

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

DAVID JACOBS and GARY HINDES, on behalf of themselves and all others similarly situated, and derivatively on behalf of the Federal National Mortgage Association and Federal Home Loan Mortgage Corporation,

Plaintiffs,

v.

THE FEDERAL HOUSING FINANCE AGENCY, in its capacity as Conservator of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, and THE UNITED STATES DEPARTMENT OF THE TREASURY,

Defendants,

and

THE FEDERAL NATIONAL MORTGAGE ASSOCIATION and THE FEDERAL HOME LOAN MORTGAGE CORPORATION,

Nominal Defendants.

Civil Action No.: 15-708-GMS

CLASS ACTION

JURY TRIAL DEMANDED

**PLAINTIFFS' APPLICATION FOR CERTIFICATION
TO THE DELAWARE AND VIRGINIA SUPREME COURTS
OF NOVEL AND UNDECIDED ISSUES OF STATE LAW¹**

Plaintiffs David Jacobs and Gary Hinds, on behalf of themselves and all others similarly situated, and derivatively on behalf of the Federal National Mortgage Association (“Fannie Mae”) and Federal Home Loan Mortgage Corporation (“Freddie Mac,” and, together with Fannie Mae, the “Companies”), request that this Court certify the following questions of law to the

¹ Proposed Certifications of Questions of Law are submitted herewith.

Delaware and Virginia Supreme Courts in accordance with Del. Supr. Ct. R. 41 and Del. Const. Art. IV, § 11(8), and Va. Supr. Ct. R. 5:40(a) and Va. Const. Art. VI, § 1, respectively:

1. Does Delaware law permit preferred stock of a corporation to have a cumulative dividend right equal to the entire net worth of the corporation, payable quarterly in perpetuity, as provided in Section 2 of Fannie Mae's Amended and Restated Certificate of Designation of Terms of Variable Liquidation Preference Senior Preferred Stock, Series 2008-2, dated September 27, 2012 (which is attached hereto as Exhibit A)?

2. Does Virginia law permit preferred stock of a corporation to have a cumulative dividend right equal to the entire net worth of the corporation, payable quarterly in perpetuity, as provided in Section 2 of Freddie Mac's Amended and Restated Certificate of Creation, Designation, Powers, Preferences, Rights, Privileges, Qualifications, Limitations, Restrictions, Terms and Conditions of Variable Liquidation Preference Senior Preferred Stock (Par Value \$1.00 Per Share), dated September 27, 2012 (which is attached hereto as Exhibit B)?

Certification of these state law questions of first impression presents the opportunity to potentially resolve this litigation between Plaintiffs and Defendants Federal Housing Finance Agency ("FHFA"), in its capacity as conservator of the Companies, and the United States Department of the Treasury ("Treasury"), as well as decide important matters of Delaware and Virginia policy that broadly impact the corporations organized under the laws of those states. The facts relevant to answering these questions are not capable of dispute.

PRELIMINARY STATEMENT

This case concerns August 2012 amendments to the constitutive documents of two publicly traded, stockholder-owned corporations—Fannie Mae and Freddie Mac—to grant to their controlling stockholder all of their profits forever in return for no consideration. The

controlling stockholder, the federal government, called these 2012 amendments the “Net Worth Sweep.” At the time of the Net Worth Sweep, the Companies were profitable, the federal government was acting in a commercial capacity, and it controlled the affairs of the Companies. This action challenges the validity and enforceability of the Net Worth Sweep.

There is no federal corporate law relevant to this case. The applicable federal law incorporates Delaware and Virginia law to govern the constitutive documents and internal affairs of the Fannie Mae and Freddie Mac, respectively. The “Net Worth Sweep” itself re-confirms that Delaware and Virginia law are the applicable federal rules of decision with respect to the preferred stock instruments owned by the government.

Under Delaware and Virginia corporate law, the “Net Worth Sweep” is invalid, void, and unenforceable. The corporate laws of those States do not permit preferred stock to have a dividend right equal to the entire net worth of the corporation, payable quarterly, forever, to the necessary exclusion of any dividends ever being paid on junior stock. Because the Net Worth Sweep purports to do this, it is invalid, void, and unenforceable.

Specifically, Section 151 of the General Corporation Law of the State of Delaware (“DGCL”) allows preferred stockholders to receive dividends “*at such rates*, on such conditions and at such times as shall be stated in the certificate of incorporation or in the [board] resolution” 8 *Del. C.* § 151(c) (emphasis added). Preferred stock dividends must be made “payable *in preference to, or in . . . relation to*, the dividends payable on any other class or classes or of any other series of stock[.]” *Id.* (emphasis added). Section 151 does not permit a provision requiring that a series of preferred stock receive a quarterly dividend equal to the entire net worth of a corporation to the necessary exclusion (in perpetuity) of any dividends ever being paid on junior stock.

Because the Net Worth Sweep diverts, in perpetuity, all of the net worth of Fannie Mae to Treasury, it neither is paid at a “rate” nor is it payable “in preference to” or “in relation to” the dividends payable to other classes or series of stock. The Net Worth Sweep is not paid at a “rate” because Treasury’s participation in corporate earnings growth is unlimited, absolute, and perpetual. The Net Worth Sweep is not payable “in preference to” or “in relation to” the dividends payable to other classes or series of stock because it is payable to the absolute, permanent exclusion of dividends to other stockholders. Once the Net Worth Sweep is paid each quarter, there necessarily will be no assets remaining in the Company that would ever be available for the payment of dividends on any other classes or series of stock regardless of how valuable the Company may become in the future. Accordingly, the Net Worth Sweep is invalid under Section 151(c) of the DGCL and is void *ab initio* and unenforceable.

Similarly, the Virginia Stock Corporation Act (“VSCA”) provides that a corporation may authorize “one or more classes or series of shares that . . . *have preference over* any other class or series of shares with respect to distributions [such as dividends].” Va. Code § 13.1-638 (emphasis added). Virginia law does not permit corporations to establish a dividend preference that operates to preclude all other classes of stockholders from the potential to receive dividends in perpetuity. Accordingly, the Net Worth Sweep is invalid under the VSCA and is void *ab initio* and unenforceable.

While Plaintiffs respectfully submit that the invalidity of the Net Worth Sweep under Delaware and Virginia law is clear, this issue has never before been decided by courts of those states. It therefore is a novel issue of Delaware and Virginia law appropriate for certification to those states’ highest courts. Furthermore, resolution of this issue is important and urgent, as the issue implicates important matters of Delaware and Virginia policy and will have a broad impact

on the corporations organized under the laws of those states. Were the Net Worth Sweep to be upheld as permissible under Delaware and Virginia law, a very troubling precedent would be set for those states' corporate laws, for stockholders of corporations of those states, and for the mergers and acquisitions community as a whole, because such precedent would appear to extend equally to corporations not under conservatorship and without the federal government as their senior preferred stockholder, and thereby permit the directors of a Delaware or Virginia corporation unilaterally to contract away all of the net worth and profits of the corporation for all time to a single preferred stockholder. Certifying the question now to the Delaware and Virginia Supreme Courts will allow those courts to provide guidance on this important issue of Delaware and Virginia corporate law, which is the central issue in this litigation, and provide needed certainty to corporations and their directors, officers, and stockholders. Additionally, certification of this issue will serve the interests of judicial economy in this case, because the answer could resolve the dispute between Plaintiffs and Defendants at the threshold stage.

UNDISPUTED FACTS RELEVANT TO PROPOSED CERTIFICATION

The facts relevant to answering the questions of law to be certified are not capable of dispute, and are almost entirely based on the Companies' bylaws and the certificates of designation governing Treasury's senior preferred stock in the Companies.

Fannie Mae and Freddie Mac are for-profit, stockholder-owned corporations organized and existing under the Federal National Mortgage Association Charter Act and the Federal Home Loan Mortgage Corporation Act, respectively. Compl. ¶ 30. Federal law authorizes each of the Companies to designate "the law of the jurisdiction in which [its] principal office . . . is located, [or] . . . [the] Delaware General Corporation Law" for purposes of its corporate governance

practices and procedures. 12 C.F.R. § 1710.10.² Fannie Mae has elected Delaware law to apply pursuant to Section 1.05 of its bylaws, which provides, in pertinent part, that “the corporation has elected to follow the applicable corporate governance practices and procedures of the Delaware General Corporation Law.” Compl. ¶ 32. Freddie Mac has elected Virginia law to apply pursuant to Section 11.3 of its bylaws, which provides, in pertinent part, that “the Corporation shall follow the corporate governance practices and procedures of the law of the Commonwealth of Virginia, including without limitation the Virginia Stock Corporation Act as the same may be amended from time to time.” *Id.*

On July 30, 2008, Congress enacted the Housing and Economic Recovery Act of 2008 (“HERA”), which created FHFA and empowered it to act as the Companies’ regulator and to appoint itself as conservator or receiver of the Companies in certain statutorily specified circumstances. *Id.* ¶ 4. In addition, HERA granted Treasury limited, temporary authority to purchase securities from the Companies. *Id.* ¶ 34. HERA left in place the federal charters of the Companies and did not implicitly or explicitly repeal or modify the provisions of their bylaws, implemented pursuant to federal law, specifying that Delaware and Virginia law govern the Companies’ internal affairs. *Id.* ¶ 4.

On September 6, 2008, FHFA placed the Companies under conservatorship and appointed itself as conservator of the Companies. *Id.* The day after the conservatorships were imposed, FHFA, as conservator for the Companies, and Treasury entered into two virtually identical senior preferred stock purchase agreements (the “PSPAs”), pursuant to which each of

² On November 19, 2015, FHFA promulgated new regulations applicable to the Companies that concern the state laws that govern their internal affairs. *See* 12 C.F.R. § 1239.3 (effective Dec. 21, 2015). These new regulations do not have retroactive effect, and Defendants do not rely on them in this case. At any rate, they likewise authorize the Companies to select the DGCL or the law of their principal place of business for their corporate governance.

Fannie Mae and Freddie Mac created and issued a new class of stock, the “Senior Preferred Stock.” *Id.* ¶ 36. The Senior Preferred Stock was created pursuant to two virtually identical Senior Preferred Stock Certificates of Designation (one each for Fannie Mae and Freddie Mac) (the “Certificates of Designation”) that set forth the rights, powers and preferences of the Senior Preferred Stock. *Id.* Treasury purchased 1 million shares of each Company’s Senior Preferred Stock in exchange for a funding commitment that allowed each Company to draw up to \$100 billion from Treasury (this cap was later increased in size by two subsequent amendments to the PSPAs, first to \$200 billion each and then to an amount established by a formula that may be greater (but not less) than \$200 billion each, adjusting for the amount of any deficiencies experienced by the Companies in 2010, 2011 and 2012 and any surplus existing as of December 31, 2012). *Id.* The 1 million shares of each Company’s Senior Preferred Stock have an aggregate liquidation preference equal to \$1 billion (\$1,000 per share) plus the sum of all additional amounts drawn by each Company on Treasury’s funding commitment. *Id.* ¶ 36. The newly issued Senior Preferred Stock of each of the Companies ranks senior to all other classes and series of stock and initially entitled Treasury to receive a cumulative cash dividend of 10% of the outstanding liquidation preference (12% if the dividend were paid in kind). *Id.* ¶ 8. Absent the express consent of Treasury and FHFA, the Companies generally cannot redeem the Senior Preferred Stock. *Id.* ¶ 36.

On August 17, 2012, FHFA entered into a third amendment of each of the Amended and Restated Senior Preferred Stock Purchase Agreements (together, the “Third Amendment”) and amended the Certificates of Designation setting forth the terms of the Fannie Mae and Freddie Mac Senior Preferred Stock. *Id.* These amendments changed the preferred dividend on Treasury’s Senior Preferred Stock in the Companies from one payable at the previously

established 10% cash (and 12% in-kind) rate to a perpetual quarterly “dividend” equal to the entire positive net worth of each of Fannie Mae and Freddie Mac. *Id.*; *see also id.* ¶¶ 42-43. The Companies and their other stockholders received no consideration in exchange for FHFA’s acquiescence to the Net Worth Sweep. *Id.* ¶¶ 15, 42.

Treasury and FHFA have both acknowledged that, under the Net Worth Sweep, *Treasury will receive—in perpetuity—any and all profits that Fannie Mae and Freddie Mac earn.* *Id.* ¶ 16. Thus, it will be impossible for either Company to ever have a positive net worth, to ever pay a dividend on account of another class or series of stock, or to ever emerge from conservatorship and return to private market control. *Id.*

Specifically, the Third Amendment to the PSPAs and the corresponding Amended and Restated Certificates of Designation provide, in pertinent part, that, as holder of the Senior Preferred Stock, Treasury shall be entitled to receive “cumulative cash dividends in an amount equal to the then-current Dividend Amount.” *Id.* ¶ 43.

The “Dividend Amount” is defined as follows:

For each Dividend Period from January 1, 2013, through and including December 31, 2017, the “Dividend Amount” for a Dividend Period means the amount, if any, by which the Net Worth Amount at the end of the immediately preceding fiscal quarter, less the Applicable Capital Reserve Amount, exceeds zero. ***For each Dividend Period from January 1, 2018, the “Dividend Amount” for a Dividend Period means the amount, if any, by which the Net Worth Amount at the end of the immediately preceding fiscal quarter exceeds zero.*** In each case, “Net Worth Amount” means (i) the total assets of the Company (such assets excluding the Commitment and any unfunded amounts thereof) as reflected on the balance sheet of the Company as of the applicable date set forth in this Certificate, prepared in accordance with GAAP, less (ii) the total liabilities of the Company (such liabilities excluding any obligation in respect of any capital stock of the Company, including this Certificate), as reflected on the balance sheet of the Company as of the applicable date set forth in this Certificate, prepared in accordance with GAAP. “Applicable

Capital Reserve Amount” means, as of any date of determination, for each Dividend Period from January 1, 2013, through and including December 31, 2013, \$3,000,000,000; and for each Dividend Period occurring within each 12-month period thereafter, \$3,000,000,000 reduced by an equal amount for each such 12-month period through and including December 31, 2017, so that for each Dividend Period from January 1, 2018, the Applicable Capital Reserve Amount shall be zero. For the avoidance of doubt, if the calculation of the Dividend Amount for a Dividend Period does not exceed zero, then no Dividend Amount shall accrue or be payable for such Dividend Period.

Id. (emphasis added). Thus, pursuant to the Net Worth Sweep, from January 1, 2013 through December 31, 2017, each Company pays to Treasury, in the form of a purported “dividend,” that particular Company’s “Net Worth Amount” (*i.e.*, total assets less total liabilities) less the “Applicable Capital Reserve Amount” (which starts at \$3 billion and decreases to \$0 by January 1, 2018). *Id.* ¶ 44. Beginning January 1, 2018 and continuing in perpetuity, the Net Worth Amount will be paid out each quarter to Treasury without any capital reserve whatsoever. *Id.*

The Net Worth Sweep “dividends” are cumulative. *Id.* ¶ 45. If the Net Worth Amount is greater than zero and the board of directors does not declare a “dividend” on the Senior Preferred Stock, then the “dividend” accumulates. Under the Certificates of Designation, no dividends may be paid on any other classes or series of stock of either Company unless and until full cumulative “dividends” (*i.e.*, the full Net Worth Sweep amount) are paid on the Senior Preferred Stock pursuant to the Net Worth Sweep. *Id.* Because the entire net worth of each Company is payable in perpetuity to the Senior Preferred Stock, no dividends can ever be paid on other classes or series of stock. *Id.*

PROCEDURAL HISTORY

On August 17, 2015, Plaintiffs filed a Class Action and Derivative Complaint (the “Complaint”) in this Court against FHFA, in its capacity as conservator of the Companies, and

Treasury. On November 13, 2015, FHFA and Treasury moved to dismiss the Complaint and submitted opening briefs in support thereof. Plaintiffs filed their Answering Brief in Opposition to FHFA's and Treasury's motions to dismiss on January 16, 2016.

ARGUMENT

I. Legal Standards For Certification

Delaware. The Delaware Supreme Court will accept certification of a question of Delaware law from a federal district court pursuant to Del. Supr. Ct. Rule 41 and Del. Const. Art IV, § 11(8). Under Rule 41, the district court may, on motion or *sua sponte*, certify to the Delaware Supreme Court for decision a question of law arising in any case before it prior to final judgment if: (1) there is an important and urgent reason for an immediate determination of such question by the Delaware Supreme Court and (2) the certifying court has not decided the issue in the case. Del. Supr. Ct. Rule 41(a)(ii).³ See e.g., *Waters v. United States*, 787 A.2d 71, 72 (Del. 2001) (deciding question of Delaware law certified by the District Court for the District of Delaware); *United States v. Anderson*, 669 A.2d 73, 74 (Del. 1995) (same); *United States v. Cumberbatch*, 647 A.2d 1098, 1099 (Del. 1994) (same); *Rales v. Blasband*, 634 A.2d 927, 930 (Del. 1993) (same).

