), alter executive compensation, enter into new contracts, consolidate or merge with another company. Without Treasury's approval, the GSEs could not sell, convey, or transfer any assets, except for dispositions for fair-market value:

- 1) To a limited-life regulated entity;
- 2) "In the ordinary course of business, consistent with past practice;"
- 3) During a liquidation of the GSE;
- 4) Of cash (or equivalent) for cash (or equivalent); or
- 5) To stay within the debt limit (Stock Purchase)

The 1st Amendment. On May 6, 2009, in response to changes in the market, Treasury and the FHFA amended the SPSPA, raising Treasury's Commitment (and thus the Maximum Amount) from \$100 billion to \$200 billion per GSE (1st Amendment). Treasury and the FHFA raised the GSEs' portfolio cap from \$850 billion to \$900 billion and derived the 10% reductions (to begin in 2010) from the \$900 billion cap (e.g. the cap would be \$810 billion by end year 2010) (MMN 10-1). The amendment also raised the GSEs' debt ceiling to \$1,080 billion in aggregate par value debt (Ibid). The \$1,080 debt cap was based on 120% of \$900 billion, the GSEs' new portfolio cap. The debt cap decreased by 10% annually beginning in 2010, since its maximum value was calculated using 120% of the GSEs' portfolio cap (Ibid).

The 2nd Amendment. The FHFA and Treasury amended the SPSPA again on December 24, 2009, just as the MBS purchase program and credit facility were expiring. The December amendment increased Treasury's commitment to \$200 billion plus any draws during 2010, 2011, and 2012, less any surplus amount that existed on December 31, 2012 (if a surplus existed). In other words, Treasury would not count draws requested in 2010, 2011, and

2012 as part of its \$200 billion commitment, effectively providing the GSEs with unlimited draws during these years (2nd Amendment).

The 3rd Amendment. The 3rd and most recent amendment was entered into on August 17, 2012 (effective as of January 1, 2013), and increased the GSEs' portfolio cap reduction from 10% to 15% per year, but not below \$250 billion (3rd Amendment). The amendment also capped the GSEs' capital reserves at \$3 billion (2013) and required reductions of \$600 million annually until they reach zero by January 2018. At that point, the GSEs would depend on Treasury funds to cover their losses (Ibid). The 3rd amendment required Fannie Mae and Freddie Mac to submit an annual risk management plan to Treasury, including a detailed explanation of how each company planned to reduce its operations and curb taxpayer losses. The 3rd amendment added a sixth exception to the GSE asset transfers (see previous page for the original five), allowing the GSEs to dispose of any assets that were valued at \$250 million or less without Treasury's approval (Ibid).

The 3rd amendment also altered the SPSPA's dividend structure, replacing the 10% (or 12%) fixed dividend rate with a variable dividend rate (3rd Amendment). This policy was enacted to protect the taxpayer and was also part of a broader initiative of the then administration to wind down GSE operations (Thompson and Wiggins 2017). From January 1, 2013, until December 31, 2017, for any quarter, the variable dividend rate included the net worth amount from the previous quarter (if positive), less the maximum allowed capital reserve amount. Fannie Mae and Freddie Mac would not pay a dividend if their net worth fell below the capital threshold. From January 1, 2018, onward the dividend rate would consist of the net worth amount, as the capital reserve amount would be zero (3rd Amendment). In practice, the variable dividend rate and other terms adopted in the amendment amounted to a quarterly net sweep of any GSE profits to Treasury.

December 2017 letter agreement. Treasury sent the FHFA a letter agreement on December 21, 2017, which proposed a change to the capital reserve amount. The letter agreement raised the maximum capital reserve amount from zero to \$3 billion, beginning in January 2018. Per the 3rd amendment, the dividend payment would consist of any positive net worth less \$3 billion, or the applicable capital reserve amount. The letter also mandated that \$3 billion be added to the liquidation preference of the GSEs' SPS (Letter Agreement). Treasury also asserted that the \$3 billion capital buffer depended on the GSEs' ability to continue paying dividends. According to a press release by Treasury, "any failure by Fannie Mae or Freddie Mac to declare and pay a full quarterly dividend will result in the automatic, immediate termination of its capital buffer" (Treasury PR 12/21/2017).

Commenting on the letter agreement, the FHFA director argued that:

While it is apparent that a draw will be necessary for each Enterprise if tax legislation results in a reduction to the corporate tax rate, FHFA considers the \$3 billion capital reserve sufficient to cover other fluctuations in income in the normal course of each Enterprise's business. We, therefore, contemplate that going forward Enterprise dividends will be declared and paid beyond the \$3 billion capital reserve in the absence of exigent circumstances (FHFA PR 12/21/2017).

Termination of commitment. Treasury and the FHFA could terminate the SPSPA for three reasons. First, if the liquidation end date occurred and Treasury had supplied all the requested funds for the liquidation end date. Second, if the GSE repaid, defeased, or completed by another provision its mortgage guarantee obligations and debts. Third, if Treasury injected the full amount of its commitment into the GSEs (Stock Purchase). The status of the FHFA’s conservatorship would not affect the SPSPA, and the SPSPA would continue even if the FHFA placed the GSEs into a receivership or “any other insolvency proceeding” (Ibid).

Figure 3: Repayment Priority following termination of Treasury’s commitment

	Repayment Priority
Unpaid Dividends	1
Unpaid PCFees	2
Cumulative Draws	3
Original Aggregate Liquidation Preference	4

Sources: Certificate

A GSE could pay down the liquidation preference in whole or in part, but only in cash. As shown in Figure 3, any such pay down would be first applied to offset any unpaid dividends, and then any unpaid PCFees, that had been added to the liquidation preference. The GSE was required to pay down the liquidation preference (in the stated order) if it issued any shares of capital stock in exchange for cash while the SPS was outstanding. However, if the Commitment had not yet terminated, the liquidation preference could not be paid down below the initial \$1 billion (Ibid). If the GSE paid down the liquidation preference to zero after termination of the Commitment, the SPS would be deemed to have been redeemed and no longer outstanding. As of this case’s publication, however, the GSEs remain in conservatorship, the SPS remains outstanding, and the SPSPA’s are still in effect.

Outcomes

Following the conservatorship announcement on September 7, 2008, market demand for GSE debt seemed to increase (FOMC Minutes 09/16/2008). However, the GSEs’ common stock fell to about \$1 (from approximately \$60 per share the previous year). Preferred shares did not fare much better (Frame et al. 2015). In addition to the issuance of senior preferred stock to Treasury, the FHFA’s decision to freeze private equity likely contributed to the downturn in stock prices (FHFA Statement).