Rule 41(b) provides a non-exhaustive list of the types of questions that are appropriate for certification to the Delaware Supreme Court. Specifically, Rule 41(b) provides: "Without

³ Rule 41(a)(ii) provides: "The Supreme Court of the United States, a Court of Appeals of the United States, **a United States District Court**, a United States Bankruptcy Court, the United States Securities and Exchange Commission, the Highest Appellate Court of any other State, the Highest Appellate Court of any foreign country, or any foreign governmental agency regulating the public issuance or trading of securities may, on motion or *sua sponte*, certify to this Court for decision a question or questions of law arising in any matter before it prior to the entry of final judgment or decision if there is an important and urgent reason for an immediate determination of such question or questions by this Court and the certifying court or entity has not decided the question or questions in the matter." (bold emphasis added).

limiting the [Delaware Supreme Court's] discretion to hear proceedings on certification, the following illustrate reasons for accepting certification:

- (i) *Original question of law.* – The question of law is of first instance in this State;
- (ii) *Conflicting decisions.* – The decisions of the trial courts are conflicting upon the question of law;
- (iii) *Unsettled question.* – The question of law relates to the constitutionality, construction or application of a statute of this State which has not been, but should be, settled by the Court.”

Del. Supr. Ct. Rule 41(b) (emphasis in original).

Virginia. Similarly, the Virginia Supreme Court will accept certification of a question of Virginia law from a federal district court pursuant to Va. Supr. Ct. R. 5:40(a) and Va. Const. Art. VI, § 1 “if a question of Virginia law is determinative in any proceeding pending before the certifying court and it appears there is no controlling precedent on point in the decisions of [the Virginia Supreme] Court or the Court of Appeals of Virginia.” Va. Supr. Ct. R. 5:40(a).

II. The Legal Issue Here Is Appropriate For Certification

The Delaware and Virginia Supreme Courts have not yet decided the key legal issue pending before this Court concerning the validity of a dividend right in the nature of the Net Worth Sweep. Additionally, there is an important and urgent need for this question of state law to be certified to those states' respective Supreme Courts, as the question meets two of the illustrative reasons for certification set forth in Delaware Supreme Court Rule 41, it involves a question of Virginia law that is determinative of this proceeding as required by Virginia Supreme Court Rule 5:40(a), and it is an issue of pressing importance to Delaware and Virginia corporations, as well as their directors, officers, and stockholders.

The question whether the preferred stock of a corporation may be given a cumulative dividend right equal to the entire net worth of the corporation in perpetuity is a question of first

impression in Delaware and Virginia. There is no controlling precedent on point in decisions of any courts of those states. As such, the question can be certified to the Delaware and Virginia Supreme Courts. Del. Supr. Ct. R. 41(b)(i); Va. Supr. Ct. R. 5:40(a); *see also A.W. Fin. Servs., S.A., v. Empire Res., Inc.*, 2009 WL 212412, at *3 (S.D.N.Y. Jan. 29, 2009) (certifying four questions to Delaware Supreme Court and finding that “[e]ach of those questions is an ‘[o]riginal question of law’ pursuant to Del. Supr. Ct. R. 41(b)(i), as this is the ‘first instance’ that a Delaware court will be addressing any of them”); *Shaw v. Agri-Mark, Inc.*, 50 F.3d 117, 120 (2d Cir. 1995) (certifying questions to Delaware Supreme Court because they were of “first instance in the State of Delaware”); *Lee-Warren v. Sch. Bd. of Cumberland Cty.*, 792 F. Supp. 472, 473 (W.D. Va. 1991) (“Recognizing this as a case of first impression under Virginia law . . . [this] Court . . . certifi[ed] to the Supreme Court of Virginia the statutory interpretation issue . . .”).

The legal question at issue also is an unsettled question of law that relates to the “construction or application of a statute of [the State of Delaware] which has not been, but should be, settled by the [Delaware Supreme] Court.” *See* Del. Supr. Ct. R. 41(b)(iii). Deciding whether a corporation may grant a dividend right like the Net Worth Sweep will require construction and application of DGCL § 151 (as well as VSCA § 13.1-638). This too makes the question of law appropriate for certification. Del. Supr. Ct. R. 41(b)(iii); *see also Penn Mut. Life Ins. Co. v. Oglesby*, 695 A.2d 1146, 1151 (Del. 1997) (certified question involved construction and application of Delaware’s incontestability statute for health policies); *A.W. Fin. Servs.*, 2009 WL 212412, at *3 (certified questions involved construction and application of Delaware’s escheat statute).

Because the question at issue is a legal question of first impression in Delaware and Virginia, and involves the construction and application of Delaware and Virginia statutes, it is

the quintessential example of a question that should be certified to the Delaware and Virginia Supreme Courts.

There also is an important and urgent need for certification of this question because the question raises a threshold dispositive issue in this case and resolution of the question will have a broad impact on state policy.

A determination whether a dividend right like the Net Worth Sweep is valid and enforceable under the corporation laws of Delaware and Virginia should be made at the threshold of the action and is potentially dispositive of this case. If, as Plaintiffs contend, a corporation cannot implement such a dividend right as a matter of Delaware and Virginia corporate law, the parties could avoid protracted litigation and this Court, as well as the Third Circuit, could avoid expending time and resources on this dispute. Therefore, the need for guidance from the Delaware and Virginia Supreme Courts now, on the threshold issue present in this case, is compelling. Seeking guidance from the Delaware and Virginia Supreme Courts at this juncture will serve judicial economy and prevent inefficient use of time and resources by this Court, the parties, and possibly the Third Circuit. Because of the expected efficiencies, district courts often use certification to resolve threshold matters that raise novel issues, such as those present here.

Obtaining answers to novel legal questions that will have a broad impact within the state is a primary purpose of allowing certification to the Delaware and Virginia Supreme Courts. *See, e.g., Rales v. Blasband*, 626 A.2d 1364, 1366 (Del. 1993) (“The question certified is one involving the corporation law of the State of Delaware. The issue presented is apparently one of first impression. Thus, there appear to exist important and urgent reasons for an immediate determination by this Court of the substantive rights implicated by the question certified.”); *Bradick v. Grumman Data Sys. Corp.*, 254 Va. 156, 486 S.E.2d 545 (1997) (granting

certification where the issue was a matter of first impression and a decision would have broad ramifications for similarly situated parties). A decision on the open question presented here will not only affect the parties in this case, but will have broad ramifications on Delaware and Virginia corporations, affecting the rights and responsibilities of their directors, officers, and stockholders. Because this case raises important questions of state public policy that affect all relevant constituencies of Delaware and Virginia corporations, the balance weighs heavily in favor of certification. Indeed, the importance of interpreting and applying corporate law statutes and principles has been made clear by the fact that the Delaware and Virginia Supreme Courts previously have accepted certified questions of law regarding those states' corporate laws. *Rales*, 626 A.2d at 1366 (accepting certified question of law regarding a novel demand futility issue because the issue was one of first impression and implicated important matters of Delaware corporation law); *ATP Tour, Inc. v. Deutscher Tennis Bund*, 91 A.3d 554, 555 (Del. 2014) (granting certification regarding the validity of fee-shifting bylaw provisions under Delaware corporate law); *C.F. Trust, Inc. v. First Flight L.P.*, 266 Va. 3, 12, 580 S.E.2d 806, 811 (2003) (answering certified question of law asking whether Virginia law would recognize a claim for outsider reverse veil-piercing under the facts of the particular case). In order to provide clarity and certainty to the constituencies of Delaware and Virginia corporations, those states' highest courts should be given the opportunity to address the issue whether their corporate laws permit preferred stock of a corporation to be given a cumulative dividend right equal to the entire net worth of the corporation in perpetuity.

CONCLUSION

For the reasons set forth above, the Court should certify the above-stated questions of law to the Delaware and Virginia Supreme Courts in accordance with Del. Supr. Ct. R. 41 and Del. Const. Art. IV, § 11(8), and Va. Supr. Ct. R. 5:40(a) and Va. Const. Art. VI, § 1, respectively.

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Dated: January 15, 2016
1214048/42717

EXHIBIT A

FANNIE MAE

**AMENDED AND RESTATED CERTIFICATE OF DESIGNATION OF TERMS OF
VARIABLE LIQUIDATION PREFERENCE SENIOR
PREFERRED STOCK, SERIES 2008-2**

The Federal Housing Finance Agency, exercising its authority pursuant to Section 1367(b) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. § 4617), as amended, as Conservator of the Federal National Mortgage Association, amends and restates the Certificate of Designation of Terms of Variable Liquidation Preference Senior Preferred Stock, Series 2008-2, created as of September 7, 2008, in accordance with the Third Amendment dated as of August 17, 2012, to the Amended and Restated Preferred Stock Purchase Agreement dated as of September 26, 2008, the Senior Preferred Stock shall have the following designation, powers, preferences, rights, privileges, qualifications, limitations, restrictions, terms and conditions:

1. Designation, Par Value, Number of Shares and Priority

The designation of the series of preferred stock of the Federal National Mortgage Association (the “Company”) created by this resolution shall be “Variable Liquidation Preference Senior Preferred Stock, Series 2008-2” (the “Senior Preferred Stock”), and the number of shares initially constituting the Senior Preferred Stock is 1,000,000. Shares of Senior Preferred Stock will have no par value and a stated value and initial liquidation preference per share equal to \$1,000 per share, subject to adjustment as set forth herein. The Board of Directors of the Company, or a duly authorized committee thereof, in its sole discretion, may reduce the number of shares of Senior Preferred Stock, provided such reduction is not below the number of shares of Senior Preferred Stock then outstanding.

The Senior Preferred Stock shall rank prior to the common stock of the Company as provided in this Certificate and shall rank, as to both dividends and distributions upon dissolution, liquidation or winding up of the Company, prior to (a) the shares of preferred stock of the Company designated “5.25% Non-Cumulative Preferred Stock, Series D”, “5.10% Non-Cumulative Preferred Stock, Series E”, “Variable Rate Non-Cumulative Preferred Stock, Series F”, “Variable Rate Non-Cumulative Preferred Stock, Series G”, “5.81% Non-Cumulative Preferred Stock, Series H”, “5.375% Non-Cumulative Preferred Stock, Series I”, “5.125% Non-Cumulative Preferred Stock, Series L”, “4.75% Non-Cumulative Preferred Stock, Series M”, “5.50% Non-Cumulative Preferred Stock, Series N”, “Non-Cumulative Preferred Stock, Series O”, “Non-Cumulative Convertible Series 2004-1 Preferred Stock”, “Variable Rate Non-Cumulative Preferred Stock, Series P”, “6.75% Non-Cumulative Preferred Stock, Series Q”, “7.625% Non-Cumulative Preferred Stock, Series R”, “Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series S”, and “8.75% Non-Cumulative Mandatory Convertible Preferred Stock”, Series 2008-1”, (b) any other capital stock of the Company outstanding on the date of the initial issuance of the Senior Preferred Stock and (c) any

capital stock of the Company that may be issued after the date of initial issuance of the Senior Preferred Stock.

2. Dividends

(a) For each Dividend Period from the date of the initial issuance of the Senior Preferred Stock through and including December 31, 2012, holders of outstanding shares of Senior Preferred Stock shall be entitled to receive, ratably, when, as and if declared by the Board of Directors, in its sole discretion, out of funds legally available therefor, cumulative cash dividends at the annual rate per share equal to the then-current Dividend Rate on the then-current Liquidation Preference. For each Dividend Period from January 1, 2013, holders of outstanding shares of Senior Preferred Stock shall be entitled to receive, ratably, when, as and if declared by the Board of Directors, in its sole discretion, out of funds legally available therefor, cumulative cash dividends in an amount equal to the then-current Dividend Amount. Dividends on the Senior Preferred Stock shall accrue from but not including the date of the initial issuance of the Senior Preferred Stock and will be payable in arrears when, as and if declared by the Board of Directors quarterly on March 31, June 30, September 30 and December 31 of each year (each, a "Dividend Payment Date"), commencing on December 31, 2008. If a Dividend Payment Date is not a "Business Day," the related dividend will be paid not later than the next Business Day with the same force and effect as though paid on the Dividend Payment Date, without any increase to account for the period from such Dividend Payment Date through the date of actual payment. "Business Day" means a day other than (i) a Saturday or Sunday, (ii) a day on which New York City banks are closed, or (iii) a day on which the offices of the Company are closed.

If declared, the initial dividend will be for the period from but not including the date of the initial issuance of the Senior Preferred Stock through and including December 31, 2008. Except for the initial Dividend Payment Date, the "Dividend Period" relating to a Dividend Payment Date will be the period from but not including the preceding Dividend Payment Date through and including the related Dividend Payment Date. For each Dividend Period from the date of initial issuance of the Senior Preferred Stock through and including December 31, 2012, the amount of dividends payable on the initial Dividend Payment Date or for any Dividend Period through and including December 31, 2012, that is not a full calendar quarter shall be computed on the basis of 30-day months, a 360-day year and the actual number of days elapsed in any period of less than one month. For the avoidance of doubt, for each Dividend Period from the date of the initial issuance of the Senior Preferred Stock through and including December 31, 2012, in the event that the Liquidation Preference changes in the middle of a Dividend Period, the amount of dividends payable on the Dividend Payment Date at the end of such Dividend Period shall take into account such change in Liquidation Preference and shall be computed at the Dividend Rate on each Liquidation Preference based on the portion of the Dividend Period that each Liquidation Preference was in effect.

(b) To the extent not paid pursuant to Section 2(a) above, dividends on the Senior Preferred Stock shall accrue and shall be added to the Liquidation Preference pursuant to Section 8, whether or not there are funds legally available for the payment of such dividends and whether or not dividends are declared.

(c) For each Dividend Period from the date of the initial issuance of the Senior Preferred Stock through and including December 31, 2012, "Dividend Rate" means 10.0%;

provided, however, that if at any time the Company shall have for any reason failed to pay dividends in cash in a timely manner as required by this Certificate, then immediately following such failure and for all Dividend Periods thereafter until the Dividend Period following the date on which the Company shall have paid in cash full cumulative dividends (including any unpaid dividends added to the Liquidation Preference pursuant to Section 8) the “Dividend Rate” shall mean 12.0%.

For each Dividend Period from January 1, 2013, through and including December 31, 2017, the “Dividend Amount” for a Dividend Period means the amount, if any, by which the Net Worth Amount at the end of the immediately preceding fiscal quarter, less the Applicable Capital Reserve Amount, exceeds zero. For each Dividend Period from January 1, 2018, the “Dividend Amount” for a Dividend Period means the amount, if any, by which the Net Worth Amount at the end of the immediately preceding fiscal quarter exceeds zero. In each case, “Net Worth Amount” means (i) the total assets of the Company (such assets excluding the Commitment and any unfunded amounts thereof) as reflected on the balance sheet of the Company as of the applicable date set forth in this Certificate, prepared in accordance with GAAP, less (ii) the total liabilities of the Company (such liabilities excluding any obligation in respect of any capital stock of the Company, including this Certificate), as reflected on the balance sheet of the Company as of the applicable date set forth in this Certificate, prepared in accordance with GAAP. “Applicable Capital Reserve Amount” means, as of any date of determination, for each Dividend Period from January 1, 2013, through and including December 31, 2013, \$3,000,000,000; and for each Dividend Period occurring within each 12-month period thereafter, \$3,000,000,000 reduced by an equal amount for each such 12-month period through and including December 31, 2017, so that for each Dividend Period from January 1, 2018, the Applicable Capital Reserve Amount shall be zero. For the avoidance of doubt, if the calculation of the Dividend Amount for a Dividend Period does not exceed zero, then no Dividend Amount shall accrue or be payable for such Dividend Period.

(d) Each such dividend shall be paid to the holders of record of outstanding shares of the Senior Preferred Stock as they appear in the books and records of the Company on such record date as shall be fixed in advance by the Board of Directors, not to be earlier than 45 days nor later than 10 days preceding the applicable Dividend Payment Date. The Company may not, at any time, declare or pay dividends on, make distributions with respect to, or redeem, purchase or acquire, or make a liquidation payment with respect to, any common stock or other securities ranking junior to the Senior Preferred Stock unless (i) full cumulative dividends on the outstanding Senior Preferred Stock in respect of the then-current Dividend Period and all past Dividend Periods (including any unpaid dividends added to the Liquidation Preference pursuant to Section 8) have been declared and paid in cash (including through any pay down of Liquidation Preference pursuant to Section 3) and (ii) all amounts required to be paid pursuant to Section 4 (without giving effect to any prohibition on such payment under any applicable law) have been paid in cash.

(e) Notwithstanding any other provision of this Certificate, the Board of Directors, in its discretion, may choose to pay dividends on the Senior Preferred Stock without the payment of any dividends on the common stock, preferred stock or any other class or series of stock from time to time outstanding ranking junior to the Senior Preferred Stock with respect to the payment of dividends.

(f) If and whenever dividends, having been declared, shall not have been paid in full,

as aforesaid, on shares of the Senior Preferred Stock, all such dividends that have been declared on shares of the Senior Preferred Stock shall be paid to the holders pro rata based on the aggregate Liquidation Preference of the shares of Senior Preferred Stock held by each holder, and any amounts due but not paid in cash shall be added to the Liquidation Preference pursuant to Section 8.

3. Optional Pay Down of Liquidation Preference

(a) Following termination of the Commitment (as defined in the Preferred Stock Purchase Agreement referred to in Section 8 below), and subject to any limitations which may be imposed by law and the provisions below, the Company may pay down the Liquidation Preference of all outstanding shares of the Senior Preferred Stock pro rata, at any time, in whole or in part, out of funds legally available therefor, with such payment first being used to reduce any accrued and unpaid dividends previously added to the Liquidation Preference pursuant to Section 8 below and, to the extent all such accrued and unpaid dividends have been paid, next being used to reduce any Periodic Commitment Fees (as defined in the Preferred Stock Purchase Agreement referred to in Section 8 below) previously added to the Liquidation Preference pursuant to Section 8 below. Prior to termination of the Commitment, and subject to any limitations which may be imposed by law and the provisions below, the Company may pay down the Liquidation Preference of all outstanding shares of the Senior Preferred Stock pro rata, at any time, out of funds legally available therefor, but only to the extent of (i) accrued and unpaid dividends previously added to the Liquidation Preference pursuant to Section 8 below and not repaid by any prior pay down of Liquidation Preference and (ii) Periodic Commitment Fees previously added to the Liquidation Preference pursuant to Section 8 below and not repaid by any prior pay down of Liquidation Preference. Any pay down of Liquidation Preference permitted by this Section 3 shall be paid by making a payment in cash to the holders of record of outstanding shares of the Senior Preferred Stock as they appear in the books and records of the Company on such record date as shall be fixed in advance by the Board of Directors, not to be earlier than 45 days nor later than 10 days preceding the date fixed for the payment.

(b) In the event the Company shall pay down of the Liquidation Preference of the Senior Preferred Stock as aforesaid, notice of such pay down shall be given by the Company by first class mail, postage prepaid, mailed neither less than 10 nor more than 45 days preceding the date fixed for the payment, to each holder of record of the shares of the Senior Preferred Stock, at such holder's address as the same appears in the books and records of the Company. Each such notice shall state the amount by which the Liquidation Preference of each share shall be reduced and the pay down date.

(c) If after termination of the Commitment the Company pays down the Liquidation Preference of each outstanding share of Senior Preferred Stock in full, such shares shall be deemed to have been redeemed as of the date of such payment, and the dividend that would otherwise be payable for the Dividend Period ending on the pay down date will be paid on such date. Following such deemed redemption, the shares of the Senior Preferred Stock shall no longer be deemed to be outstanding, and all rights of the holders thereof as holders of the Senior Preferred Stock shall cease, with respect to shares so redeemed, other than the right to receive the pay down amount (which shall include the final dividend for such shares). Any shares of the Senior Preferred Stock

which shall have been so redeemed, after such redemption, shall no longer have the status of authorized, issued or outstanding shares.

4. Mandatory Pay Down of Liquidation Preference Upon Issuance of Capital Stock

(a) If the Company shall issue any shares of capital stock (including without limitation common stock or any series of preferred stock) in exchange for cash at any time while the Senior Preferred Stock is outstanding, then the Company shall, within 10 Business Days, use the proceeds of such issuance net of the direct costs relating to the issuance of such securities (including, without limitation, legal, accounting and investment banking fees) to pay down the Liquidation Preference of all outstanding shares of Senior Preferred Stock pro rata, out of funds legally available therefor, by making a payment in cash to the holders of record of outstanding shares of the Senior Preferred Stock as they appear in the books and records of the Company on such record date as shall be fixed in advance by the Board of Directors, not to be earlier than 45 days nor later than 10 days preceding the date fixed for the payment, with such payment first being used to reduce any accrued and unpaid dividends previously added to the Liquidation Preference pursuant to Section 8 below and, to the extent all such accrued and unpaid dividends have been paid, next being used to reduce any Periodic Commitment Fees (as defined in the Preferred Stock Purchase Agreement referred to in Section 8 below) previously added to the Liquidation Preference pursuant to Section 8 below; provided that, prior to the termination of the Commitment (as defined in the Preferred Stock Purchase Agreement referred to in Section 8 below), the Liquidation Preference of each share of Senior Preferred Stock shall not be paid down below \$1,000 per share.

(b) If the Company shall not have sufficient assets legally available for the pay down of the Liquidation Preference of the shares of Senior Preferred Stock required under Section 4(a), the Company shall pay down the Liquidation Preference per share to the extent permitted by law, and shall pay down any Liquidation Preference not so paid down because of the unavailability of legally available assets or other prohibition as soon as practicable to the extent it is thereafter able to make such pay down legally. The inability of the Company to make such payment for any reason shall not relieve the Company from its obligation to effect any required pay down of the Liquidation Preference when, as and if permitted by law.

(c) If after the termination of the Commitment the Company pays down the Liquidation Preference of each outstanding share of Senior Preferred Stock in full, such shares shall be deemed to have been redeemed as of the date of such payment, and the dividend that would otherwise be payable for the Dividend Period ending on the pay down date will be paid on such date. Following such deemed redemption, the shares of the Senior Preferred Stock shall no longer be deemed to be outstanding, and all rights of the holders thereof as holders of the Senior Preferred Stock shall cease, with respect to shares so redeemed, other than the right to receive the pay down amount (which shall include the final dividend for such redeemed shares). Any shares of the Senior Preferred Stock which shall have been so redeemed, after such redemption, shall no longer have the status of authorized, issued or outstanding shares.

5. No Voting Rights

Except as set forth in this Certificate or otherwise required by law, the shares of the

Senior Preferred Stock shall not have any voting powers, either general or special.

6. No Conversion or Exchange Rights

The holders of shares of the Senior Preferred Stock shall not have any right to convert such shares into or exchange such shares for any other class or series of stock or obligations of the Company.

7. No Preemptive Rights

No holder of the Senior Preferred Stock shall as such holder have any preemptive right to purchase or subscribe for any other shares, rights, options or other securities of any class of the Company which at any time may be sold or offered for sale by the Company.

8. Liquidation Rights and Preference

(a) Except as otherwise set forth herein, upon the voluntary or involuntary dissolution, liquidation or winding up of the Company, the holders of the outstanding shares of the Senior Preferred Stock shall be entitled to receive out of the assets of the Company available for distribution to stockholders, before any payment or distribution shall be made on the common stock or any other class or series of stock of the Company ranking junior to the Senior Preferred Stock upon liquidation, the amount per share equal to the Liquidation Preference plus an amount, determined in accordance with Section 2(a) above, equal to the dividend otherwise payable for the then-current Dividend Period accrued through and including the date of payment in respect of such dissolution, liquidation or winding up; provided, however, that if the assets of the Company available for distribution to stockholders shall be insufficient for the payment of the amount which the holders of the outstanding shares of the Senior Preferred Stock shall be entitled to receive upon such dissolution, liquidation or winding up of the Company as aforesaid, then, all of the assets of the Company available for distribution to stockholders shall be distributed to the holders of outstanding shares of the Senior Preferred Stock pro rata based on the aggregate Liquidation Preference of the shares of Senior Preferred Stock held by each holder.

(b) "Liquidation Preference" shall initially mean \$1,000 per share and shall be:

(i) increased each time a Deficiency Amount (as defined in the Preferred Stock Purchase Agreement) is paid to the Company by an amount per share equal to the aggregate amount so paid to the Company divided by the number of shares of Senior Preferred Stock outstanding at the time of such payment;

(ii) increased each time the Company does not pay the full Periodic Commitment Fee (as defined in the Preferred Stock Purchase Agreement) in cash by an amount per share equal to the amount of the Periodic Commitment Fee that is not paid in cash divided by the number of shares of Senior Preferred Stock outstanding at the time such payment is due;

(iii) increased on the Dividend Payment Date if the Company fails to pay in full the dividend payable for the Dividend Period ending on such date by an amount per share equal to the aggregate amount of unpaid dividends divided by the number of shares of Senior Preferred Stock outstanding on such date; and

(iv) decreased each time the Company pays down the Liquidation Preference pursuant to Section 3 or Section 4 of this Certificate by an amount per share equal to the aggregate amount of the pay down divided by the number of shares of Senior Preferred Stock outstanding at the time of such pay down.

(c) "Preferred Stock Purchase Agreement" means the Preferred Stock Purchase Agreement, dated September 7, 2008, between the Company and the United States Department of the Treasury.

(d) Neither the sale of all or substantially all of the property or business of the Company, nor the merger, consolidation or combination of the Company into or with any other corporation or entity, shall be deemed to be a dissolution, liquidation or winding up for the purpose of this Section 8.

9. Additional Classes or Series of Stock

The Board of Directors shall have the right at any time in the future to authorize, create and issue, by resolution or resolutions, one or more additional classes or series of stock of the Company, and to determine and fix the distinguishing characteristics and the relative rights, preferences, privileges and other terms of the shares thereof; provided that, any such class or series of stock may not rank prior to or on parity with the Senior Preferred Stock without the prior written consent of the holders of at least two-thirds of all the shares of Senior Preferred Stock at the time outstanding.

10. Miscellaneous

(a) The Company and any agent of the Company may deem and treat the holder of a share or shares of Senior Preferred Stock, as shown in the Company's books and records, as the absolute owner of such share or shares of Senior Preferred Stock for the purpose of receiving payment of dividends in respect of such share or shares of Senior Preferred Stock and for all other purposes whatsoever, and neither the Company nor any agent of the Company shall be affected by any notice to the contrary. All payments made to or upon the order of any such person shall be valid and, to the extent of the sum or sums so paid, effectual to satisfy and discharge liabilities for moneys payable by the Company on or with respect to any such share or shares of Senior Preferred Stock.

(b) The shares of the Senior Preferred Stock, when duly issued, shall be fully paid and non-assessable.

(c) The Senior Preferred Stock may be issued, and shall be transferable on the books of the Company, only in whole shares.

(d) For purposes of this Certificate, the term "the Company" means the Federal National Mortgage Association and any successor thereto by operation of law or by reason of a merger, consolidation, combination or similar transaction.

(e) This Certificate and the respective rights and obligations of the Company and the holders of the Senior Preferred Stock with respect to such Senior Preferred Stock shall be construed in accordance with and governed by the laws of the United States, provided that the law of the State of Delaware shall serve as the federal rule of decision in all instances except where such law is inconsistent with the Company's enabling legislation, its public purposes or any

provision of this Certificate.

(f) Any notice, demand or other communication which by any provision of this Certificate is required or permitted to be given or served to or upon the Company shall be given or served in writing addressed (unless and until another address shall be published by the Company) to Fannie Mae, 3900 Wisconsin Avenue NW, Washington, DC 20016, Attn: Executive Vice President and General Counsel. Such notice, demand or other communication to or upon the Company shall be deemed to have been sufficiently given or made only upon actual receipt of a writing by the Company. Any notice, demand or other communication which by any provision of this Certificate is required or permitted to be given or served by the Company hereunder may be given or served by being deposited first class, postage prepaid, in the United States mail addressed (i) to the holder as such holder's name and address may appear at such time in the books and records of the Company or (ii) if to a person or entity other than a holder of record of the Senior Preferred Stock, to such person or entity at such address as reasonably appears to the Company to be appropriate at such time. Such notice, demand or other communication shall be deemed to have been sufficiently given or made, for all purposes, upon mailing.

(g) The Company, by or under the authority of the Board of Directors, may amend, alter, supplement or repeal any provision of this Certificate pursuant to the following terms and conditions:

(i) Without the consent of the holders of the Senior Preferred Stock, the Company may amend, alter, supplement or repeal any provision of this Certificate to cure any ambiguity, to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Certificate, provided that such action shall not adversely affect the interests of the holders of the Senior Preferred Stock.

(ii) The consent of the holders of at least two-thirds of all of the shares of the Senior Preferred Stock at the time outstanding, given in person or by proxy, either in writing or by a vote at a meeting called for the purpose at which the holders of shares of the Senior Preferred Stock shall vote together as a class, shall be necessary for authorizing, effecting or validating the amendment, alteration, supplementation or repeal (whether by merger, consolidation or otherwise) of the provisions of this Certificate other than as set forth in subparagraph (i) of this paragraph (g). The creation and issuance of any other class or series of stock, or the issuance of additional shares of any existing class or series of stock, of the Company ranking junior to the Senior Preferred Stock shall not be deemed to constitute such an amendment, alteration, supplementation or repeal.

(iii) Holders of the Senior Preferred Stock shall be entitled to one vote per share on matters on which their consent is required pursuant to subparagraph (ii) of this paragraph (g). In connection with any meeting of such holders, the Board of Directors shall fix a record date, neither earlier than 60 days nor later than 10 days prior to the date of such meeting, and holders of record of shares of the Senior Preferred Stock on such record date shall be entitled to notice of and to vote at any such meeting and any adjournment. The Board of Directors, or such person or persons as it may designate, may

establish reasonable rules and procedures as to the solicitation of the consent of holders of the Senior Preferred Stock at any such meeting or otherwise, which rules and procedures shall conform to the requirements of any national securities exchange on which the Senior Preferred Stock may be listed at such time.

(h) RECEIPT AND ACCEPTANCE OF A SHARE OR SHARES OF THE SENIOR PREFERRED STOCK BY OR ON BEHALF OF A HOLDER SHALL CONSTITUTE THE UNCONDITIONAL ACCEPTANCE BY THE HOLDER (AND ALL OTHERS HAVING BENEFICIAL OWNERSHIP OF SUCH SHARE OR SHARES) OF ALL OF THE TERMS AND PROVISIONS OF THIS CERTIFICATE. NO SIGNATURE OR OTHER FURTHER MANIFESTATION OF ASSENT TO THE TERMS AND PROVISIONS OF THIS CERTIFICATE SHALL BE NECESSARY FOR ITS OPERATION OR EFFECT AS BETWEEN THE COMPANY AND THE HOLDER (AND ALL SUCH OTHERS).

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Company this 27th day of September, 2012.

[Seal]

FEDERAL NATIONAL MORTGAGE ASSOCIATION, by
The Federal Housing Finance Agency, its Conservator
/s/ Edward J. DeMarco
Edward J. DeMarco
Acting Director

Signature Page to September 2012 Amended and Restated Certificate of Designation of Senior Preferred Stock

EXHIBIT B

FREDDIE MAC
AMENDED AND RESTATED CERTIFICATE OF CREATION,
DESIGNATION, POWERS, PREFERENCES, RIGHTS,
PRIVILEGES, QUALIFICATIONS, LIMITATIONS,
RESTRICTIONS, TERMS AND CONDITIONS OF
VARIABLE LIQUIDATION PREFERENCE SENIOR PREFERRED STOCK
(PAR VALUE \$1.00 PER SHARE)

The Federal Housing Finance Agency, as Conservator of the Federal Home Loan Mortgage Corporation, a government-sponsored enterprise of the United States of America (the "Company"), does hereby certify that, pursuant to authority vested in the Board of Directors of the Company by Section 306(f) of the Federal Home Loan Mortgage Corporation Act, and pursuant to the authority vested in the Conservator of the Company by Section 1367(b) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. §4617), as amended, the Conservator adopted Resolution FHLMC 2008-24 on September 7, 2008, which resolution is now, and at all times since such date has been, in full force and effect, and that the Conservator approved the final terms of the issuance and sale of the preferred stock of the Company designated above.

As amended and restated in accordance with the Third Amendment dated as of August 17, 2012, to the Amended and Restated Senior Preferred Stock Purchase Agreement dated as of September 26, 2008, the Senior Preferred Stock shall have the following designation, powers, preferences, rights, privileges, qualifications, limitations, restrictions, terms and conditions:

1. Designation, Par Value, Number of Shares and Seniority

The class of preferred stock of the Company created hereby (the "Senior Preferred Stock") shall be designated "Variable Liquidation Preference Senior Preferred Stock," shall have a par value of \$1.00 per share and shall consist of 1,000,000 shares. The Senior Preferred Stock shall rank prior to the common stock of the Company as provided in this Certificate and shall rank, as to both dividends and distributions upon liquidation, prior to (a) the Fixed-to-Floating Rate Non-Cumulative Perpetual Preferred Stock issued on December 4, 2007, (b) the 6.55% Non-Cumulative Preferred Stock issued on September 28, 2007, (c) the 6.02% Non-Cumulative Preferred Stock issued on July 24, 2007, (d) the 5.66% Non-Cumulative Preferred Stock issued on April 16, 2007, (e) the 5.57% Non-Cumulative Preferred Stock issued on January 16, 2007, (f) the 5.9% Non-Cumulative Preferred Stock issued on October 16, 2006, (g) the 6.42% Non-Cumulative Preferred Stock issued on July 17, 2006, (h) the Variable Rate, Non-Cumulative Preferred Stock issued on July 17, 2006, (i) the 5.81% Non-Cumulative Preferred Stock issued on January 29, 2002, (j) the 5.7% Non-Cumulative Preferred Stock issued on October 30, 2001, (k) the 6% Non-Cumulative Preferred Stock issued on May 30, 2001, (l) the Variable Rate, Non-Cumulative Preferred Stock issued on May 30, 2001 and June 1, 2001, (m) the 5.81% Non-Cumulative Preferred Stock issued on March 23, 2001, (n) the Variable Rate, Non-Cumulative Preferred Stock issued on March 23, 2001, (o) the Variable Rate, Non-Cumulative Preferred Stock issued on January 26, 2001, (p) the Variable Rate, Non-Cumulative Preferred Stock issued on November 5, 1999, (q) the 5.79% Non-Cumulative Preferred Stock issued on July 21, 1999, (r) the 5.1% Non-Cumulative Preferred Stock issued on March 19, 1999, (s) the 5.3% Non-Cumulative Preferred Stock issued on October 28, 1998, (t) the

5.1% Non-Cumulative Preferred Stock issued on September 23, 1998, (u) the Variable Rate, Non-Cumulative Preferred Stock issued on September 23, 1998 and September 29, 1998, (v) the 5% Non-Cumulative Preferred Stock issued on March 23, 1998, (w) the 5.81% Non-Cumulative Preferred Stock issued on October 27, 1997, (x) the Variable Rate, Non-Cumulative Preferred Stock issued on April 26, 1996, (y) any other capital stock of the Company outstanding on the date of the initial issuance of the Senior Preferred Stock, and (z) any capital stock of the Company that may be issued after the date of initial issuance of the Senior Preferred Stock.