Mortgage yields also fell for a brief period. The Monday (09/08) following the intervention, the rate on Fannie Mae’s five-year debt and its mortgage backed securities (MBS) dropped about 30 and 50 basis points respectively (using five-year Treasury bond yields as the

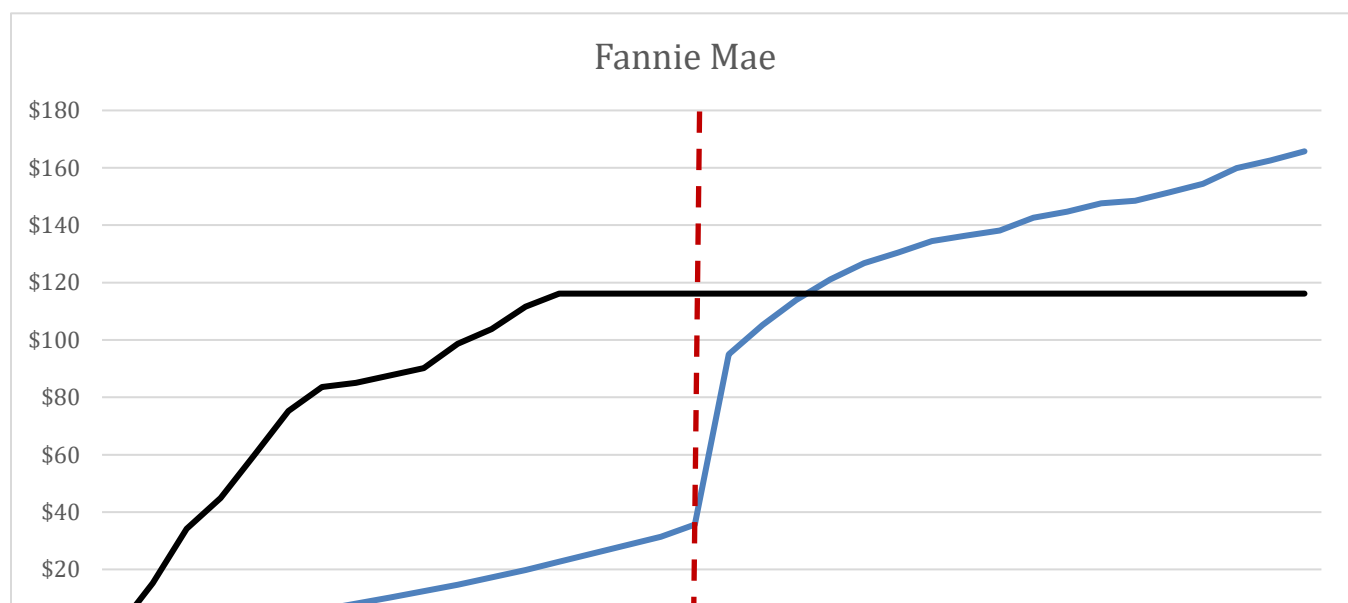
spread). More broadly, mortgage rates fell by 50 basis points. Following Lehman Brothers' collapse on September 15, however, mortgage rates rose and quickly exceeded levels that Fannie Mae and Freddie Mac had experienced prior to the conservatorship (Frame et al. 2015).

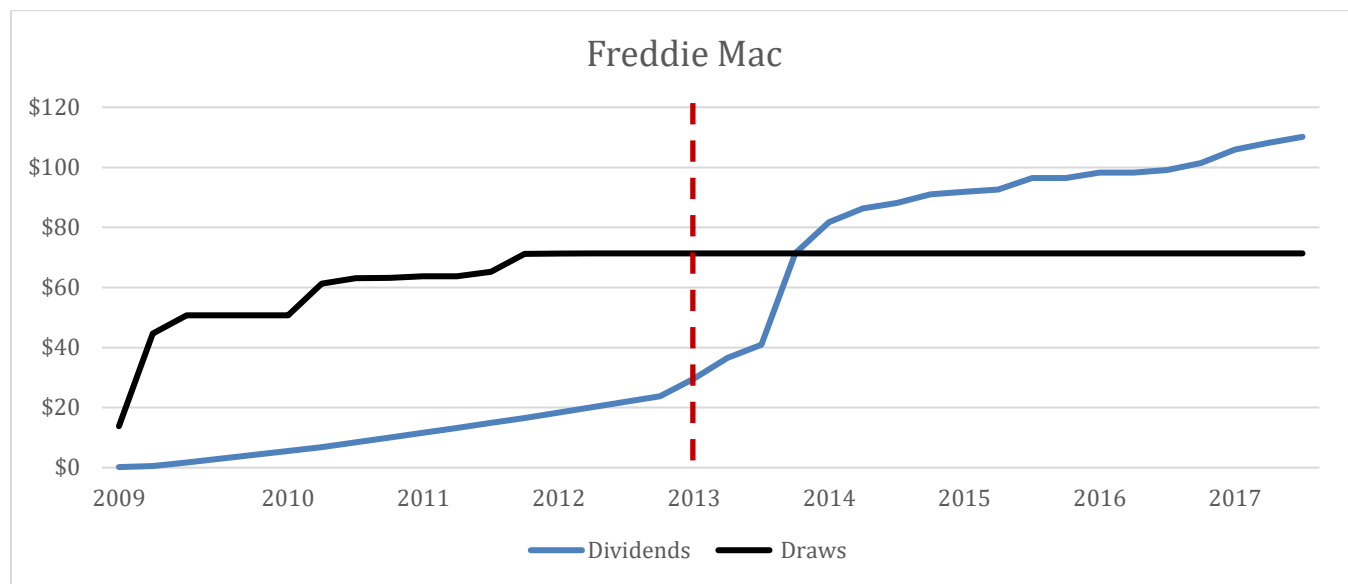
From 2008 to 2012 Fannie Mae drew an aggregate \$116.15 billion under the SPSPA, while Freddie Mac drew an aggregate \$71.34 billion, requesting only quarterly draws. The largest draws occurred during the first year of the conservatorship. Fannie Mae drew a peak sum of \$19 billion in 1st quarter 2009, while Freddie Mac drew a peak sum of \$30.8 billion in 4th quarter 2009. The GSEs have not requested a draw since 1st quarter 2012 (see Appendix A). After Treasury expanded its funding cap in December 2009, Fannie Mae had \$124.8 billion and Freddie Mac \$149.3 billion in commitment available from Treasury, which amount remains available as of this case's publication (despite draws received in 2010-2012) due to the nature of the adjusted formula for accounting for draws adopted with the 2nd amendment (Appendix A).

Treasury and the FHFA passed the 3rd amendment under more stabilized conditions for the housing market and for the GSEs. In 2012, Fannie Mae and Freddie Mac posted annual profits (after paying dividends to Treasury) for the first time since 2007. When the GSE's became profitable in 2012, they reevaluated their deferred tax assets, which only increased profits further. Tax reevaluation enabled the GSEs to realize record-breaking profits in 2013, with Fannie Mae realizing \$58.7 billion in 1st quarter and Freddie Mac netting \$30.4 billion in 3rd quarter (Frame et al. 2015).

From 2008 to 2012, Fannie Mae and Freddie Mac paid an aggregate \$23.75 and \$31.43 billion in dividends, respectively (see Appendix B). From 1st quarter 2013 to 3rd quarter 2017, Fannie Mae and Freddie Mac paid \$86.39 billion and \$134.31 billion in dividends, respectively (see Appendix B). As of 3rd quarter 2017, Fannie Mae and Freddie Mac have paid an aggregate \$276.8 billion to Treasury dividends and have received \$187.5 billion in draws, which have increased the combined liquidation preference to \$189.5 billion (8-K GSEs 08/2017). As of July 2017, Fannie Mae's liquidation preference was valued at \$117.1 billion and Freddie Mac's liquidation preference was valued at \$71.3 billion, for an aggregate \$189.4 billion (Ibid).

Figures 4 and 5: Fannie Mae and Freddie Mac Aggregate Dividends and Draws (\$B)





Source: Appendix A and B
 Created by Daniel Thompson

Notes:

- 1) Timeline: from September 2008 until September 2017
- 2) Red denotes enactment of new variable dividend formula

The GSEs never exceeded their established portfolio caps or debt ceilings. Fannie Mae’s peak portfolio was \$817.8 billion in June 2010 (Fannie Mae Monthly Summary 12/2010). Freddie Mac’s peak portfolio was \$867.1 billion in March 2009 (SEC 8-k Freddie Mac 12/23/2009). Fannie Mae came closest to the debt ceiling in November 2008, with \$885.6 billion (Fannie Mae Monthly Summary 12/2008). Freddie Mac held a peak debt of \$932.4 billion in March 2009 (SEC 8-k Freddie Mac 12/23/2009). Per the 3rd amendment, capital reserves have been decreasing by \$600 billion on schedule, and are expected reach zero in January 2018 (Treasury Report 01/12/2017).

Treasury sent the FHFA a letter agreement on December 21, 2017, which raised the maximum capital reserve amount from zero to \$3 billion indefinitely, beginning in January 2018 (Letter Agreement). The effect of the letter agreement sent December 2017 from Treasury to the FHFA remains unclear as of this case’s writing. Since the beginning of the conservatorship and the SPSPA, many individuals and entities, mainly shareholders, have

sought damages from the FHFA. Several of these cases are still unresolved (Davidoff Solomon and Zaring 2015). The conservatorship and the SPSPA are still in effect.

II. Key Design Decisions

1. The passage of the Housing and Economic Recovery Act (HERA) on July 30, 2008 provided the legal authority to establish the SPSPA.

The government passed HERA to enhance resolution and funding alternatives with respect to the GSEs' in light of their severely weakened condition, their critical role in the stability of the mortgage and housing markets, and the stresses then impacting those markets. Prior to HERA, OFHEO (the former GSE regulator) had no viable way to fund a conservatorship intervention, which rendered its conservatorship authority ineffective. HERA created a new regulator, the FHFA, and provided it with expanded authority over the GSEs. The new law also allowed Treasury to fund Fannie Mae and Freddie Mac for an emergency period (expiring December 31, 2009), thus ensuring their solvency. These emergency powers enabled Treasury to enter into the SPSPA, the MBS purchase program, and the credit facility. See Thompson 2017 for more information.

2. Treasury designed the SPSPA in the form of a "keepwell" agreement, enabling it to continue to fund the GSEs after December 31, 2009.

As stated in HERA, Treasury's emergency powers included "purchas[ing] any obligations and other securities issued by [Fannie Mae and Freddie Mac]" (HERA). These powers were unlimited as to amount but expired on December 31, 2009. The government could have funded the GSEs through continued purchases of debt or securities, similar to Treasury's GSE MBS program which purchased \$225 billion of agency MBS (\$220.8 billion face value) before expiring on December 31, 2009 (See Zanger-Tishler and Wiggins 2017). Yet, no matter how large any such purchases might have been, they also would have had to cease as of December 31, 2009 leaving the GSEs with an uncertain future.

The government sought to avoid this result, but no one could predict just how long the conservatorships would last or how much funding would be needed. Therefore, the FHFA and Treasury aimed to structure a funding mechanism that complied with HERA's limitations and had maximum duration so that it would provide for the GSEs' needs after December 31, 2009, should the conservatorships last that long.

Designing the SPSPA in the form of a "keepwell" – an agreement typically entered into by a parent company intent on assuring the solvency of a subsidiary – allowed the FHFA and Treasury to fulfill these criteria. The keepwell agreement did not require continued purchases of any obligations or securities. Instead, it provided for a one-time transfer of 1,000 shares of SPS – with an initial liquidation preference of \$1,000 per share – from each

GSE to Treasury. In return, Treasury agreed to fund the GSEs through draws, with each draw increasing the aggregate liquidation preference, which would have to be paid to Treasury under certain circumstances. To the same effect, all SPS received by Treasury was perpetual, allowing the GSEs “to continue their business without worrying about a looming maturity date for [the SPS]” (Jester et al. 2018).

The variable liquidation preference of the SPS and its accompanying dividend formula were central to the SPSPA’s funding mechanism. In return for this commitment (among other considerations) the GSEs paid Treasury a 10% quarterly dividend (12% if delinquent) based on the previous quarter’s liquidation preference through 2012 (Certificate). In this way, Treasury was able to categorize the draws as “increase[ing] [its] investment in the GSEs’ senior preferred stock” (Treasury Report 01/12/2017). By relying on an increasing liquidity preference, the SPSPA facilitated continued funding of the GSEs, and maintenance of their solvency, even after December 31, 2009, if needed, without running afoul of HERA’s limitations.

3. Treasury capped the GSEs’ portfolios to \$850 billion (later increased to \$900 billion) and mandated gradual portfolio reduction.

Treasury set the portfolio cap at \$850 billion, and later raised it \$900 billion, because officials recognized that the GSEs needed to continue purchasing loans, which would keep the secondary mortgage market from collapsing (Treasury PR 09/07/2008). Secretary Paulson argued that the portfolio cap would “promote stability in the secondary mortgage market and lower the cost of funding, [since] the GSEs will modestly increase their MBS portfolios through the end of 2009” (Ibid). After the GSEs had supplied the market through the most severe period of the crisis, federal officials wound down their portfolios to reduce systemic risk (Ibid). Defaults on subprime and Alt-A mortgages in Fannie Mae and Freddie Mac’s mortgage portfolios had contributed to the GSEs’ losses during the crisis (FCIC 2011). Paulson claimed, “in 2010 [GSE] portfolios will begin to be gradually reduced at the rate of 10 percent per year, largely through natural run off, eventually stabilizing at a lower, less risky size” (Treasury PR 09/07/2008).

4. The SPSPA capped the GSEs’ debt at 110% of their pre-crisis debt, then raised the debt limit to 120% of their portfolios, mandating a gradual reduction to begin in 2010.