2. Dividends

(a) For each Dividend Period from the date of the initial issuance of the Senior Preferred Stock through and including December 31, 2012, holders of outstanding shares of Senior Preferred Stock shall be entitled to receive, ratably, when, as and if declared by the Board of Directors, in its sole discretion, out of funds legally available therefor, cumulative cash dividends at the annual rate per share equal to the then-current Dividend Rate on the then-current Liquidation Preference. For each Dividend Period from January 1, 2013, holders of outstanding shares of Senior Preferred Stock shall be entitled to receive, ratably, when, as and if declared by the Board of Directors, in its sole discretion, out of funds legally available therefor, cumulative cash dividends in an amount equal to the then-current Dividend Amount. Dividends on the Senior Preferred Stock shall accrue from but not including the date of the initial issuance of the Senior Preferred Stock and will be payable in arrears when, as and if declared by the Board of Directors quarterly on March 31, June 30, September 30 and December 31 of each year (each, a "Dividend Payment Date"), commencing on December 31, 2008. If a Dividend Payment Date is not a "Business Day," the related dividend will be paid not later than the next Business Day with the same force and effect as though paid on the Dividend Payment Date, without any increase to account for the period from such Dividend Payment Date through the date of actual payment. "Business Day" means a day other than (i) a Saturday or Sunday, (ii) a day on which New York City banks are closed, or (iii) a day on which the offices of the Company are closed.

If declared, the initial dividend will be for the period from but not including the date of the initial issuance of the Senior Preferred Stock through and including December 31, 2008. Except for the initial Dividend Payment Date, the "Dividend Period" relating to a Dividend Payment Date will be the period from but not including the preceding Dividend Payment Date through and including the related Dividend Payment Date. For each Dividend Period from the date of the initial issuance of the Senior Preferred Stock through and including December 31, 2012, the amount of dividends payable on the initial Dividend Payment Date or for any Dividend Period through and including December 31, 2012, that is not a full calendar quarter shall be computed on the basis of 30-day months, a 360-day year and the actual number of days elapsed in any period of less than one month. For the avoidance of doubt, for each Dividend Period from the date of the initial issuance of the Senior Preferred Stock through and including December 31, 2012, in the event that the Liquidation Preference changes in the middle of a Dividend Period, the amount of dividends payable on the Dividend Payment Date at the end of such Dividend Period shall take into account such change in Liquidation Preference and shall be computed at the Dividend Rate on each Liquidation Preference based on the portion of the Dividend Period that each Liquidation Preference was in effect.

(b) To the extent not paid pursuant to Section 2(a) above, dividends on the Senior

Preferred Stock shall accrue and shall be added to the Liquidation Preference pursuant to Section 8, whether or not there are funds legally available for the payment of such dividends and whether or not dividends are declared.

(c) For each Dividend Period from the date of the initial issuance of the Senior Preferred Stock through and including December 31, 2012, "Dividend Rate" means 10.0%; provided, however, that if at any time the Company shall have for any reason failed to pay dividends in cash in a timely manner as required by this Certificate, then immediately following such failure and for all Dividend Periods thereafter until the Dividend Period following the date on which the Company shall have paid in cash full cumulative dividends (including any unpaid dividends added to the Liquidation Preference pursuant to Section 8), the "Dividend Rate" shall mean 12.0%.

For each Dividend Period from January 1, 2013, through and including December 31, 2017, the "Dividend Amount" for a Dividend Period means the amount, if any, by which the Net Worth Amount at the end of the immediately preceding fiscal quarter, less the Applicable Capital Reserve Amount, exceeds zero. For each Dividend Period from January 1, 2018, the "Dividend Amount" for a Dividend Period means the amount, if any, by which the Net Worth Amount at the end of the immediately preceding fiscal quarter exceeds zero. In each case, "Net Worth Amount" means (i) the total assets of the Company (such assets excluding the Commitment and any unfunded amounts thereof) as reflected on the balance sheet of the Company as of the applicable date set forth in this Certificate, prepared in accordance with GAAP, less (ii) the total liabilities of the Company (such liabilities excluding any obligation in respect of any capital stock of the Company, including this Certificate), as reflected on the balance sheet of the Company as of the applicable date set forth in this Certificate, prepared in accordance with GAAP. "Applicable Capital Reserve Amount" means, as of any date of determination, for each Dividend Period from January 1, 2013, through and including December 31, 2013, \$3,000,000,000; and for each Dividend Period occurring within each 12-month period thereafter, \$3,000,000,000 reduced by an equal amount for each such 12-month period through and including December 31, 2017, so that for each Dividend Period from January 1, 2018, the Applicable Capital Reserve Amount shall be zero. For the avoidance of doubt, if the calculation of the Dividend Period does not exceed zero, then no Dividend Amount shall accrue or be payable for such Dividend Period.

(d) Each such dividend shall be paid to the holders of record of outstanding shares of the Senior Preferred Stock as they appear in the books and records of the Company on such record date as shall be fixed in advance by the Board of Directors, not to be earlier than 45 days nor later than 10 days preceding the applicable Dividend Payment Date. The Company may not, at any time, declare or pay dividends on, make distributions with respect to, or redeem, purchase or acquire, or make a liquidation payment with respect to, any common stock or other securities ranking junior to the Senior Preferred Stock unless (i) full cumulative dividends on the outstanding Senior Preferred Stock in respect of the then-current Dividend Period and all past Dividend Periods (including any unpaid dividends added to the Liquidation Preference pursuant to Section 8) have been declared and paid in cash (including through any pay down of Liquidation Preference pursuant to Section 3) and (ii) all amounts required to be paid pursuant to Section 4 (without giving effect to any prohibition on such payment under any applicable

law) have been paid in cash.

(e) Notwithstanding any other provision of this Certificate, the Board of Directors, in its discretion, may choose to pay dividends on the Senior Preferred Stock without the payment of any dividends on the common stock, preferred stock or any other class or series of stock from time to time outstanding ranking junior to the Senior Preferred Stock with respect to the payment of dividends.

(f) If and whenever dividends, having been declared, shall not have been paid in full, as aforesaid, on shares of the Senior Preferred Stock, all such dividends that have been declared on shares of the Senior Preferred Stock shall be paid to the holders pro rata based on the aggregate Liquidation Preference of the shares of Senior Preferred Stock held by each holder, and any amounts due but not paid in cash shall be added to the Liquidation Preference pursuant to Section 8.

3. Optional Pay Down of Liquidation Preference

(a) Following termination of the Commitment (as defined in the Preferred Stock Purchase Agreement referred to in Section 8 below), and subject to any limitations which may be imposed by law and the provisions below, the Company may pay down the Liquidation Preference of all outstanding shares of the Senior Preferred Stock pro rata, at any time, in whole or in part, out of funds legally available therefor, with such payment first being used to reduce any accrued and unpaid dividends previously added to the Liquidation Preference pursuant to Section 8 below and, to the extent all such accrued and unpaid dividends have been paid, next being used to reduce any Periodic Commitment Fees (as defined in the Preferred Stock Purchase Agreement referred to in Section 8 below) previously added to the Liquidation Preference pursuant to Section 8 below. Prior to termination of the Commitment, and subject to any limitations which may be imposed by law and the provisions below, the Company may pay down the Liquidation Preference of all outstanding shares of the Senior Preferred Stock pro rata, at any time, out of funds legally available therefor, but only to the extent of (i) accrued and unpaid dividends previously added to the Liquidation Preference pursuant to Section 8 below and not repaid by any prior pay down of Liquidation Preference and (ii) Periodic Commitment Fees previously added to the Liquidation Preference pursuant to Section 8 below and not repaid by any prior pay down of Liquidation Preference. Any pay down of Liquidation Preference permitted by this Section 3 shall be paid by making a payment in cash to the holders of record of outstanding shares of the Senior Preferred Stock as they appear in the books and records of the Company on such record date as shall be fixed in advance by the Board of Directors, not to be earlier than 45 days nor later than 10 days preceding the date fixed for the payment.

(b) In the event the Company shall pay down of the Liquidation Preference of the Senior Preferred Stock as aforesaid, notice of such pay down shall be given by the Company by first class mail, postage prepaid, mailed neither less than 10 nor more than 45 days preceding the date fixed for the payment, to each holder of record of the shares of the Senior Preferred Stock, at such holder's address as the same appears in the books and records of the Company. Each such notice shall state the amount by which the Liquidation Preference of each share shall be reduced and the pay down date.

(c) If after termination of the Commitment the Company pays down the Liquidation Preference of each outstanding share of Senior Preferred Stock in full, such shares shall be deemed to have been redeemed as of the date of such payment, and the dividend that would otherwise be payable for the Dividend Period ending on the pay down date will be paid on such date. Following such deemed redemption, the shares of the Senior Preferred Stock shall no longer be deemed to be outstanding, and all rights of the holders thereof as holders of the Senior Preferred Stock shall cease, with respect to shares so redeemed, other than the right to receive the pay down amount (which shall include the final dividend for such shares). Any shares of the Senior Preferred Stock which shall have been so redeemed, after such redemption, shall no longer have the status of authorized, issued or outstanding shares.

4. Mandatory Pay Down of Liquidation Preference Upon Issuance of Capital Stock

(a) If the Company shall issue any shares of capital stock (including without limitation common stock or any series of preferred stock) in exchange for cash at any time while the Senior Preferred Stock is outstanding, then the Company shall, within 10 Business Days, use the proceeds of such issuance net of the direct costs relating to the issuance of such securities (including, without limitation, legal, accounting and investment banking fees) to pay down the Liquidation Preference of all outstanding shares of Senior Preferred Stock pro rata, out of funds legally available therefor, by making a payment in cash to the holders of record of outstanding shares of the Senior Preferred Stock as they appear in the books and records of the Company on such record date as shall be fixed in advance by the Board of Directors, not to be earlier than 45 days nor later than 10 days preceding the date fixed for the payment, with such payment first being used to reduce any accrued and unpaid dividends previously added to the Liquidation Preference pursuant to Section 8 below and, to the extent all such accrued and unpaid dividends have been paid, next being used to reduce any Periodic Commitment Fees (as defined in the Preferred Stock Purchase Agreement referred to in Section 8 below) previously added to the Liquidation Preference pursuant to Section 8 below; provided that, prior to the termination of the Commitment (as defined in the Preferred Stock Purchase Agreement referred to in Section 8 below), the Liquidation Preference of each share of Senior Preferred Stock shall not be paid down below \$1,000 per share.

(b) If the Company shall not have sufficient assets legally available for the pay down of the Liquidation Preference of the shares of Senior Preferred Stock required under Section 4(a), the Company shall pay down the Liquidation Preference per share to the extent permitted by law, and shall pay down any Liquidation Preference not so paid down because of the unavailability of legally available assets or other prohibition as soon as practicable to the extent it is thereafter able to make such pay down legally. The inability of the Company to make such payment for any reason shall not relieve the Company from its obligation to effect any required pay down of the Liquidation Preference when, as and if permitted by law.

(c) If after the termination of the Commitment the Company pays down the Liquidation Preference of each outstanding share of Senior Preferred Stock in full, such shares shall be deemed to have been redeemed as of the date of such payment, and the dividend that would otherwise be payable for the Dividend Period ending on the pay down date will be paid

on such date. Following such deemed redemption, the shares of the Senior Preferred Stock shall no longer be deemed to be outstanding, and all rights of the holders thereof as holders of the Senior Preferred Stock shall cease, with respect to shares so redeemed, other than the right to receive the pay down amount (which shall include the final dividend for such redeemed shares). Any shares of the Senior Preferred Stock which shall have been so redeemed, after such redemption, shall no longer have the status of authorized, issued or outstanding shares.

5. No Voting Rights

Except as set forth in this Certificate or otherwise required by law, the shares of the Senior Preferred Stock shall not have any voting powers, either general or special.

6. No Conversion or Exchange Rights

The holders of shares of the Senior Preferred Stock shall not have any right to convert such shares into or exchange such shares for any other class or series of stock or obligations of the Company.

7. No Preemptive Rights

No holder of the Senior Preferred Stock shall as such holder have any preemptive right to purchase or subscribe for any other shares, rights, options or other securities of any class of the Company which at any time may be sold or offered for sale by the Company.

8. Liquidation Rights and Preference

(a) Except as otherwise set forth herein, upon the voluntary or involuntary dissolution, liquidation or winding up of the Company, the holders of the outstanding shares of the Senior Preferred Stock shall be entitled to receive out of the assets of the Company available for distribution to stockholders, before any payment or distribution shall be made on the common stock or any other class or series of stock of the Company ranking junior to the Senior Preferred Stock upon liquidation, the amount per share equal to the Liquidation Preference plus an amount, determined in accordance with Section 2(a) above, equal to the dividend otherwise payable for the then-current Dividend Period accrued through and including the date of payment in respect of such dissolution, liquidation or winding up; provided, however, that if the assets of the Company available for distribution to stockholders shall be insufficient for the payment of the amount which the holders of the outstanding shares of the Senior Preferred Stock shall be entitled to receive upon such dissolution, liquidation or winding up of the Company as aforesaid, then, all of the assets of the Company available for distribution to stockholders shall be distributed to the holders of outstanding shares of the Senior Preferred Stock pro rata based on the aggregate Liquidation Preference of the shares of Senior Preferred Stock held by each holder.

(b) "Liquidation Preference" shall initially mean \$1,000 per share and shall be:

(i) increased each time a Deficiency Amount (as defined in the Preferred Stock Purchase Agreement) is paid to the Company by an amount per share equal to the aggregate amount so paid to the Company divided by the number of shares of

Senior Preferred Stock outstanding at the time of such payment;

(ii) increased each time the Company does not pay the full Periodic Commitment Fee (as defined in the Preferred Stock Purchase Agreement) in cash by an amount per share equal to the amount of the Periodic Commitment Fee that is not paid in cash divided by the number of shares of Senior Preferred Stock outstanding at the time such payment is due;

(iii) increased on the Dividend Payment Date if the Company fails to pay in full the dividend payable for the Dividend Period ending on such date by an amount per share equal to the aggregate amount of unpaid dividends divided by the number of shares of Senior Preferred Stock outstanding on such date; and

(iv) decreased each time the Company pays down the Liquidation Preference pursuant to Section 3 or Section 4 of this Certificate by an amount per share equal to the aggregate amount of the pay down divided by the number of shares of Senior Preferred Stock outstanding at the time of such pay down.

(c) "Preferred Stock Purchase Agreement" means the Preferred Stock Purchase Agreement, dated September 7, 2008, between the Company and the United States Department of the Treasury.

(d) Neither the sale of all or substantially all of the property or business of the Company, nor the merger, consolidation or combination of the Company into or with any other corporation or entity, shall be deemed to be a dissolution, liquidation or winding up for the purpose of this Section 8.

9. Additional Classes or Series of Stock

The Board of Directors shall have the right at anytime in the future to authorize, create and issue, by resolution or resolutions, one or more additional classes or series of stock of the Company, and to determine and fix the distinguishing characteristics and the relative rights, preferences, privileges and other terms of the shares thereof; provided that, any such class or series of stock may not rank prior to or on parity with the Senior Preferred Stock without the prior written consent of the holders of at least two-thirds of all the shares of Senior Preferred Stock at the time outstanding.

10. Miscellaneous

(a) The Company and any agent of the Company may deem and treat the holder of a share or shares of Senior Preferred Stock, as shown in the Company's books and records, as the absolute owner of such share or shares of Senior Preferred Stock for the purpose of receiving payment of dividends in respect of such share or shares of Senior Preferred Stock and for all other purposes whatsoever, and neither the Company nor any agent of the Company shall be affected by any notice to the contrary. All payments made to or upon the order of any such person shall be valid and, to the extent of the sum or sums so paid, effectual to satisfy and discharge liabilities for moneys payable by the Company on or with respect to any such share or shares of Senior Preferred Stock.

(b) The shares of the Senior Preferred Stock, when duly issued, shall be fully paid and non-assessable.

(c) The Senior Preferred Stock may be issued, and shall be transferable on the books of the Company, only in whole shares.

(d) For purposes of this Certificate, the term “the Company” means the Federal Home Loan Mortgage Corporation and any successor thereto by operation of law or by reason of a merger, consolidation, combination or similar transaction.

(e) This Certificate and the respective rights and obligations of the Company and the holders of the Senior Preferred Stock with respect to such Senior Preferred Stock shall be construed in accordance with and governed by the laws of the United States, provided that the law of the Commonwealth of Virginia shall serve as the federal rule of decision in all instances except where such law is inconsistent with the Company’s enabling legislation, its public purposes or any provision of this Certificate.

(f) Any notice, demand or other communication which by any provision of this Certificate is required or permitted to be given or served to or upon the Company shall be given or served in writing addressed (unless and until another address shall be published by the Company) to Freddie Mac, 8200 Jones Branch Drive, McLean, Virginia 22102, Attn: Executive Vice President and General Counsel. Such notice, demand or other communication to or upon the Company shall be deemed to have been sufficiently given or made only upon actual receipt of a writing by the Company. Any notice, demand or other communication which by any provision of this Certificate is required or permitted to be given or served by the Company hereunder may be given or served by being deposited first class, postage prepaid, in the United States mail addressed (i) to the holder as such holder’s name and address may appear at such time in the books and records of the Company or (ii) if to a person or entity other than a holder of record of the Senior Preferred Stock, to such person or entity at such address as reasonably appears to the Company to be appropriate at such time. Such notice, demand or other communication shall be deemed to have been sufficiently given or made, for all purposes, upon mailing.