Under the SPSPA, the GSEs could not increase their debt levels to more than 110% of their debt on June 30, 2008. The 1st amendment, passed on May 6, 2009, raised the debt limit to 120% of the portfolio cap. Pursuant to a mandatory decrease of the portfolio, the debt cap decreased by 10% annually beginning in 2010 (1st Amendment). The third amendment accelerated the decrease from 10% to 15% (3rd Amendment).

Treasury and the FHFA recognized that the GSEs required adequate leverage to purchase and hold mortgages in their portfolios. Since the GSEs were obligated to reduce their portfolios, the FHFA limited outstanding debt as a percentage of the GSE's portfolio.

5. In addition to the caps on debt and portfolios, the SPSPA required the GSEs to abide by certain covenants restricting their operations.

Without Treasury's approval, the GSEs and the FHFA, as conservator, could not:

- 1) Pay dividends on any class of stock other than the Senior Preferred Stock
- 2) Issue stock
- 3) Enter into a contract with any affiliate of Treasury
- 4) End the conservatorship, unless the FHFA moved the GSEs into receivership
- 5) Sell, convey, or transfer any of its assets, unless the transaction constituted "the ordinary course of business"
- 6) Merge with another entity
- 7) Avoid compliance with SEC deadlines for 10-K, 8-K, and other reports
- 8) Enter into new executive compensation arrangements (1st Amendment)

6. The SPSPA included a periodic commitment fee (PCFee) but Treasury waived it and never collected it.

The GSEs were required to pay a quarterly PCFee, accruing from January 1, 2010 and payable quarterly beginning March 31, 2010, to compensate Treasury for its ongoing commitment (1st Amendment). The FHFA and Treasury—in consultation with the Fed—decided the amount of the PCFee, which would be applicable for a five-year period (and reset every five years) (Ibid). Treasury could in its discretion waive the PCFee in 2010 and at the beginning of each subsequent based on adverse conditions in the mortgage market (Ibid). The GSE could at its discretion choose not to pay the PCFee but have it added to the aggregate liquidation preference (Ibid). Since the GSEs continued to post losses into 2012, Treasury waived the commitment fee for each quarter beginning in March 2010 until it suspended the fee with the 3rd amendment (3rd Amendment).

7. The 3rd amendment, which was entered into on August 17, 2012, switched dividend payments from a fixed rate to a variable rate.

The FHFA identified two factors in its decision to implement a variable dividend. For one, this approach, which provided the GSEs and Treasury with more flexibility, eliminated the need for the GSEs to borrow from Treasury to pay dividends, which increased the SPSS' liquidation preference, and by extension, the dividend payment itself (FHFA PR 08/17/2009). FHFA director Edward DeMarco argued that this approach increased market confidence (Ibid). Secondly, the FHFA asserted that Fannie Mae and Freddie Mac's earnings

would be “used to benefit taxpayers,” as taxpayer money had sustained the GSEs (FHFA Webpage).

This new formula was not without risk to Treasury; dividends became dependent on the GSEs being profitable. If the GSEs did not realize profits, they did not pay the dividend. This was the case for Freddie Mac in 4th quarter 2015 and 2nd quarter 2016 (see Appendix B).

The variable dividend was also part of a larger initiative that aimed to build a new infrastructure for the secondary mortgage market in contemplation of a significant shrinking of the GSEs’ operations and role (Thompson and Wiggins 2017).

8. While 3rd Amendment required a reduction in the GSEs’ capital reserves to zero, the December letter agreement raised the capital reserves to \$3 billion for an indefinite period of time.

The amendment also capped the GSEs capital reserves at \$3 billion (2013) and required reductions of \$600 million annually until they reached zero by January 2018. At that point, the GSEs will depend on Treasury funds to cover their losses (3rd Amendment). The reduction in GSE capital reserves in 2012 seemed to align with the government’s interest in shrinking the GSEs’ operations and role in the secondary mortgage market (Thompson and Wiggins 2017). While the mandatory diminishing of capital reserves was instituted pursuant to the idea of reducing the GSEs’ presence, this approach may complicate the GSEs’ exit from conservatorship, as by 2018 they will no longer have any equity remaining (Ibid).

Treasury sent the FHFA a letter agreement on December 21, 2017, which raised the maximum capital reserve amount from zero to \$3 billion indefinitely, beginning in January 2018 (Letter Agreement). It is unlikely that the change was instituted to help the GSEs prepare for exiting the conservatorship. The letter agreement mandated that the GSEs increase the liquidation preference of their SPS by \$3 billion, which the firms have to pay down before exiting the SPSPA (Ibid). Treasury also asserted that the GSEs could maintain a \$3 billion capital buffer only if they continued to pay dividends (Treasury PR 12/21/2017).

9. Treasury received a warrant to purchase up to 79.9% of GSE stock at any point during the warrant’s twenty-year lifetime.

In addition to purchases of SPS (and the provision that Treasury would be paid the liquidation preference upon the occurrence of certain events), Treasury also received under the SPSPA (among other considerations) a warrant to purchase up to 79.9% of the common stock of each GSE for a nominal amount at any point during the warrant’s twenty-year term, offering taxpayers significant upside if the GSEs restored viability within this timeframe.

A maximum of 79.9% of all shares was chosen in order to cap the federal government's ownership stake at less than 80%. If the federal government had acquired a stake of 80% or more, it also would have had to consolidate the assets and liabilities of the GSEs onto its own balance sheet (Jester et al. 2018)

10. Treasury and the FHFA operated the SPSPA with transparency to assure GSE bondholders, the market, and American taxpayers.

The FHFA and Treasury circulated press releases and detailed reports as part of their transparency policies. Treasury and the FHFA often announced amendments to the SPSPA months before they became effective, allowing the market to adjust to the announced changes before they were instituted. Treasury announced the May 2009 amendment in February of that year (Treasury Statement 02/18/2009). Most components of the 3rd amendment—passed in August 2012—did not take effect until 1st quarter 2013. Treasury and the FHFA also made copies of each amendment easily accessible.

The FHFA and Treasury released reports that outlined their role in the intervention (3rd Amendment). Treasury and FHFA officials underscored the importance of protecting taxpayers in their reports and public statements. During Treasury's announcement of the GSE intervention, Secretary Paulson stressed that protecting the taxpayer remained one of Treasury's chief priorities (Treasury PR 09/07/2008). In February 2010, Edward DeMarco, then Acting Director of the FHFA, wrote a letter to Congress, acknowledging that taxpayer funds kept Fannie Mae and Freddie Mac in operation. In response, DeMarco pledged to outline how the FHFA had limited, and would limit, GSE losses (FHFA Letter 02/02/2010). DeMarco later argued that the 3rd amendment was enacted mostly to protect taxpayers (FHFA PR 08/17/2009).

III. Evaluation

The SPSPA was crucial to maintaining the GSEs' positive net worth throughout the crisis and while in conservatorship. The system of draws that Treasury and the FHFA created under the SPSPA, which could extend beyond December 31, 2009, guaranteed that the firms remained solvent. Despite this success, the variable dividend formula in the 3rd amendment (08/17/2012) has generated controversy within the academic community, shareholders, and in other corners.

Scholars are divided over the legality of the variable dividend formula in the 3rd amendment. Steven Davidoff Solomon and David Zaring (2015) argue that the new dividend formula, which redirected all net earnings to Treasury, violates aspects of corporate and administrative law. They claim that Treasury and the FHFA surmounted the normal administrative hurdles faced by shareholders when the government agencies instituted the variable dividend formula. They also assert that the government's decision to conduct a net sweep of profits constituted a violation of interest, as the FHFA and

Treasury—the architects of the dividend formula—also oversaw the GSEs. These scholars question the extent to which government agencies can enact emergency measures that circumvent standard corporate and administrative legal proceedings (Davidoff Solomon and Zaring 2015).

Frame et al. (2015) acknowledge that the GSEs have paid more to Treasury in dividends (\$275.9 billion) than they have received in draws (\$187.5 billion). Nonetheless, they contend that a comparison of nominal cash flows between the GSEs and Treasury does not mean the GSEs have repaid Treasury—and taxpayers by extension. Instead, Frame et al. highlight that Treasury assumed a substantial risk with the intervention and is owed a risk premium. They note that Treasury’s guarantee to maintain GSEs’ solvency lowered the GSEs’ funding costs, thus increasing their profits. They also note that Treasury never collected a commitment fee, which would have reduced the GSE’s profits as well (Frame et al. 2015).

The new dividend formula also engendered a substantial backlash from shareholders, resulting in over a dozen lawsuits. Most recently, a suit by Fairholme Funds Inc. led Treasury to release a new trove of documents on the GSE intervention, which escalated shareholder concerns. Shareholders subsequently pointed to these documents as proof that Treasury knew that GSEs were going to become profitable around 2012 and changed the agreement to sweep profits (Bloomberg 07/28/2017). GSE shareholders continue to dispute the legality of the variable dividend formula, but, as of this case’s writing, courts have upheld it (Ibid).

IV. References

Federal Housing Finance Agency, 2008 Annual Report to Congress. April 15, 2009.

https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/OFHEO_Report_Congress-2008.pdf

_____, Letter to Congress. February 2, 2010.

https://www.fhfa.gov/Media/PublicAffairs/Documents/Letter_to_Dodd_Frank_Shelby_Bachus-02-02-2010_n508.pdf

_____, Mortgage Market Note 10-1. January 20, 2010.

https://www.fhfa.gov/PolicyProgramsResearch/Research/PaperDocuments/20100120_MMNote_10-1_508.pdf

_____, Press Release: Changes to Fannie Mae and Freddie Mac Preferred Stock Purchase Agreements. August 17, 2012.

<https://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-FHFA-Acting-Director-Edward-J-DeMarco-on-Changes-to-Fannie-Mae-and-Freddie-Mac-Preferred-Stock-Purchases.aspx>

_____, Press Release: Statement from FHFA Director Melvin L. Watt on Capital Reserve for Fannie Mae and Freddie Mac. December 21, 2017.

<https://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-from-FHFA-Director-Melvin-L-Watt-on-Capital-Reserve-for-Fannie-Mae-and-Freddie-Mac.aspx>

_____, Statement. "The Appointment of FHFA as Conservator for Fannie Mae and Freddie Mac." *Senate Committee on Banking, Housing, and Urban Affairs*. September 23, 2008.

<https://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-James-B-Lockhart-III-Director-FHFA-Before-The-US-Senate-Committee-on-Banking-Housing-and-Urban-Affairs.aspx>

_____, Webpage: Senior Preferred Stock Purchase Agreement (SPSPA). Accessed: July 31, 2017.

<https://www.fhfa.gov/Conservatorship/Pages/Senior-Preferred-Stock-Purchase-Agreements.aspx>

FHFA and Treasury, Fannie Mae Certificate of Designation of Terms of Variable Liquidation Preference Senior Preferred Stock, series 2008-2. September 7, 2008.

https://www.fhfa.gov/Conservatorship/Documents/Senior-Preferred-Stock-Agree/2008-9-7_SPSPA_FannieMae_Certificate_N508.pdf

_____, Fannie Mae Amended and Restated Senior Preferred Stock Purchase Agreement. September 26, 2008.

https://www.fhfa.gov/Conservatorship/Documents/Senior-Preferred-Stock-Agree/2008-9-26_SPSPA_FannieMae_RestatedAgreement_N508.pdf

_____, Fannie Mae Amendment to Amended and Restated Senior Preferred Stock Purchase Agreement. May 6, 2009.

https://www.fhfa.gov/Conservatorship/Documents/Senior-Preferred-Stock-Agree/2009-5-6_SPSPA_FannieMae_Amendment_508.pdf

_____, Fannie Mae Second Amendment to Amended and Restated Senior Preferred Stock Purchase Agreement. December 24, 2009.

https://www.fhfa.gov/Conservatorship/Documents/Senior-Preferred-Stock-Agree/2009-12-24_SPSPA_FannieMae_Amendment2_508.pdf

_____, Fannie Mae Third Amendment to Amended and Restated Senior Preferred Stock Purchase Agreement. August 17, 2012.

https://www.fhfa.gov/Conservatorship/Documents/Senior-Preferred-Stock-Agree/2012-8-17_SPSPA_FannieMae_Amendment3_508.pdf

_____, Fannie Mae Warrant to Purchase Common Stock. September 7, 2009.
<https://www.treasury.gov/press-center/press-releases/Documents/warrantfnm3.pdf>

_____, Letter Agreement. December 21, 2017.
<https://www.fhfa.gov/Media/PublicAffairs/Documents/GSEletteragreementfnm12-21-2017.pdf>

Federal National Mortgage Association. Monthly Summary: December 2010.
<http://www.fanniemae.com/resources/file/ir/pdf/monthly-summary/123110.pdf>

_____, Monthly Summary. December 2012.
<http://www.fanniemae.com/resources/file/ir/pdf/monthly-summary/123112.pdf>

Financial Crisis Inquiry Commission, Final Report, Chapter 17: September 2008: The Takeover of Fannie Mae and Freddie Mac and Conclusion. January 27, 2011.
http://som.yale.edu/sites/default/files/FCIC_Final_Report_Chapter_17_The_Takeover_of_Fannie_and_Freddie.pdf

Frame, W. Scott, Andreas Fuster, Joseph Tracy and James Vickery. The Rescue of Fannie Mae and Freddie Mac. *Federal Reserve Bank of New York Staff Reports*, March, 2015.
http://som.yale.edu/sites/default/files/Frame_W_Scott_et_al_The_Rescue_of_Fannie_Mae_and_Freddie_Mac.pdf

Housing and Economic Recovery Act (HERA §1117), Public Law 110-289. July 30, 2008.
https://www.fhfa.gov/Government/Documents/GPO_Authenticated%20HERA.pdf

Jester, Dan, Matthew Kabaker, Jeremiah Norton, and Lee Sachs. Rescuing the Mortgage Giants. Preliminary Discussion Draft, September 11-12, 2018.
https://som.yale.edu/sites/default/files/09%20GSEs%20II%209_10%20REV%20Prelim%20Disc%20Draft%202018.09.11%20%281%29.pdf

Light, Joe. Fannie Shareholders Seeking Redress. Bloomberg Markets. July 28, 2017.
<https://www.bloomberg.com/news/articles/2017-07-28/new-documents-give-hope-to-fannie-shareholders-seeking-redress>

Lehman Brothers Equity Research. Report: GSEs: Risks, Rewards, and Imperatives. *North America Financial Services Mortgage Finance*. July 7, 2008.