(g) The Company, by or under the authority of the Board of Directors, may amend, alter, supplement or repeal any provision of this Certificate pursuant to the following terms and conditions:

(i) Without the consent of the holders of the Senior Preferred Stock, the Company may amend, alter, supplement or repeal any provision of this Certificate to cure any ambiguity, to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Certificate, provided that such action shall not adversely affect the interests of the holders of the Senior Preferred Stock.

(ii) The consent of the holders of at least two-thirds of all of the shares of the Senior Preferred Stock at the time outstanding, given in person or by proxy, either in writing or by a vote at a meeting called for the purpose at which the holders of shares of the Senior Preferred Stock shall vote together as a class, shall be necessary for

authorizing, effecting or validating the amendment, alteration, supplementation or repeal (whether by merger, consolidation or otherwise) of the provisions of this Certificate other than as set forth in subparagraph (i) of this paragraph (g). The creation and issuance of any other class or series of stock, or the issuance of additional shares of any existing class or series of stock, of the Company ranking junior to the Senior Preferred Stock shall not be deemed to constitute such an amendment, alteration, supplementation or repeal.

(iii) Holders of the Senior Preferred Stock shall be entitled to one vote per share on matters on which their consent is required pursuant to subparagraph (ii) of this paragraph (g). In connection with any meeting of such holders, the Board of Directors shall fix a record date, neither earlier than 60 days nor later than 10 days prior to the date of such meeting, and holders of record of shares of the Senior Preferred Stock on such record date shall be entitled to notice of and to vote at any such meeting and any adjournment. The Board of Directors, or such person or persons as it may designate, may establish reasonable rules and procedures as to the solicitation of the consent of holders of the Senior Preferred Stock at any such meeting or otherwise, which rules and procedures shall conform to the requirements of any national securities exchange on which the Senior Preferred Stock may be listed at such time.

(h) RECEIPT AND ACCEPTANCE OF A SHARE OR SHARES OF THE SENIOR PREFERRED STOCK BY OR ON BEHALF OF A HOLDER SHALL CONSTITUTE THE UNCONDITIONAL ACCEPTANCE BY THE HOLDER (AND ALL OTHERS HAVING BENEFICIAL OWNERSHIP OF SUCH SHARE OR SHARES) OF ALL OF THE TERMS AND PROVISIONS OF THIS CERTIFICATE. NO SIGNATURE OR OTHER FURTHER MANIFESTATION OF ASSENT TO THE TERMS AND PROVISIONS OF THIS CERTIFICATE SHALL BE NECESSARY FOR ITS OPERATION OR EFFECT AS BETWEEN THE COMPANY AND THE HOLDER (AND ALL SUCH OTHERS).

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Company this 27th day of September, 2012.

[Seal]

FEDERAL HOME LOAN MORTGAGE CORPORATION,
by
The Federal Housing Finance Agency, its Conservator

By: /s/ Edward J DeMarco
Edward J DeMarco
Acting Director

Signature Page to September 2012 Amended and Restated Certificate of Designation of Senior Preferred Stock

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

DAVID JACOBS and GARY HINDES, on behalf of themselves and all others similarly situated, and derivatively on behalf of the Federal National Mortgage Association and Federal Home Loan Mortgage Corporation,

Plaintiffs,

v.

THE FEDERAL HOUSING FINANCE AGENCY, in its capacity as Conservator of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, and THE UNITED STATES DEPARTMENT OF THE TREASURY,

Defendants,

and

THE FEDERAL NATIONAL MORTGAGE ASSOCIATION and THE FEDERAL HOME LOAN MORTGAGE CORPORATION,

Nominal Defendants.

Civil Action No.: 15-708-GMS

CLASS ACTION

[PROPOSED] ORDER

At Wilmington, this ___ day of _____, 2016, having reviewed the parties' contentions and the applicable law;

IT IS HEREBY ORDERED that Plaintiffs' Application for Certification to the Delaware and Virginia Supreme Courts of Novel and Undecided Issues of State Law is GRANTED for the reasons set forth in the Court's Certifications of Questions of Law;

IT IS FURTHER ORDERED that this case is stayed until such time as the Delaware and Virginia Supreme Courts make decisions whether to accept or refuse the certifications.

United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

DAVID JACOBS and GARY HINDES, on behalf of themselves and all others similarly situated, and derivatively on behalf of the Federal National Mortgage Association and Federal Home Loan Mortgage Corporation,

Plaintiffs,

v.

THE FEDERAL HOUSING FINANCE AGENCY, in its capacity as Conservator of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, and THE UNITED STATES DEPARTMENT OF THE TREASURY,

Defendants,

and

THE FEDERAL NATIONAL MORTGAGE ASSOCIATION and THE FEDERAL HOME LOAN MORTGAGE CORPORATION,

Nominal Defendants.

Civil Action No.: 15-708-GMS

CLASS ACTION

CERTIFICATION OF QUESTION OF LAW TO THE DELAWARE SUPREME COURT

This ____ day of _____, 2016, the Court having found:

(1) The nature and stage of proceedings are:

On August 17, 2015, Plaintiffs David Jacobs and Gary Hinds, on behalf of themselves and all others similarly situated, and derivatively on behalf of the Federal National Mortgage Association (“Fannie Mae”) and Federal Home Loan Mortgage Corporation (“Freddie Mac,” and, together with Fannie Mae, the “Companies”), filed a Class Action and Derivative Complaint (the “Complaint”) in this Court against Defendants Federal Housing Finance Agency (“FHFA”),

in its capacity as conservator of the Companies, and the United States Department of the Treasury (“Treasury”). On November 13, 2015, FHFA and Treasury moved to dismiss the Complaint and submitted opening briefs in support thereof. On January 16, 2016, Plaintiffs filed their answering brief in opposition to FHFA’s and Treasury’s motions to dismiss.

In the current application, Plaintiffs have requested that this Court certify the following question of law to the Delaware Supreme Court in accordance with Del. Supr. Ct. R. 41 and Del. Const. Art. IV, § 11(8):

Does Delaware law permit preferred stock of a corporation to have a cumulative dividend right equal to the entire net worth of the corporation, payable quarterly in perpetuity, as provided in Section 2 of Fannie Mae’s Amended and Restated Certificate of Designation of Terms of Variable Liquation Preference Senior Preferred Stock, Series 2008-2, dated September 27, 2012 (which is attached hereto as Exhibit A)?

(2) The following facts are undisputed:

Fannie Mae and Freddie Mac are for-profit, stockholder-owned corporations organized and existing under the Federal National Mortgage Association Charter Act and the Federal Home Loan Mortgage Corporation Act, respectively. Compl. ¶ 30. Federal law authorizes each of the Companies to designate “the law of the jurisdiction in which [its] principal office . . . is located, [or] . . . [the] Delaware General Corporation Law” for purposes of its corporate governance practices and procedures. 12 C.F.R. § 1710.10. Fannie Mae has elected Delaware law to apply pursuant to Section 1.05 of its bylaws, which provides, in pertinent part, that “the corporation has elected to follow the applicable corporate governance practices and procedures of the Delaware General Corporation Law.” Compl. ¶ 32. Freddie Mac has elected Virginia law to apply pursuant to Section 11.3 of its bylaws, which provides, in pertinent part, that “the Corporation shall follow the corporate governance practices and procedures of the law of the Commonwealth

of Virginia, including without limitation the Virginia Stock Corporation Act as the same may be amended from time to time.” *Id.*

On July 30, 2008, Congress enacted the Housing and Economic Recovery Act of 2008 (“HERA”), which created FHFA and empowered it to act as the Companies’ regulator and to appoint itself as conservator or receiver of the Companies in certain statutorily specified circumstances. *Id.* ¶ 4. In addition, HERA granted Treasury limited, temporary authority to purchase securities from the Companies. *Id.* ¶ 34. HERA left in place the federal charters of the Companies and did not implicitly or explicitly repeal or modify the provisions of their bylaws, implemented pursuant to federal law, specifying that Delaware and Virginia law govern the Companies’ internal affairs. *Id.* ¶ 4.

On September 6, 2008, FHFA placed the Companies under conservatorship and appointed itself as conservator of the Companies. *Id.* The day after the conservatorships were imposed, FHFA, acting as conservator for the Companies, and Treasury entered into two virtually identical senior preferred stock purchase agreements (the “PSPAs”), pursuant to which each of Fannie Mae and Freddie Mac created and issued a new class of stock, the “Senior Preferred Stock.” *Id.* ¶ 36. The Senior Preferred Stock was created pursuant to two virtually identical Senior Preferred Stock Certificates of Designation (one each for Fannie Mae and Freddie Mac) (the “Certificates of Designation”) that set forth the rights, powers and preferences of the Senior Preferred Stock. *Id.* Treasury purchased 1 million shares of each Company’s Senior Preferred Stock in exchange for a funding commitment that allowed each Company to draw up to \$100 billion from Treasury (this cap was later increased in size by two subsequent amendments to the PSPAs, first to \$200 billion each and then to an amount established by a formula that may be greater (but not less) than \$200 billion each, adjusting for the amount of any

deficiencies experienced by the Companies in 2010, 2011 and 2012 and any surplus existing as of December 31, 2012). *Id.* The 1 million shares of each Company's Senior Preferred Stock have an aggregate liquidation preference equal to \$1 billion (\$1,000 per share) plus the sum of all additional amounts drawn by each Company on Treasury's funding commitment. *Id.* ¶ 36. The newly issued Senior Preferred Stock of each of the Companies ranks senior to all other classes and series of stock and initially entitled Treasury to receive a cumulative cash dividend of 10% of the outstanding liquidation preference (12% if the dividend were paid in kind). *Id.* ¶ 8. Absent the express consent of Treasury and FHFA, the Companies generally cannot redeem the Senior Preferred Stock. *Id.* ¶ 36.

On August 17, 2012, FHFA entered into a third amendment of each of the Amended and Restated Senior Preferred Stock Purchase Agreements (together, the "Third Amendment") and amended the Certificates of Designation setting forth the terms of the Fannie Mae and Freddie Mac Senior Preferred Stock. *Id.* These amendments changed the preferred dividend on Treasury's Senior Preferred Stock in the Companies from one payable at the previously established 10% cash (and 12% in-kind) rate to a perpetual quarterly "dividend" equal to the entire positive net worth of each of Fannie Mae and Freddie Mac. *Id.*; *see also id.* ¶¶ 42-43.

Specifically, the Third Amendment to the PSPAs and the corresponding Amended and Restated Certificates of Designation provide, in pertinent part, that, as holder of the Senior Preferred Stock, Treasury "shall be entitled to receive, ratably, when, as and if declared by the Board of Directors, in its sole discretion, out of funds legally available therefor, cumulative cash dividends in an amount equal to the then-current Dividend Amount." *Id.* ¶ 43.

The "Dividend Amount" is defined as follows:

For each Dividend Period from January 1, 2013, through and including December 31, 2017, the "Dividend Amount" for a

Dividend Period means the amount, if any, by which the Net Worth Amount at the end of the immediately preceding fiscal quarter, less the Applicable Capital Reserve Amount, exceeds zero. For each Dividend Period from January 1, 2018, the “Dividend Amount” for a Dividend Period means the amount, if any, by which the Net Worth Amount at the end of the immediately preceding fiscal quarter exceeds zero. In each case, “Net Worth Amount” means (i) the total assets of the Company (such assets excluding the Commitment and any unfunded amounts thereof) as reflected on the balance sheet of the Company as of the applicable date set forth in this Certificate, prepared in accordance with GAAP, less (ii) the total liabilities of the Company (such liabilities excluding any obligation in respect of any capital stock of the Company, including this Certificate), as reflected on the balance sheet of the Company as of the applicable date set forth in this Certificate, prepared in accordance with GAAP. “Applicable Capital Reserve Amount” means, as of any date of determination, for each Dividend Period from January 1, 2013, through and including December 31, 2013, \$3,000,000,000; and for each Dividend Period occurring within each 12-month period thereafter, \$3,000,000,000 reduced by an equal amount for each such 12-month period through and including December 31, 2017, so that for each Dividend Period from January 1, 2018, the Applicable Capital Reserve Amount shall be zero. For the avoidance of doubt, if the calculation of the Dividend Amount for a Dividend Period does not exceed zero, then no Dividend Amount shall accrue or be payable for such Dividend Period.

Id. Thus, pursuant to the Net Worth Sweep, from January 1, 2013 through December 31, 2017, each Company pays to Treasury, in the form of a purported “dividend,” that particular Company’s “Net Worth Amount” (*i.e.*, total assets less total liabilities) less the “Applicable Capital Reserve Amount” (which starts at \$3 billion and decreases to \$0 by January 1, 2018). *Id.*

¶ 44. Beginning January 1, 2018 and continuing in perpetuity, the Net Worth Amount will be paid out each quarter to Treasury without any capital reserve whatsoever. *Id.*

The Net Worth Sweep “dividends” are cumulative. *Id.* ¶ 45. If the Net Worth Amount is greater than zero and the board of directors does not declare a “dividend” on the Senior Preferred Stock, then the “dividend” accumulates. Under the Certificates of Designation, no dividends

may be paid on any other classes or series of stock of either Company unless and until full cumulative “dividends” (*i.e.*, the full Net Worth Sweep amount) are paid on the Senior Preferred Stock pursuant to the Net Worth Sweep. *Id.* Because the entire net worth of each Company is payable in perpetuity to the Senior Preferred Stock, no dividends can ever be paid on other classes or series of stock. *Id.*

(3) The question of law set forth below should be certified to the Supreme Court of the State of Delaware for the following reasons:

Plaintiffs present an important question of Delaware law that meets the requirements for certification under Delaware Supreme Court Rule 41. The question whether Delaware law permits preferred stock of a corporation to be given a cumulative dividend right equal to the entire net worth of the corporation in perpetuity meets the requirements for certification because it is (1) a matter of first impression in Delaware and (2) requires the construction and application of a Delaware statute (8 *Del. C.* § 151) that should be settled by the Delaware Supreme Court.

(4) The important and urgent reasons for an immediate determination by the Delaware Supreme Court of the question certified are:

There are several important and urgent reasons for certification.

First, the question raises a threshold and potentially dispositive issue in the case and a determination of the issue may terminate this litigation. If Plaintiffs are correct that Delaware law does not permit preferred stock of a corporation to be given a cumulative dividend right equal to the entire net worth of the corporation in perpetuity, then it would appear that Plaintiffs’ claims prevail as a matter of law and this litigation would be resolved, without further time or expense by this Court or the parties.

Second, determination of the legal issue will have a broad impact on Delaware public policy. A decision regarding whether Delaware law permits preferred stock of a corporation to be given a cumulative dividend right equal to the entire net worth of the corporation in perpetuity will have a significant impact on the rights and duties of directors, officers, and stockholders of Delaware corporations. There is an urgent need for a decision on this important issue so as to provide certainty and clarity to all corporations organized under Delaware law.

(5) If certification is accepted, it is recommended that Plaintiffs David Jacobs and Gary Hinds be appellants and that Defendants Federal Housing Finance Agency and the United States Department of the Treasury be appellees for purposes of the caption of any filings in the Supreme Court of Delaware with respect to the certified question.

NOW, THEREFORE, IT IS ORDERED that the following question of law is certified to the Supreme Court of the State of Delaware for disposition in accordance with Rule 41 of the Delaware Supreme Court:

Does Delaware law permit preferred stock of a corporation to have a cumulative dividend right equal to the entire net worth of the corporation, payable quarterly in perpetuity, as provided in Section 2 of Fannie Mae's Amended and Restated Certificate of Designation of Terms of Variable Liquation Preference Senior Preferred Stock, Series 2008-2, dated September 27, 2012 (which is attached hereto as Exhibit A)?

In accordance with Delaware Supreme Court Rule 41, it is recommended that briefs shall be filed in the Delaware Supreme Court in the following order: Plaintiffs David Jacobs and Gary Hinds should brief first, followed by Defendants Federal Housing Finance Agency and the United States Department of the Treasury.

Dated: _____, 2016

Gregory M. Sleet, United States District Judge

EXHIBIT A

FANNIE MAE

**AMENDED AND RESTATED CERTIFICATE OF DESIGNATION OF TERMS OF
VARIABLE LIQUIDATION PREFERENCE SENIOR
PREFERRED STOCK, SERIES 2008-2**

The Federal Housing Finance Agency, exercising its authority pursuant to Section 1367(b) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. § 4617), as amended, as Conservator of the Federal National Mortgage Association, amends and restates the Certificate of Designation of Terms of Variable Liquidation Preference Senior Preferred Stock, Series 2008-2, created as of September 7, 2008, in accordance with the Third Amendment dated as of August 17, 2012, to the Amended and Restated Preferred Stock Purchase Agreement dated as of September 26, 2008, the Senior Preferred Stock shall have the following designation, powers, preferences, rights, privileges, qualifications, limitations, restrictions, terms and conditions:

1. Designation, Par Value, Number of Shares and Priority

The designation of the series of preferred stock of the Federal National Mortgage Association (the “Company”) created by this resolution shall be “Variable Liquidation Preference Senior Preferred Stock, Series 2008-2” (the “Senior Preferred Stock”), and the number of shares initially constituting the Senior Preferred Stock is 1,000,000. Shares of Senior Preferred Stock will have no par value and a stated value and initial liquidation preference per share equal to \$1,000 per share, subject to adjustment as set forth herein. The Board of Directors of the Company, or a duly authorized committee thereof, in its sole discretion, may reduce the number of shares of Senior Preferred Stock, provided such reduction is not below the number of shares of Senior Preferred Stock then outstanding.