Paulson, Henry. *On the Brink: Inside the Race to Stop the Collapse of the Global Financial System*. September, 2010.

Securities and Exchange Commission. Form 8-K, Federal Home Loan Mortgage Corporation. Sec 99.1. December 23, 2009.

<https://www.sec.gov/Archives/edgar/data/1026214/000095012309072900/f71222exv99w1.htm>

_____, 99.1. January 23, 2009.

http://otp.investis.com/clients/us/federal_homeloan/SEC/sec-show.aspx?FilingId=6357611&Cik=0001026214&Type=PDF&hasPdf=1

_____, 99.1. August 1, 2017.

http://otp.investis.com/clients/us/federal_homeloan/SEC/sec-show.aspx?Type=html&FilingId=12200972&CIK=0001026214&Index=10000

Securities and Exchange Commission. Form 8-K, Federal Home Loan Mortgage Corporation. August 03, 2017.

<https://www.sec.gov/Archives/edgar/data/310522/000031052217000218/a2017q2pressrelease.htm>

Thompson, Daniel and Rosalind Wiggins. 2017. "GSE Intervention: Conservatorship." YPFS Case Study. Yale Program on Financial Stability, Yale University.

Thompson, Daniel. 2017. "GSE Intervention: HERA memo." YPFS note. Yale Program on Financial Stability, Yale University.

United States Department of the Treasury. Factsheet: Treasury Senior Preferred Stock Purchase Agreement. September 7, 2008.

https://www.fhfa.gov/Conservatorship/Documents/Senior-Preferred-Stock-Agree/2008-8-7_SPSA_FactSheet_508.pdf

_____, Press Release: Statement by Secretary Henry M. Paulson, Jr. on Treasury and Federal Housing Finance Agency Action to Protect Financial Markets and Taxpayers. September 7, 2008.

<https://www.treasury.gov/press-center/press-releases/Pages/hp1129.aspx>

_____, Press Release: Treasury Department and FHFA Modify Terms of Preferred Stock Purchase Agreements for Fannie Mae and Freddie Mac. December 21, 2017.

<https://home.treasury.gov/news/press-releases/sm0242>

V. Key Program Documents

Summary of Program

- Factsheet: Treasury Preferred Stock Purchase Agreement (Treasury 09/07/2008) – Explains the basic agreement, the amount of capital that Treasury could inject, and ways to alter the agreement.
https://www.fhfa.gov/Conservatorship/Documents/Senior-Preferred-Stock-Agree/2008-8-7_SPSPA_FactSheet_508.pdf
- FAQ: Treasury Preferred Stock Purchase Agreement (Treasury 09/11/2008) – Explains the basic agreement, the reasons why Treasury pledged up to \$100 billion, why Treasury received \$1 billion in Senior Preferred Stock, and how the SPSPA could continue after Treasury's emergency powers expired on December 31, 2009.
https://www.fhfa.gov/Conservatorship/Documents/Senior-Preferred-Stock-Agree/2008-9-11_SPSPA_FAQ_508.pdf
- Mortgage Market Note 10-1 (FHFA 01/20/2010) – Outlines the four components of the GSE intervention and their functions.
https://www.fhfa.gov/PolicyProgramsResearch/Research/PaperDocuments/20100120_MMNote_10-1_508.pdf

Implementation Documents

- Amended and Restated Senior Preferred Stock Purchase Agreement: Fannie Mae (FHFA & Treasury 09/26/2008) – Outlines Treasury's \$100 billion commitment to Fannie Mae. Also describes the warrant to purchase 79.9% of Fannie's stock and dividend payments.
https://www.fhfa.gov/Conservatorship/Documents/Senior-Preferred-Stock-Agree/2008-9-26_SPSPA_FannieMae_RestatedAgreement_N508.pdf
- Amended and Restated Senior Preferred Stock Purchase Agreement: Freddie Mac (FHFA & Treasury 09/26/2008) – Outlines Treasury's \$100 billion commitment to Freddie Mac. Also describes the warrant to purchase 79.9% of Fannie's stock and dividend payments.
https://www.fhfa.gov/Conservatorship/Documents/Senior-Preferred-Stock-Agree/2008-9-26_SPSPA_FreddieMac_RestatedAgreement_508.pdf
- Amendment to Amended and Restated Senior Preferred Stock Purchase Agreement: Fannie Mae (FHFA & Treasury 05/06/2009) – Raises the funding cap from \$100 billion to \$200 billion. Also raises Fannie Mae's portfolio cap from \$850 billion to \$900 billion and bases the 10% reductions on the \$900 billion cap. Increases Fannie Mae's debt ceiling to \$1,080 billion.
https://www.fhfa.gov/Conservatorship/Documents/Senior-Preferred-Stock-Agree/2009-5-6_SPSPA_FannieMae_Amendment_508.pdf

- Amendment to Amended and Restated Senior Preferred Stock Purchase Agreement: Freddie Mac (FHFA & Treasury 05/06/2009) – *Raises the funding cap from \$100 billion to \$200 billion. Also raises the Freddie Mac’s portfolio cap from \$850 billion to \$900 billion and bases the 10% reductions on the \$900 billion cap. Increases Freddie Mac’s debt ceiling to \$1,080 billion.*
https://www.fhfa.gov/Conservatorship/Documents/Senior-Preferred-Stock-Agree/2009-5-6_SPSPA_FreddieMac_Amendment_508.pdf
- Fannie Mae Preferred Stock Certificate (FHFA & Treasury 09/07/2008) – *Outlines basic tenants of the program including dividend payment schedule, commitment fees, pay on liquidation preference, and the initial purchase of \$1 billion in Senior Preferred Stock from Fannie Mae to Treasury.*
https://www.fhfa.gov/Conservatorship/Documents/Senior-Preferred-Stock-Agree/2008-9-7_SPSPA_FannieMae_Certificate_N508.pdf
- Freddie Mac Preferred Stock Certificate (FHFA & Treasury 09/07/2008) – *Outlines basic tenants of the program including dividend payment schedule, commitment fees, pay on liquidation preference, and the initial purchase of \$1 billion in Senior Preferred Stock from Freddie Mac to Treasury.*
https://www.fhfa.gov/Conservatorship/Documents/Senior-Preferred-Stock-Agree/2008-9-7_SPSPA_FreddieMac_Certificate_508.pdf
- Housing and Economic Recovery Act of 2008 (HERA §1117) – *Legally authorizes Treasury and the FHFA to establish the SPSPA.*
https://www.fhfa.gov/Government/Documents/GPO_Authenticated%20HERA.pdf
- Second Amendment to Amended and Restated Senior Preferred Stock Purchase Agreement: Fannie (FHFA & Treasury 12/24/2009) - *Increases Treasury’s funding cap to \$200 billion less aggregate draws plus a new formula, which included all net worth deficits from 2010 through 2012 minus any surplus that would exist on December 31, 2012. Pushes commitment fee start date back to January 1, 2011.*
https://www.fhfa.gov/Conservatorship/Documents/Senior-Preferred-Stock-Agree/2009-12-24_SPSPA_FannieMae_Amendment2_508.pdf
- Second Amendment to Amended and Restated Senior Preferred Stock Purchase Agreement: Freddie (FHFA & Treasury 12/24/2009) - *Increases Treasury’s funding cap to \$200 billion less aggregate draws plus a new formula, which included all net worth deficits from 2010 through 2012 minus any surplus that would exist on December 31, 2012. Pushes commitment fee start date back to January 1, 2011.*
https://www.fhfa.gov/Conservatorship/Documents/Senior-Preferred-Stock-Agree/2009-12-24_SPSPA_FreddieMac_Amendment2_N508.pdf
- Third Amendment to Amended and Restated Senior Preferred Stock Purchase Agreement: Fannie (FHFA & Treasury 08/17/2012) - *Amendment that authorizes Treasury to receive all future dividend payments from the GSEs; annually lowers the*

GSEs' capital reserves to zero.

https://www.fhfa.gov/Conservatorship/Documents/Senior-Preferred-Stock-Agree/2012-8-17_SPSPA_FannieMae_Amendment3_508.pdf

- Third Amendment to Amended and Restated Senior Preferred Stock Purchase Agreement: Freddie (FHFA & Treasury 08/17/2012) - Amendment that authorizes Treasury to receive all future dividend payments from the GSEs; annually lowers the GSEs' capital reserves to zero.
https://www.fhfa.gov/Conservatorship/Documents/Senior-Preferred-Stock-Agree/2012-8-17_SPSPA_FannieMae_Amendment3_508.pdf

Legal/Regulatory Guidance

- Opinion on Federal Obligation to SPSPA (DOI 09/26/2008) – Opinion finding that GSE debtholders can sue Treasury if Treasury fails to provide a requested draw.
https://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/PaulsonLtrPSPA_N508.pdf

Press Releases/Announcements

- Changes to Fannie Mae and Freddie Mac Preferred Stock Purchase Agreements (FHFA 08/17/2012) – Announces the 3rd amendment and provides the rationale for the amendment. <https://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-FHFA-Acting-Director-Edward-J-DeMarco-on-Changes-to-Fannie-Mae-and-Freddie-Mac-Preferred-Stock-Purchas.aspx>
- Meeting the Challenges of the Financial Crisis (03/18/2009) – Lockhart's speech outlines what the FHFA, Treasury, and the Fed did in the first 6 months of conservatorship.
<https://www.fhfa.gov/Media/PublicAffairs/Pages/Women-in-Housing-and-Finance-Symposium.aspx>
- Statement by Secretary Henry M. Paulson, Jr. on Treasury and Federal Housing Finance Agency Action to Protect Financial Markets and Taxpayers (09/07/2008) – Treasury press release that announces the four-part rescue plan for the GSEs, including the SPSPA.
<https://www.treasury.gov/press-center/press-releases/Pages/hp1129.aspx>

Media Stories

- The Fannie and Freddie Document Trove (Forbes 08/02/2017) - Pointed to newly-released documents as proof that Treasury knew that GSEs were going to become profitable around 2012 and changed the agreement to sweep profits.
<https://www.forbes.com/sites/richardepstein/2017/08/02/the-fannie-freddie-document-treasure-trove/#36f2495a2905>

- [Understanding the Fannie/Freddie Takeover \(NPR 09/09/2008\)](http://www.npr.org/templates/story/story.php?storyId=94420613) - *Generally outlines the media reaction and level of public understanding just after the government rescue (including the SPSPA) was enacted.*
<http://www.npr.org/templates/story/story.php?storyId=94420613>
- [U.S. Foresaw Better Return in Seizing Fannie and Freddie Profits \(NYT 07/23/2017\)](https://www.nytimes.com/2017/07/23/business/fannie-freddie-treasury-lawsuit.html?mcubz=1) - *Pointed to newly-released documents as proof that Treasury knew that GSEs were going to become profitable around 2012 and changed the agreement to sweep profits.*
<https://www.nytimes.com/2017/07/23/business/fannie-freddie-treasury-lawsuit.html?mcubz=1>

Key Academic Papers

- [After the Deal: Fannie, Freddie, and the Financial Crisis Aftermath \(Davidoff Solomon and Zaring 2015\)](http://scholarship.law.berkeley.edu/facpubs/2477) - *Explains the legal ramifications of the conservatorship, with particular emphasis on the 3rd amendment.*
<http://scholarship.law.berkeley.edu/facpubs/2477>
- [The Rescue of Fannie Mae and Freddie Mac \(Frame, Fuster, Tracy, and Vickery 2015\)](http://pubs.aeaweb.org/doi/pdfplus/10.1257/jep.29.2.25) - *Comprehensive paper that addresses the causes of the conservatorship and evaluates the program's efficacy in the short-run and the long-run.*
<http://pubs.aeaweb.org/doi/pdfplus/10.1257/jep.29.2.25>

Reports/Assessments

- [Analysis of the 3rd amendment to the Senior Preferred Stock Purchase Agreements \(OIG 03/20/2013\)](https://www.fhfa.gov/Content/Files/WPR-2013-002_2.pdf) - *Evaluates the variable dividend payment and its potential implications for taxpayers, debtors, and the market.*
https://www.fhfa.gov/Content/Files/WPR-2013-002_2.pdf
- [GSEs and the Government's Role in Housing Finance: Issues for the 113th The Congress \(CRS 09/13/2013\)](http://fedweb.com/wp-content/uploads/2017/06/CRS-GSEs-and-the-Governments-Role-in-Housing-Finance.pdf) - *Discusses various options of restructuring the government's intervention of the GSEs.*
<http://fedweb.com/wp-content/uploads/2017/06/CRS-GSEs-and-the-Governments-Role-in-Housing-Finance.pdf>
- [Housing Finance at a Glance: A Monthly Chartbook \[sic\] \(Urban Institute 01/2016\)](http://www.urban.org/research/publication/housing-finance-glance-monthly-chartbook-january-2016/view/full_report) - *Includes annualized data on market indicators, GSE portfolios limits, mortgage originations, et cetera.*
http://www.urban.org/research/publication/housing-finance-glance-monthly-chartbook-january-2016/view/full_report