The Senior Preferred Stock shall rank prior to the common stock of the Company as provided in this Certificate and shall rank, as to both dividends and distributions upon dissolution, liquidation or winding up of the Company, prior to (a) the shares of preferred stock of the Company designated “5.25% Non-Cumulative Preferred Stock, Series D”, “5.10% Non-Cumulative Preferred Stock, Series E”, “Variable Rate Non-Cumulative Preferred Stock, Series F”, “Variable Rate Non-Cumulative Preferred Stock, Series G”, “5.81% Non-Cumulative Preferred Stock, Series H”, “5.375% Non-Cumulative Preferred Stock, Series I”, “5.125% Non-Cumulative Preferred Stock, Series L”, “4.75% Non-Cumulative Preferred Stock, Series M”, “5.50% Non-Cumulative Preferred Stock, Series N”, “Non-Cumulative Preferred Stock, Series O”, “Non-Cumulative Convertible Series 2004-1 Preferred Stock”, “Variable Rate Non-Cumulative Preferred Stock, Series P”, “6.75% Non-Cumulative Preferred Stock, Series Q”, “7.625% Non-Cumulative Preferred Stock, Series R”, “Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series S”, and “8.75% Non-Cumulative Mandatory Convertible Preferred Stock”, Series 2008-1”, (b) any other capital stock of the Company outstanding on the date of the initial issuance of the Senior Preferred Stock and (c) any

capital stock of the Company that may be issued after the date of initial issuance of the Senior Preferred Stock.

2. Dividends

(a) For each Dividend Period from the date of the initial issuance of the Senior Preferred Stock through and including December 31, 2012, holders of outstanding shares of Senior Preferred Stock shall be entitled to receive, ratably, when, as and if declared by the Board of Directors, in its sole discretion, out of funds legally available therefor, cumulative cash dividends at the annual rate per share equal to the then-current Dividend Rate on the then-current Liquidation Preference. For each Dividend Period from January 1, 2013, holders of outstanding shares of Senior Preferred Stock shall be entitled to receive, ratably, when, as and if declared by the Board of Directors, in its sole discretion, out of funds legally available therefor, cumulative cash dividends in an amount equal to the then-current Dividend Amount. Dividends on the Senior Preferred Stock shall accrue from but not including the date of the initial issuance of the Senior Preferred Stock and will be payable in arrears when, as and if declared by the Board of Directors quarterly on March 31, June 30, September 30 and December 31 of each year (each, a "Dividend Payment Date"), commencing on December 31, 2008. If a Dividend Payment Date is not a "Business Day," the related dividend will be paid not later than the next Business Day with the same force and effect as though paid on the Dividend Payment Date, without any increase to account for the period from such Dividend Payment Date through the date of actual payment. "Business Day" means a day other than (i) a Saturday or Sunday, (ii) a day on which New York City banks are closed, or (iii) a day on which the offices of the Company are closed.

If declared, the initial dividend will be for the period from but not including the date of the initial issuance of the Senior Preferred Stock through and including December 31, 2008. Except for the initial Dividend Payment Date, the "Dividend Period" relating to a Dividend Payment Date will be the period from but not including the preceding Dividend Payment Date through and including the related Dividend Payment Date. For each Dividend Period from the date of initial issuance of the Senior Preferred Stock through and including December 31, 2012, the amount of dividends payable on the initial Dividend Payment Date or for any Dividend Period through and including December 31, 2012, that is not a full calendar quarter shall be computed on the basis of 30-day months, a 360-day year and the actual number of days elapsed in any period of less than one month. For the avoidance of doubt, for each Dividend Period from the date of the initial issuance of the Senior Preferred Stock through and including December 31, 2012, in the event that the Liquidation Preference changes in the middle of a Dividend Period, the amount of dividends payable on the Dividend Payment Date at the end of such Dividend Period shall take into account such change in Liquidation Preference and shall be computed at the Dividend Rate on each Liquidation Preference based on the portion of the Dividend Period that each Liquidation Preference was in effect.

(b) To the extent not paid pursuant to Section 2(a) above, dividends on the Senior Preferred Stock shall accrue and shall be added to the Liquidation Preference pursuant to Section 8, whether or not there are funds legally available for the payment of such dividends and whether or not dividends are declared.

(c) For each Dividend Period from the date of the initial issuance of the Senior Preferred Stock through and including December 31, 2012, "Dividend Rate" means 10.0%;

provided, however, that if at any time the Company shall have for any reason failed to pay dividends in cash in a timely manner as required by this Certificate, then immediately following such failure and for all Dividend Periods thereafter until the Dividend Period following the date on which the Company shall have paid in cash full cumulative dividends (including any unpaid dividends added to the Liquidation Preference pursuant to Section 8) the “Dividend Rate” shall mean 12.0%.

For each Dividend Period from January 1, 2013, through and including December 31, 2017, the “Dividend Amount” for a Dividend Period means the amount, if any, by which the Net Worth Amount at the end of the immediately preceding fiscal quarter, less the Applicable Capital Reserve Amount, exceeds zero. For each Dividend Period from January 1, 2018, the “Dividend Amount” for a Dividend Period means the amount, if any, by which the Net Worth Amount at the end of the immediately preceding fiscal quarter exceeds zero. In each case, “Net Worth Amount” means (i) the total assets of the Company (such assets excluding the Commitment and any unfunded amounts thereof) as reflected on the balance sheet of the Company as of the applicable date set forth in this Certificate, prepared in accordance with GAAP, less (ii) the total liabilities of the Company (such liabilities excluding any obligation in respect of any capital stock of the Company, including this Certificate), as reflected on the balance sheet of the Company as of the applicable date set forth in this Certificate, prepared in accordance with GAAP. “Applicable Capital Reserve Amount” means, as of any date of determination, for each Dividend Period from January 1, 2013, through and including December 31, 2013, \$3,000,000,000; and for each Dividend Period occurring within each 12-month period thereafter, \$3,000,000,000 reduced by an equal amount for each such 12-month period through and including December 31, 2017, so that for each Dividend Period from January 1, 2018, the Applicable Capital Reserve Amount shall be zero. For the avoidance of doubt, if the calculation of the Dividend Amount for a Dividend Period does not exceed zero, then no Dividend Amount shall accrue or be payable for such Dividend Period.

(d) Each such dividend shall be paid to the holders of record of outstanding shares of the Senior Preferred Stock as they appear in the books and records of the Company on such record date as shall be fixed in advance by the Board of Directors, not to be earlier than 45 days nor later than 10 days preceding the applicable Dividend Payment Date. The Company may not, at any time, declare or pay dividends on, make distributions with respect to, or redeem, purchase or acquire, or make a liquidation payment with respect to, any common stock or other securities ranking junior to the Senior Preferred Stock unless (i) full cumulative dividends on the outstanding Senior Preferred Stock in respect of the then-current Dividend Period and all past Dividend Periods (including any unpaid dividends added to the Liquidation Preference pursuant to Section 8) have been declared and paid in cash (including through any pay down of Liquidation Preference pursuant to Section 3) and (ii) all amounts required to be paid pursuant to Section 4 (without giving effect to any prohibition on such payment under any applicable law) have been paid in cash.

(e) Notwithstanding any other provision of this Certificate, the Board of Directors, in its discretion, may choose to pay dividends on the Senior Preferred Stock without the payment of any dividends on the common stock, preferred stock or any other class or series of stock from time to time outstanding ranking junior to the Senior Preferred Stock with respect to the payment of dividends.

(f) If and whenever dividends, having been declared, shall not have been paid in full,

as aforesaid, on shares of the Senior Preferred Stock, all such dividends that have been declared on shares of the Senior Preferred Stock shall be paid to the holders pro rata based on the aggregate Liquidation Preference of the shares of Senior Preferred Stock held by each holder, and any amounts due but not paid in cash shall be added to the Liquidation Preference pursuant to Section 8.

3. Optional Pay Down of Liquidation Preference

(a) Following termination of the Commitment (as defined in the Preferred Stock Purchase Agreement referred to in Section 8 below), and subject to any limitations which may be imposed by law and the provisions below, the Company may pay down the Liquidation Preference of all outstanding shares of the Senior Preferred Stock pro rata, at any time, in whole or in part, out of funds legally available therefor, with such payment first being used to reduce any accrued and unpaid dividends previously added to the Liquidation Preference pursuant to Section 8 below and, to the extent all such accrued and unpaid dividends have been paid, next being used to reduce any Periodic Commitment Fees (as defined in the Preferred Stock Purchase Agreement referred to in Section 8 below) previously added to the Liquidation Preference pursuant to Section 8 below. Prior to termination of the Commitment, and subject to any limitations which may be imposed by law and the provisions below, the Company may pay down the Liquidation Preference of all outstanding shares of the Senior Preferred Stock pro rata, at any time, out of funds legally available therefor, but only to the extent of (i) accrued and unpaid dividends previously added to the Liquidation Preference pursuant to Section 8 below and not repaid by any prior pay down of Liquidation Preference and (ii) Periodic Commitment Fees previously added to the Liquidation Preference pursuant to Section 8 below and not repaid by any prior pay down of Liquidation Preference. Any pay down of Liquidation Preference permitted by this Section 3 shall be paid by making a payment in cash to the holders of record of outstanding shares of the Senior Preferred Stock as they appear in the books and records of the Company on such record date as shall be fixed in advance by the Board of Directors, not to be earlier than 45 days nor later than 10 days preceding the date fixed for the payment.

(b) In the event the Company shall pay down of the Liquidation Preference of the Senior Preferred Stock as aforesaid, notice of such pay down shall be given by the Company by first class mail, postage prepaid, mailed neither less than 10 nor more than 45 days preceding the date fixed for the payment, to each holder of record of the shares of the Senior Preferred Stock, at such holder's address as the same appears in the books and records of the Company. Each such notice shall state the amount by which the Liquidation Preference of each share shall be reduced and the pay down date.

(c) If after termination of the Commitment the Company pays down the Liquidation Preference of each outstanding share of Senior Preferred Stock in full, such shares shall be deemed to have been redeemed as of the date of such payment, and the dividend that would otherwise be payable for the Dividend Period ending on the pay down date will be paid on such date. Following such deemed redemption, the shares of the Senior Preferred Stock shall no longer be deemed to be outstanding, and all rights of the holders thereof as holders of the Senior Preferred Stock shall cease, with respect to shares so redeemed, other than the right to receive the pay down amount (which shall include the final dividend for such shares). Any shares of the Senior Preferred Stock

which shall have been so redeemed, after such redemption, shall no longer have the status of authorized, issued or outstanding shares.

4. Mandatory Pay Down of Liquidation Preference Upon Issuance of Capital Stock

(a) If the Company shall issue any shares of capital stock (including without limitation common stock or any series of preferred stock) in exchange for cash at any time while the Senior Preferred Stock is outstanding, then the Company shall, within 10 Business Days, use the proceeds of such issuance net of the direct costs relating to the issuance of such securities (including, without limitation, legal, accounting and investment banking fees) to pay down the Liquidation Preference of all outstanding shares of Senior Preferred Stock pro rata, out of funds legally available therefor, by making a payment in cash to the holders of record of outstanding shares of the Senior Preferred Stock as they appear in the books and records of the Company on such record date as shall be fixed in advance by the Board of Directors, not to be earlier than 45 days nor later than 10 days preceding the date fixed for the payment, with such payment first being used to reduce any accrued and unpaid dividends previously added to the Liquidation Preference pursuant to Section 8 below and, to the extent all such accrued and unpaid dividends have been paid, next being used to reduce any Periodic Commitment Fees (as defined in the Preferred Stock Purchase Agreement referred to in Section 8 below) previously added to the Liquidation Preference pursuant to Section 8 below; provided that, prior to the termination of the Commitment (as defined in the Preferred Stock Purchase Agreement referred to in Section 8 below), the Liquidation Preference of each share of Senior Preferred Stock shall not be paid down below \$1,000 per share.

(b) If the Company shall not have sufficient assets legally available for the pay down of the Liquidation Preference of the shares of Senior Preferred Stock required under Section 4(a), the Company shall pay down the Liquidation Preference per share to the extent permitted by law, and shall pay down any Liquidation Preference not so paid down because of the unavailability of legally available assets or other prohibition as soon as practicable to the extent it is thereafter able to make such pay down legally. The inability of the Company to make such payment for any reason shall not relieve the Company from its obligation to effect any required pay down of the Liquidation Preference when, as and if permitted by law.

(c) If after the termination of the Commitment the Company pays down the Liquidation Preference of each outstanding share of Senior Preferred Stock in full, such shares shall be deemed to have been redeemed as of the date of such payment, and the dividend that would otherwise be payable for the Dividend Period ending on the pay down date will be paid on such date. Following such deemed redemption, the shares of the Senior Preferred Stock shall no longer be deemed to be outstanding, and all rights of the holders thereof as holders of the Senior Preferred Stock shall cease, with respect to shares so redeemed, other than the right to receive the pay down amount (which shall include the final dividend for such redeemed shares). Any shares of the Senior Preferred Stock which shall have been so redeemed, after such redemption, shall no longer have the status of authorized, issued or outstanding shares.

5. No Voting Rights

Except as set forth in this Certificate or otherwise required by law, the shares of the

Senior Preferred Stock shall not have any voting powers, either general or special.

6. No Conversion or Exchange Rights

The holders of shares of the Senior Preferred Stock shall not have any right to convert such shares into or exchange such shares for any other class or series of stock or obligations of the Company.

7. No Preemptive Rights

No holder of the Senior Preferred Stock shall as such holder have any preemptive right to purchase or subscribe for any other shares, rights, options or other securities of any class of the Company which at any time may be sold or offered for sale by the Company.

8. Liquidation Rights and Preference

(a) Except as otherwise set forth herein, upon the voluntary or involuntary dissolution, liquidation or winding up of the Company, the holders of the outstanding shares of the Senior Preferred Stock shall be entitled to receive out of the assets of the Company available for distribution to stockholders, before any payment or distribution shall be made on the common stock or any other class or series of stock of the Company ranking junior to the Senior Preferred Stock upon liquidation, the amount per share equal to the Liquidation Preference plus an amount, determined in accordance with Section 2(a) above, equal to the dividend otherwise payable for the then-current Dividend Period accrued through and including the date of payment in respect of such dissolution, liquidation or winding up; provided, however, that if the assets of the Company available for distribution to stockholders shall be insufficient for the payment of the amount which the holders of the outstanding shares of the Senior Preferred Stock shall be entitled to receive upon such dissolution, liquidation or winding up of the Company as aforesaid, then, all of the assets of the Company available for distribution to stockholders shall be distributed to the holders of outstanding shares of the Senior Preferred Stock pro rata based on the aggregate Liquidation Preference of the shares of Senior Preferred Stock held by each holder.

(b) "Liquidation Preference" shall initially mean \$1,000 per share and shall be:

(i) increased each time a Deficiency Amount (as defined in the Preferred Stock Purchase Agreement) is paid to the Company by an amount per share equal to the aggregate amount so paid to the Company divided by the number of shares of Senior Preferred Stock outstanding at the time of such payment;

(ii) increased each time the Company does not pay the full Periodic Commitment Fee (as defined in the Preferred Stock Purchase Agreement) in cash by an amount per share equal to the amount of the Periodic Commitment Fee that is not paid in cash divided by the number of shares of Senior Preferred Stock outstanding at the time such payment is due;

(iii) increased on the Dividend Payment Date if the Company fails to pay in full the dividend payable for the Dividend Period ending on such date by an amount per share equal to the aggregate amount of unpaid dividends divided by the number of shares of Senior Preferred Stock outstanding on such date; and

(iv) decreased each time the Company pays down the Liquidation Preference pursuant to Section 3 or Section 4 of this Certificate by an amount per share equal to the aggregate amount of the pay down divided by the number of shares of Senior Preferred Stock outstanding at the time of such pay down.

(c) “Preferred Stock Purchase Agreement” means the Preferred Stock Purchase Agreement, dated September 7, 2008, between the Company and the United States Department of the Treasury.

(d) Neither the sale of all or substantially all of the property or business of the Company, nor the merger, consolidation or combination of the Company into or with any other corporation or entity, shall be deemed to be a dissolution, liquidation or winding up for the purpose of this Section 8.

9. Additional Classes or Series of Stock

The Board of Directors shall have the right at any time in the future to authorize, create and issue, by resolution or resolutions, one or more additional classes or series of stock of the Company, and to determine and fix the distinguishing characteristics and the relative rights, preferences, privileges and other terms of the shares thereof; provided that, any such class or series of stock may not rank prior to or on parity with the Senior Preferred Stock without the prior written consent of the holders of at least two-thirds of all the shares of Senior Preferred Stock at the time outstanding.

10. Miscellaneous

(a) The Company and any agent of the Company may deem and treat the holder of a share or shares of Senior Preferred Stock, as shown in the Company’s books and records, as the absolute owner of such share or shares of Senior Preferred Stock for the purpose of receiving payment of dividends in respect of such share or shares of Senior Preferred Stock and for all other purposes whatsoever, and neither the Company nor any agent of the Company shall be affected by any notice to the contrary. All payments made to or upon the order of any such person shall be valid and, to the extent of the sum or sums so paid, effectual to satisfy and discharge liabilities for moneys payable by the Company on or with respect to any such share or shares of Senior Preferred Stock.