VI. Appendix

A: Quarterly Draws on Treasury Commitments to Fannie Mae and Freddie Mac per the Senior Preferred Stock Purchase Agreement

Quarter	Freddie Mac				Fannie Mae			
	Reported GAAP Net Worth	Requested Draw	Draw Date	Cumulative Enterprise Draws ²	Reported GAAP Net Worth	Requested Draw	Draw Date	Cumulative Enterprise Draws ²
2008 Q3	-\$13.700	\$13.800	11/24/2008	\$13.800	\$9.400	\$0.000	N/A	\$0.000
2008 Q4	-30.600	30.800	3/31/2009	44.600	-15.200	15.200	3/31/2009	15.200
2009 Q1	-6.000	6.100	6/30/2009	50.700	-18.900	19.000	6/30/2009	34.200
2009 Q2	8.200	0.000	N/A	50.700	-10.600	10.700	9/30/2009	44.900
2009 Q3	10.400	0.000	N/A	50.700	-15.000	15.000	12/31/2009	59.900
2009 Q4	4.400	0.000	3/31/2010	50.700	-15.300	15.300	3/31/2010	75.200
2010 Q1	-10.500	10.600	6/30/2010	61.300	-8.400	8.400	6/30/2010	83.600
2010 Q2	-1.700	1.800	9/30/2010	63.100	-1.400	1.500	9/30/2010	85.100
2010 Q3	-0.100	0.100	12/31/2010	63.200	-2.400	2.500	12/31/2010	87.600
2010 Q4	-0.400	0.500	3/31/2011	63.700	-2.500	2.600	3/31/2011	90.200
2011 Q1	1.200	0.000	6/30/2011	63.700	-8.400	8.500	6/30/2011	98.700
2011 Q2	-1.478	1.479	9/30/2011	65.179	-5.087	5.087	9/30/2011	103.787
2011 Q3	-5.991	5.992	12/31/2011	71.171	-7.791	7.791	12/31/2011	111.578
2011 Q4	-0.146	0.146	3/31/2012	71.317	-4.571	4.571	3/31/2012	116.149
2012 Q1	-0.019	0.019	6/30/2012	71.336	0.268	0.000	N/A	116.149
2012 Q2	1.086	0.000	N/A	71.336	2.770	0.000	N/A	116.149
2012 Q3	4.906	0.000	N/A	71.336	2.411	0.000	N/A	116.149
2012 Q4	8.826	0.000	N/A	71.336	7.224	0.000	N/A	116.149
2017 Q2	2.586	0.000	N/A	71.336	3.717	0.000	N/A	116.149
Total Cumulative Draws by Both Enterprises				\$187.485				

Source: FHFA and Treasury

Notes:

1) Cumulative draws may not add up due to rounding

2) Excludes the \$1 billion liquidation preference from each GSE at the SPSPA's inception. The SPSPA never recognized the initial \$1 billion as a draw.

3) Red denotes peak draws

B: Dividends on Senior Preferred Stock Received by Treasury (\$B)

Quarter	Freddie Mac			Fannie Mae		
	Dividends Accrued	Date Paid	Cumulative Dividends Paid ²	Dividends Accrued	Date Paid	Cumulative Dividends Paid ²
2008 Q4	\$0.167	12/31/2008	\$0.173	\$0.025	12/31/2008	\$0.031
2009 Q1	0.370	3/31/2009	0.543	0.025	3/31/2009	0.056
2009 Q2	1.149	6/30/2009	1.692	0.409	6/30/2009	0.465
2009 Q3	1.294	9/30/2009	2.986	0.885	9/30/2009	1.350
2009 Q4	1.293	12/31/2009	4.278	1.150	12/31/2009	2.501
2010 Q1	1.293	3/31/2010	5.571	1.527	3/31/2010	4.028
2010 Q2	1.293	6/30/2010	6.863	1.909	6/30/2010	5.937
2010 Q3	1.560	9/30/2010	8.424	2.117	9/30/2010	8.055
2010 Q4	1.603	12/31/2010	10.027	2.153	12/31/2010	10.207
2011 Q1	1.605	3/31/2011	11.632	2.216	3/31/2011	12.424
2011 Q2	1.618	6/30/2011	13.249	2.281	6/30/2011	14.705
2011 Q3	1.618	9/30/2011	14.867	2.495	9/30/2011	17.199
2011 Q4	1.655	12/31/2011	16.522	2.621	12/31/2011	19.821
2012 Q1	1.808	3/31/2012	18.329	2.819	3/31/2012	22.639
2012 Q2	1.808	6/30/2012	20.137	2.931	6/30/2012	25.571
2012 Q3	1.808	9/28/2012	21.946	2.929	9/28/2012	28.499
2012 Q4	1.808	12/31/2012	23.754	2.929	12/31/2012	31.428
2013 Q1	5.826	3/29/2013	29.580	4.224	3/29/2013	35.652
2013 Q2	6.971	6/28/2013	36.552	59.368	6/28/2013	95.020
2013 Q3	4.357	9/30/2013	40.909	10.243	9/30/2013	105.263
2013 Q4	30.436	12/31/2013	71.345	8.617	12/31/2013	113.880
2014 Q1	10.435	3/31/2014	81.780	7.192	3/31/2014	121.072
2014 Q2	4.499	6/30/2014	86.279	5.692	6/30/2014	126.764
2014 Q3	1.890	9/30/2014	88.164	3.712	9/30/2014	130.469
2014 Q4	2.786	12/31/2014	90.955	3.999	12/31/2014	134.474
2015 Q1	0.851	3/31/2015	91.807	1.920	3/31/2015	136.394
2015 Q2	0.746	6/30/2015	92.552	1.796	6/30/2015	138.190
2015 Q3	3.913	9/30/2015	96.466	4.359	9/30/2015	142.549
2015 Q4	0.000	N/A	96.466	2.202	12/31/2015	144.751
2016 Q1	1.740	3/31/2016	98.206	2.859	3/31/2016	147.610
2016 Q2	0.000	N/A	98.206	0.919	6/30/2016	148.529
2016 Q3	0.933	9/30/2016	99.138	2.869	9/30/2016	151.398
2016 Q4	2.310	12/30/2016	101.448	2.976	12/30/2016	154.375
2017 Q1	4.476	3/31/2017	105.923	5.471	3/31/2017	159.846
2017 Q2	2.234	6/30/2017	108.158	2.779	6/30/2017	162.625
2017 Q3	1.986	TBD	110.144	3.117	TBD	165.742
Cumulative Dividends Paid by Both Enterprises³			\$275,886			

- 2) *Cumulative dividends paid may not add up due to rounding*
- 3) *Red divides the original and variable dividend formulas*

Source: [FHFA and Treasury](#)

Notes:

- 1) *Units in billions of USD*
- 2) *Cumulative dividends paid may not add up due to rounding*
- 3) *Red line divides original dividend and variable dividend payments*