(b) The shares of the Senior Preferred Stock, when duly issued, shall be fully paid and non-assessable.

(c) The Senior Preferred Stock may be issued, and shall be transferable on the books of the Company, only in whole shares.

(d) For purposes of this Certificate, the term “the Company” means the Federal National Mortgage Association and any successor thereto by operation of law or by reason of a merger, consolidation, combination or similar transaction.

(e) This Certificate and the respective rights and obligations of the Company and the holders of the Senior Preferred Stock with respect to such Senior Preferred Stock shall be construed in accordance with and governed by the laws of the United States, provided that the law of the State of Delaware shall serve as the federal rule of decision in all instances except where such law is inconsistent with the Company’s enabling legislation, its public purposes or any

provision of this Certificate.

(f) Any notice, demand or other communication which by any provision of this Certificate is required or permitted to be given or served to or upon the Company shall be given or served in writing addressed (unless and until another address shall be published by the Company) to Fannie Mae, 3900 Wisconsin Avenue NW, Washington, DC 20016, Attn: Executive Vice President and General Counsel. Such notice, demand or other communication to or upon the Company shall be deemed to have been sufficiently given or made only upon actual receipt of a writing by the Company. Any notice, demand or other communication which by any provision of this Certificate is required or permitted to be given or served by the Company hereunder may be given or served by being deposited first class, postage prepaid, in the United States mail addressed (i) to the holder as such holder's name and address may appear at such time in the books and records of the Company or (ii) if to a person or entity other than a holder of record of the Senior Preferred Stock, to such person or entity at such address as reasonably appears to the Company to be appropriate at such time. Such notice, demand or other communication shall be deemed to have been sufficiently given or made, for all purposes, upon mailing.

(g) The Company, by or under the authority of the Board of Directors, may amend, alter, supplement or repeal any provision of this Certificate pursuant to the following terms and conditions:

(i) Without the consent of the holders of the Senior Preferred Stock, the Company may amend, alter, supplement or repeal any provision of this Certificate to cure any ambiguity, to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Certificate, provided that such action shall not adversely affect the interests of the holders of the Senior Preferred Stock.

(ii) The consent of the holders of at least two-thirds of all of the shares of the Senior Preferred Stock at the time outstanding, given in person or by proxy, either in writing or by a vote at a meeting called for the purpose at which the holders of shares of the Senior Preferred Stock shall vote together as a class, shall be necessary for authorizing, effecting or validating the amendment, alteration, supplementation or repeal (whether by merger, consolidation or otherwise) of the provisions of this Certificate other than as set forth in subparagraph (i) of this paragraph (g). The creation and issuance of any other class or series of stock, or the issuance of additional shares of any existing class or series of stock, of the Company ranking junior to the Senior Preferred Stock shall not be deemed to constitute such an amendment, alteration, supplementation or repeal.

(iii) Holders of the Senior Preferred Stock shall be entitled to one vote per share on matters on which their consent is required pursuant to subparagraph (ii) of this paragraph (g). In connection with any meeting of such holders, the Board of Directors shall fix a record date, neither earlier than 60 days nor later than 10 days prior to the date of such meeting, and holders of record of shares of the Senior Preferred Stock on such record date shall be entitled to notice of and to vote at any such meeting and any adjournment. The Board of Directors, or such person or persons as it may designate, may

establish reasonable rules and procedures as to the solicitation of the consent of holders of the Senior Preferred Stock at any such meeting or otherwise, which rules and procedures shall conform to the requirements of any national securities exchange on which the Senior Preferred Stock may be listed at such time.

(h) RECEIPT AND ACCEPTANCE OF A SHARE OR SHARES OF THE SENIOR PREFERRED STOCK BY OR ON BEHALF OF A HOLDER SHALL CONSTITUTE THE UNCONDITIONAL ACCEPTANCE BY THE HOLDER (AND ALL OTHERS HAVING BENEFICIAL OWNERSHIP OF SUCH SHARE OR SHARES) OF ALL OF THE TERMS AND PROVISIONS OF THIS CERTIFICATE. NO SIGNATURE OR OTHER FURTHER MANIFESTATION OF ASSENT TO THE TERMS AND PROVISIONS OF THIS CERTIFICATE SHALL BE NECESSARY FOR ITS OPERATION OR EFFECT AS BETWEEN THE COMPANY AND THE HOLDER (AND ALL SUCH OTHERS).

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Company this 27th day of September, 2012.

[Seal]

FEDERAL NATIONAL MORTGAGE ASSOCIATION, by
The Federal Housing Finance Agency, its Conservator
/s/ Edward J. DeMarco
Edward J. DeMarco
Acting Director

Signature Page to September 2012 Amended and Restated Certificate of Designation of Senior Preferred Stock

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

DAVID JACOBS and GARY HINDES, on behalf of themselves and all others similarly situated, and derivatively on behalf of the Federal National Mortgage Association and Federal Home Loan Mortgage Corporation,

Plaintiffs,

v.

THE FEDERAL HOUSING FINANCE AGENCY, in its capacity as Conservator of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, and THE UNITED STATES DEPARTMENT OF THE TREASURY,

Defendants,

and

THE FEDERAL NATIONAL MORTGAGE ASSOCIATION and THE FEDERAL HOME LOAN MORTGAGE CORPORATION,

Nominal Defendants.

Civil Action No.: 15-708-GMS

CLASS ACTION

CERTIFICATION OF QUESTION OF LAW TO THE VIRGINIA SUPREME COURT

This ____ day of _____, 2016, the Court having found:

(1) The nature of the controversy in which the question arises is:

On August 17, 2015, Plaintiffs David Jacobs and Gary Hinds, on behalf of themselves and all others similarly situated, and derivatively on behalf of the Federal National Mortgage Association (“Fannie Mae”) and Federal Home Loan Mortgage Corporation (“Freddie Mac,” and, together with Fannie Mae, the “Companies”), filed a Class Action and Derivative Complaint (the “Complaint”) in this Court against Defendants Federal Housing Finance Agency (“FHFA”),

in its capacity as conservator of the Companies, and the United States Department of the Treasury (“Treasury”). In the Complaint, Plaintiffs asserted claims against Defendants for statutory violations under Delaware and Virginia law, breaches of contract and the implied covenant of good faith and fair dealing, and breaches of fiduciary duty. On November 13, 2015, FHFA and Treasury moved to dismiss the Complaint and submitted opening briefs in support thereof. On January 16, 2016, Plaintiffs filed their answering brief in opposition to FHFA’s and Treasury’s motions to dismiss.

(2) The question of law to be answered:

In the current application, Plaintiffs have requested that this Court certify the following question of law to the Virginia Supreme Court in accordance with Va. Supr. Ct. R. 5:40(a) and Va. Const. Art. VI, § 1:

Does Virginia law permit preferred stock of a corporation to have a cumulative dividend right equal to the entire net worth of the corporation, payable quarterly in perpetuity, as provided in Section 2 of Freddie Mac’s Amended and Restated Certificate of Creation, Designation, Powers, Preferences, Rights, Privileges, Qualifications, Limitations, Restrictions, Terms and Conditions of Variable Liquidation Preference Senior Preferred Stock (Par Value \$1.00 Per Share), dated September 27, 2012 (which is attached hereto as Exhibit A)?

(3) A statement of all facts relevant to the question certified:

Fannie Mae and Freddie Mac are for-profit, stockholder-owned corporations organized and existing under the Federal National Mortgage Association Charter Act and the Federal Home Loan Mortgage Corporation Act, respectively. Compl. ¶ 30. Federal law authorizes each of the Companies to designate “the law of the jurisdiction in which [its] principal office . . . is located, [or] . . . [the] Delaware General Corporation Law” for purposes of its corporate governance practices and procedures. 12 C.F.R. § 1710.10. Fannie Mae has elected Delaware law to apply

pursuant to Section 1.05 of its bylaws, which provides, in pertinent part, that “the corporation has elected to follow the applicable corporate governance practices and procedures of the Delaware General Corporation Law.” Compl. ¶ 32. Freddie Mac has elected Virginia law to apply pursuant to Section 11.3 of its bylaws, which provides, in pertinent part, that “the Corporation shall follow the corporate governance practices and procedures of the law of the Commonwealth of Virginia, including without limitation the Virginia Stock Corporation Act as the same may be amended from time to time.” *Id.*

On July 30, 2008, Congress enacted the Housing and Economic Recovery Act of 2008 (“HERA”), which created FHFA and empowered it to act as the Companies’ regulator and to appoint itself as conservator or receiver of the Companies in certain statutorily specified circumstances. *Id.* ¶ 4. In addition, HERA granted Treasury limited, temporary authority to purchase securities from the Companies. *Id.* ¶ 34. HERA left in place the federal charters of the Companies and did not implicitly or explicitly repeal or modify the provisions of their bylaws, implemented pursuant to federal law, specifying that Delaware and Virginia law govern the Companies’ internal affairs. *Id.* ¶ 4.

On September 6, 2008, FHFA placed the Companies under conservatorship and appointed itself as conservator of the Companies. *Id.* The day after the conservatorships were imposed, FHFA, acting as conservator for the Companies, and Treasury entered into two virtually identical senior preferred stock purchase agreements (the “PSPAs”), pursuant to which each of Fannie Mae and Freddie Mac created and issued a new class of stock, the “Senior Preferred Stock.” *Id.* ¶ 36. The Senior Preferred Stock was created pursuant to two virtually identical Senior Preferred Stock Certificates of Designation (one each for Fannie Mae and Freddie Mac) (the “Certificates of Designation”) that set forth the rights, powers and preferences

of the Senior Preferred Stock. *Id.* Treasury purchased 1 million shares of each Company's Senior Preferred Stock in exchange for a funding commitment that allowed each Company to draw up to \$100 billion from Treasury (this cap was later increased in size by two subsequent amendments to the PSPAs, first to \$200 billion each and then to an amount established by a formula that may be greater (but not less) than \$200 billion each, adjusting for the amount of any deficiencies experienced by the Companies in 2010, 2011 and 2012 and any surplus existing as of December 31, 2012). *Id.* The 1 million shares of each Company's Senior Preferred Stock have an aggregate liquidation preference equal to \$1 billion (\$1,000 per share) plus the sum of all additional amounts drawn by each Company on Treasury's funding commitment. *Id.* ¶ 36. The newly issued Senior Preferred Stock of each of the Companies ranks senior to all other classes and series of stock and initially entitled Treasury to receive a cumulative cash dividend of 10% of the outstanding liquidation preference (12% if the dividend were paid in kind). *Id.* ¶ 8. Absent the express consent of Treasury and FHFA, the Companies generally cannot redeem the Senior Preferred Stock. *Id.* ¶ 36.

On August 17, 2012, FHFA entered into a third amendment of each of the Amended and Restated Senior Preferred Stock Purchase Agreements (together, the "Third Amendment") and amended the Certificates of Designation setting forth the terms of the Fannie Mae and Freddie Mac Senior Preferred Stock. *Id.* These amendments changed the preferred dividend on Treasury's Senior Preferred Stock in the Companies from one payable at the previously established 10% cash (and 12% in-kind) rate to a perpetual quarterly "dividend" equal to the entire positive net worth of each of Fannie Mae and Freddie Mac. *Id.*; *see also id.* ¶¶ 42-43.

Specifically, the Third Amendment to the PSPAs and the corresponding Amended and Restated Certificates of Designation provide, in pertinent part, that, as holder of the Senior

Preferred Stock, Treasury “shall be entitled to receive, ratably, when, as and if declared by the Board of Directors, in its sole discretion, out of funds legally available therefor, cumulative cash dividends in an amount equal to the then-current Dividend Amount.” *Id.* ¶ 43.

The “Dividend Amount” is defined as follows:

For each Dividend Period from January 1, 2013, through and including December 31, 2017, the “Dividend Amount” for a Dividend Period means the amount, if any, by which the Net Worth Amount at the end of the immediately preceding fiscal quarter, less the Applicable Capital Reserve Amount, exceeds zero. For each Dividend Period from January 1, 2018, the “Dividend Amount” for a Dividend Period means the amount, if any, by which the Net Worth Amount at the end of the immediately preceding fiscal quarter exceeds zero. In each case, “Net Worth Amount” means (i) the total assets of the Company (such assets excluding the Commitment and any unfunded amounts thereof) as reflected on the balance sheet of the Company as of the applicable date set forth in this Certificate, prepared in accordance with GAAP, less (ii) the total liabilities of the Company (such liabilities excluding any obligation in respect of any capital stock of the Company, including this Certificate), as reflected on the balance sheet of the Company as of the applicable date set forth in this Certificate, prepared in accordance with GAAP. “Applicable Capital Reserve Amount” means, as of any date of determination, for each Dividend Period from January 1, 2013, through and including December 31, 2013, \$3,000,000,000; and for each Dividend Period occurring within each 12-month period thereafter, \$3,000,000,000 reduced by an equal amount for each such 12-month period through and including December 31, 2017, so that for each Dividend Period from January 1, 2018, the Applicable Capital Reserve Amount shall be zero. For the avoidance of doubt, if the calculation of the Dividend Amount for a Dividend Period does not exceed zero, then no Dividend Amount shall accrue or be payable for such Dividend Period.

Id. Thus, pursuant to the Net Worth Sweep, from January 1, 2013 through December 31, 2017, each Company pays to Treasury, in the form of a purported “dividend,” that particular Company’s “Net Worth Amount” (*i.e.*, total assets less total liabilities) less the “Applicable Capital Reserve Amount” (which starts at \$3 billion and decreases to \$0 by January 1, 2018). *Id.*

¶ 44. Beginning January 1, 2018 and continuing in perpetuity, the Net Worth Amount will be paid out each quarter to Treasury without any capital reserve whatsoever. *Id.*

The Net Worth Sweep “dividends” are cumulative. *Id.* ¶ 45. If the Net Worth Amount is greater than zero and the board of directors does not declare a “dividend” on the Senior Preferred Stock, then the “dividend” accumulates. Under the Certificates of Designation, no dividends may be paid on any other classes or series of stock of either Company unless and until full cumulative “dividends” (*i.e.*, the full Net Worth Sweep amount) are paid on the Senior Preferred Stock pursuant to the Net Worth Sweep. *Id.* Because the entire net worth of each Company is payable in perpetuity to the Senior Preferred Stock, no dividends can ever be paid on other classes or series of stock. *Id.*

(4) The names of each of the parties involved:

Plaintiffs are David Jacobs and Gary Hindes, on behalf of themselves and all others similarly situated, and derivatively on behalf of the Federal National Mortgage Association and Federal Home Loan Mortgage Corporation.

Defendants are the Federal Housing Finance Agency, in its capacity as conservator of the Companies, and the United States Department of the Treasury.

(5) The name, Virginia State Bar number, mailing address, telephone number (including any applicable extension), facsimile number (if any), and e-mail address (if any) of counsel for each of the parties involved:

Counsel for Plaintiffs: _____

Counsel for Defendants: _____

(6) A brief statement explaining how the certified question of law is determinative of the proceeding in the certifying court:

The question of law set forth herein should be certified to the Virginia Supreme Court for the following reasons:

Plaintiffs present an important question of Virginia law that meets the requirements for certification. The question whether Virginia law permits preferred stock of a corporation to be given a cumulative dividend right equal to the entire net worth of the corporation in perpetuity meets the requirements for certification because it is (1) a matter of first impression in Virginia and (2) potentially determinative of this proceeding.

The question raises a threshold and dispositive issue in the case and a determination of the issue may terminate this litigation. If Plaintiffs are correct that Virginia law does not permit preferred stock of a corporation to be given a cumulative dividend right equal to the entire net worth of the corporation in perpetuity, then it would appear that Plaintiffs' claims prevail as a matter of law and this litigation would be resolved, without further time or expense by this Court or the parties.

Furthermore, determination of the legal issue will have a broad impact on Virginia public policy. A decision regarding whether Virginia law permits preferred stock of a corporation to be given a cumulative dividend right equal to the entire net worth of the corporation in perpetuity will have a significant impact on the rights and duties of directors, officers, and stockholders of Virginia corporations. There is an urgent need for a decision on this important issue so as to provide certainty and clarity to all corporations organized under Virginia law.

(7) A brief statement setting forth relevant decisions, if any, of the Virginia Supreme Court and the Court of Appeals of Virginia and the reasons why such decisions are not controlling:

The following decisions are potentially relevant to disposition of the certified question:

Johnson v. Johnson & Briggs, Inc., 122 S.E. 100, 103 (Va. 1924);
Drewry, Hughes Co. v. Throckmorton, 92 S.E. 818 (Va. 1917);
Kain v. Angle, 69 S.E. 355, 357 (Va. 1910);
Dawyot v. Catawba Capital Mgmt., Inc., 82 Va. Cir. 521 (2011).

However, none of these decisions is controlling of the certified question because none answers the question whether Virginia law permits preferred stock of a corporation to be given a cumulative dividend right equal to the entire net worth of the corporation in perpetuity.

NOW, THEREFORE, IT IS ORDERED that the following question of law is certified to the Virginia Supreme Court for disposition in accordance with Virginia Supreme Court Rule 5:40(a):

Does Virginia law permit preferred stock of a corporation to have a cumulative dividend right equal to the entire net worth of the corporation, payable quarterly in perpetuity, as provided in Section 2 of Freddie Mac's Amended and Restated Certificate of Creation, Designation, Powers, Preferences, Rights, Privileges, Qualifications, Limitations, Restrictions, Terms and Conditions of Variable Liquidation Preference Senior Preferred Stock (Par Value \$1.00 Per Share), dated September 27, 2012 (which is attached hereto as Exhibit A)?

Dated: _____, 2016

Gregory M. Sleet, United States District Judge

EXHIBIT A

FREDDIE MAC
AMENDED AND RESTATED CERTIFICATE OF CREATION,
DESIGNATION, POWERS, PREFERENCES, RIGHTS,
PRIVILEGES, QUALIFICATIONS, LIMITATIONS,
RESTRICTIONS, TERMS AND CONDITIONS OF
VARIABLE LIQUIDATION PREFERENCE SENIOR PREFERRED STOCK
(PAR VALUE \$1.00 PER SHARE)

The Federal Housing Finance Agency, as Conservator of the Federal Home Loan Mortgage Corporation, a government-sponsored enterprise of the United States of America (the "Company"), does hereby certify that, pursuant to authority vested in the Board of Directors of the Company by Section 306(f) of the Federal Home Loan Mortgage Corporation Act, and pursuant to the authority vested in the Conservator of the Company by Section 1367(b) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. §4617), as amended, the Conservator adopted Resolution FHLMC 2008-24 on September 7, 2008, which resolution is now, and at all times since such date has been, in full force and effect, and that the Conservator approved the final terms of the issuance and sale of the preferred stock of the Company designated above.

As amended and restated in accordance with the Third Amendment dated as of August 17, 2012, to the Amended and Restated Senior Preferred Stock Purchase Agreement dated as of September 26, 2008, the Senior Preferred Stock shall have the following designation, powers, preferences, rights, privileges, qualifications, limitations, restrictions, terms and conditions:

1. Designation, Par Value, Number of Shares and Seniority

The class of preferred stock of the Company created hereby (the "Senior Preferred Stock") shall be designated "Variable Liquidation Preference Senior Preferred Stock," shall have a par value of \$1.00 per share and shall consist of 1,000,000 shares. The Senior Preferred Stock shall rank prior to the common stock of the Company as provided in this Certificate and shall rank, as to both dividends and distributions upon liquidation, prior to (a) the Fixed-to-Floating Rate Non-Cumulative Perpetual Preferred Stock issued on December 4, 2007, (b) the 6.55% Non-Cumulative Preferred Stock issued on September 28, 2007, (c) the 6.02% Non-Cumulative Preferred Stock issued on July 24, 2007, (d) the 5.66% Non-Cumulative Preferred Stock issued on April 16, 2007, (e) the 5.57% Non-Cumulative Preferred Stock issued on January 16, 2007, (f) the 5.9% Non-Cumulative Preferred Stock issued on October 16, 2006, (g) the 6.42% Non-Cumulative Preferred Stock issued on July 17, 2006, (h) the Variable Rate, Non-Cumulative Preferred Stock issued on July 17, 2006, (i) the 5.81% Non-Cumulative Preferred Stock issued on January 29, 2002, (j) the 5.7% Non-Cumulative Preferred Stock issued on October 30, 2001, (k) the 6% Non-Cumulative Preferred Stock issued on May 30, 2001, (l) the Variable Rate, Non-Cumulative Preferred Stock issued on May 30, 2001 and June 1, 2001, (m) the 5.81% Non-Cumulative Preferred Stock issued on March 23, 2001, (n) the Variable Rate, Non-Cumulative Preferred Stock issued on March 23, 2001, (o) the Variable Rate, Non-Cumulative Preferred Stock issued on January 26, 2001, (p) the Variable Rate, Non-Cumulative Preferred Stock issued on November 5, 1999, (q) the 5.79% Non-Cumulative Preferred Stock issued on July 21, 1999, (r) the 5.1% Non-Cumulative Preferred Stock issued on March 19, 1999, (s) the 5.3% Non-Cumulative Preferred Stock issued on October 28, 1998, (t) the

5.1% Non-Cumulative Preferred Stock issued on September 23, 1998, (u) the Variable Rate, Non-Cumulative Preferred Stock issued on September 23, 1998 and September 29, 1998, (v) the 5% Non-Cumulative Preferred Stock issued on March 23, 1998, (w) the 5.81% Non-Cumulative Preferred Stock issued on October 27, 1997, (x) the Variable Rate, Non-Cumulative Preferred Stock issued on April 26, 1996, (y) any other capital stock of the Company outstanding on the date of the initial issuance of the Senior Preferred Stock, and (z) any capital stock of the Company that may be issued after the date of initial issuance of the Senior Preferred Stock.

2. Dividends

(a) For each Dividend Period from the date of the initial issuance of the Senior Preferred Stock through and including December 31, 2012, holders of outstanding shares of Senior Preferred Stock shall be entitled to receive, ratably, when, as and if declared by the Board of Directors, in its sole discretion, out of funds legally available therefor, cumulative cash dividends at the annual rate per share equal to the then-current Dividend Rate on the then-current Liquidation Preference. For each Dividend Period from January 1, 2013, holders of outstanding shares of Senior Preferred Stock shall be entitled to receive, ratably, when, as and if declared by the Board of Directors, in its sole discretion, out of funds legally available therefor, cumulative cash dividends in an amount equal to the then-current Dividend Amount. Dividends on the Senior Preferred Stock shall accrue from but not including the date of the initial issuance of the Senior Preferred Stock and will be payable in arrears when, as and if declared by the Board of Directors quarterly on March 31, June 30, September 30 and December 31 of each year (each, a "Dividend Payment Date"), commencing on December 31, 2008. If a Dividend Payment Date is not a "Business Day," the related dividend will be paid not later than the next Business Day with the same force and effect as though paid on the Dividend Payment Date, without any increase to account for the period from such Dividend Payment Date through the date of actual payment. "Business Day" means a day other than (i) a Saturday or Sunday, (ii) a day on which New York City banks are closed, or (iii) a day on which the offices of the Company are closed.

If declared, the initial dividend will be for the period from but not including the date of the initial issuance of the Senior Preferred Stock through and including December 31, 2008. Except for the initial Dividend Payment Date, the "Dividend Period" relating to a Dividend Payment Date will be the period from but not including the preceding Dividend Payment Date through and including the related Dividend Payment Date. For each Dividend Period from the date of the initial issuance of the Senior Preferred Stock through and including December 31, 2012, the amount of dividends payable on the initial Dividend Payment Date or for any Dividend Period through and including December 31, 2012, that is not a full calendar quarter shall be computed on the basis of 30-day months, a 360-day year and the actual number of days elapsed in any period of less than one month. For the avoidance of doubt, for each Dividend Period from the date of the initial issuance of the Senior Preferred Stock through and including December 31, 2012, in the event that the Liquidation Preference changes in the middle of a Dividend Period, the amount of dividends payable on the Dividend Payment Date at the end of such Dividend Period shall take into account such change in Liquidation Preference and shall be computed at the Dividend Rate on each Liquidation Preference based on the portion of the Dividend Period that each Liquidation Preference was in effect.

(b) To the extent not paid pursuant to Section 2(a) above, dividends on the Senior

Preferred Stock shall accrue and shall be added to the Liquidation Preference pursuant to Section 8, whether or not there are funds legally available for the payment of such dividends and whether or not dividends are declared.

(c) For each Dividend Period from the date of the initial issuance of the Senior Preferred Stock through and including December 31, 2012, "Dividend Rate" means 10.0%; provided, however, that if at any time the Company shall have for any reason failed to pay dividends in cash in a timely manner as required by this Certificate, then immediately following such failure and for all Dividend Periods thereafter until the Dividend Period following the date on which the Company shall have paid in cash full cumulative dividends (including any unpaid dividends added to the Liquidation Preference pursuant to Section 8), the "Dividend Rate" shall mean 12.0%.

For each Dividend Period from January 1, 2013, through and including December 31, 2017, the "Dividend Amount" for a Dividend Period means the amount, if any, by which the Net Worth Amount at the end of the immediately preceding fiscal quarter, less the Applicable Capital Reserve Amount, exceeds zero. For each Dividend Period from January 1, 2018, the "Dividend Amount" for a Dividend Period means the amount, if any, by which the Net Worth Amount at the end of the immediately preceding fiscal quarter exceeds zero. In each case, "Net Worth Amount" means (i) the total assets of the Company (such assets excluding the Commitment and any unfunded amounts thereof) as reflected on the balance sheet of the Company as of the applicable date set forth in this Certificate, prepared in accordance with GAAP, less (ii) the total liabilities of the Company (such liabilities excluding any obligation in respect of any capital stock of the Company, including this Certificate), as reflected on the balance sheet of the Company as of the applicable date set forth in this Certificate, prepared in accordance with GAAP. "Applicable Capital Reserve Amount" means, as of any date of determination, for each Dividend Period from January 1, 2013, through and including December 31, 2013, \$3,000,000,000; and for each Dividend Period occurring within each 12-month period thereafter, \$3,000,000,000 reduced by an equal amount for each such 12-month period through and including December 31, 2017, so that for each Dividend Period from January 1, 2018, the Applicable Capital Reserve Amount shall be zero. For the avoidance of doubt, if the calculation of the Dividend Period does not exceed zero, then no Dividend Amount shall accrue or be payable for such Dividend Period.

(d) Each such dividend shall be paid to the holders of record of outstanding shares of the Senior Preferred Stock as they appear in the books and records of the Company on such record date as shall be fixed in advance by the Board of Directors, not to be earlier than 45 days nor later than 10 days preceding the applicable Dividend Payment Date. The Company may not, at any time, declare or pay dividends on, make distributions with respect to, or redeem, purchase or acquire, or make a liquidation payment with respect to, any common stock or other securities ranking junior to the Senior Preferred Stock unless (i) full cumulative dividends on the outstanding Senior Preferred Stock in respect of the then-current Dividend Period and all past Dividend Periods (including any unpaid dividends added to the Liquidation Preference pursuant to Section 8) have been declared and paid in cash (including through any pay down of Liquidation Preference pursuant to Section 3) and (ii) all amounts required to be paid pursuant to Section 4 (without giving effect to any prohibition on such payment under any applicable

law) have been paid in cash.

(e) Notwithstanding any other provision of this Certificate, the Board of Directors, in its discretion, may choose to pay dividends on the Senior Preferred Stock without the payment of any dividends on the common stock, preferred stock or any other class or series of stock from time to time outstanding ranking junior to the Senior Preferred Stock with respect to the payment of dividends.

(f) If and whenever dividends, having been declared, shall not have been paid in full, as aforesaid, on shares of the Senior Preferred Stock, all such dividends that have been declared on shares of the Senior Preferred Stock shall be paid to the holders pro rata based on the aggregate Liquidation Preference of the shares of Senior Preferred Stock held by each holder, and any amounts due but not paid in cash shall be added to the Liquidation Preference pursuant to Section 8.

3. Optional Pay Down of Liquidation Preference

(a) Following termination of the Commitment (as defined in the Preferred Stock Purchase Agreement referred to in Section 8 below), and subject to any limitations which may be imposed by law and the provisions below, the Company may pay down the Liquidation Preference of all outstanding shares of the Senior Preferred Stock pro rata, at any time, in whole or in part, out of funds legally available therefor, with such payment first being used to reduce any accrued and unpaid dividends previously added to the Liquidation Preference pursuant to Section 8 below and, to the extent all such accrued and unpaid dividends have been paid, next being used to reduce any Periodic Commitment Fees (as defined in the Preferred Stock Purchase Agreement referred to in Section 8 below) previously added to the Liquidation Preference pursuant to Section 8 below. Prior to termination of the Commitment, and subject to any limitations which may be imposed by law and the provisions below, the Company may pay down the Liquidation Preference of all outstanding shares of the Senior Preferred Stock pro rata, at any time, out of funds legally available therefor, but only to the extent of (i) accrued and unpaid dividends previously added to the Liquidation Preference pursuant to Section 8 below and not repaid by any prior pay down of Liquidation Preference and (ii) Periodic Commitment Fees previously added to the Liquidation Preference pursuant to Section 8 below and not repaid by any prior pay down of Liquidation Preference. Any pay down of Liquidation Preference permitted by this Section 3 shall be paid by making a payment in cash to the holders of record of outstanding shares of the Senior Preferred Stock as they appear in the books and records of the Company on such record date as shall be fixed in advance by the Board of Directors, not to be earlier than 45 days nor later than 10 days preceding the date fixed for the payment.

(b) In the event the Company shall pay down of the Liquidation Preference of the Senior Preferred Stock as aforesaid, notice of such pay down shall be given by the Company by first class mail, postage prepaid, mailed neither less than 10 nor more than 45 days preceding the date fixed for the payment, to each holder of record of the shares of the Senior Preferred Stock, at such holder's address as the same appears in the books and records of the Company. Each such notice shall state the amount by which the Liquidation Preference of each share shall be reduced and the pay down date.

(c) If after termination of the Commitment the Company pays down the Liquidation Preference of each outstanding share of Senior Preferred Stock in full, such shares shall be deemed to have been redeemed as of the date of such payment, and the dividend that would otherwise be payable for the Dividend Period ending on the pay down date will be paid on such date. Following such deemed redemption, the shares of the Senior Preferred Stock shall no longer be deemed to be outstanding, and all rights of the holders thereof as holders of the Senior Preferred Stock shall cease, with respect to shares so redeemed, other than the right to receive the pay down amount (which shall include the final dividend for such shares). Any shares of the Senior Preferred Stock which shall have been so redeemed, after such redemption, shall no longer have the status of authorized, issued or outstanding shares.

4. Mandatory Pay Down of Liquidation Preference Upon Issuance of Capital Stock

(a) If the Company shall issue any shares of capital stock (including without limitation common stock or any series of preferred stock) in exchange for cash at any time while the Senior Preferred Stock is outstanding, then the Company shall, within 10 Business Days, use the proceeds of such issuance net of the direct costs relating to the issuance of such securities (including, without limitation, legal, accounting and investment banking fees) to pay down the Liquidation Preference of all outstanding shares of Senior Preferred Stock pro rata, out of funds legally available therefor, by making a payment in cash to the holders of record of outstanding shares of the Senior Preferred Stock as they appear in the books and records of the Company on such record date as shall be fixed in advance by the Board of Directors, not to be earlier than 45 days nor later than 10 days preceding the date fixed for the payment, with such payment first being used to reduce any accrued and unpaid dividends previously added to the Liquidation Preference pursuant to Section 8 below and, to the extent all such accrued and unpaid dividends have been paid, next being used to reduce any Periodic Commitment Fees (as defined in the Preferred Stock Purchase Agreement referred to in Section 8 below) previously added to the Liquidation Preference pursuant to Section 8 below; provided that, prior to the termination of the Commitment (as defined in the Preferred Stock Purchase Agreement referred to in Section 8 below), the Liquidation Preference of each share of Senior Preferred Stock shall not be paid down below \$1,000 per share.

(b) If the Company shall not have sufficient assets legally available for the pay down of the Liquidation Preference of the shares of Senior Preferred Stock required under Section 4(a), the Company shall pay down the Liquidation Preference per share to the extent permitted by law, and shall pay down any Liquidation Preference not so paid down because of the unavailability of legally available assets or other prohibition as soon as practicable to the extent it is thereafter able to make such pay down legally. The inability of the Company to make such payment for any reason shall not relieve the Company from its obligation to effect any required pay down of the Liquidation Preference when, as and if permitted by law.

(c) If after the termination of the Commitment the Company pays down the Liquidation Preference of each outstanding share of Senior Preferred Stock in full, such shares shall be deemed to have been redeemed as of the date of such payment, and the dividend that would otherwise be payable for the Dividend Period ending on the pay down date will be paid

on such date. Following such deemed redemption, the shares of the Senior Preferred Stock shall no longer be deemed to be outstanding, and all rights of the holders thereof as holders of the Senior Preferred Stock shall cease, with respect to shares so redeemed, other than the right to receive the pay down amount (which shall include the final dividend for such redeemed shares). Any shares of the Senior Preferred Stock which shall have been so redeemed, after such redemption, shall no longer have the status of authorized, issued or outstanding shares.

5. No Voting Rights

Except as set forth in this Certificate or otherwise required by law, the shares of the Senior Preferred Stock shall not have any voting powers, either general or special.

6. No Conversion or Exchange Rights

The holders of shares of the Senior Preferred Stock shall not have any right to convert such shares into or exchange such shares for any other class or series of stock or obligations of the Company.

7. No Preemptive Rights

No holder of the Senior Preferred Stock shall as such holder have any preemptive right to purchase or subscribe for any other shares, rights, options or other securities of any class of the Company which at any time may be sold or offered for sale by the Company.

8. Liquidation Rights and Preference

(a) Except as otherwise set forth herein, upon the voluntary or involuntary dissolution, liquidation or winding up of the Company, the holders of the outstanding shares of the Senior Preferred Stock shall be entitled to receive out of the assets of the Company available for distribution to stockholders, before any payment or distribution shall be made on the common stock or any other class or series of stock of the Company ranking junior to the Senior Preferred Stock upon liquidation, the amount per share equal to the Liquidation Preference plus an amount, determined in accordance with Section 2(a) above, equal to the dividend otherwise payable for the then-current Dividend Period accrued through and including the date of payment in respect of such dissolution, liquidation or winding up; provided, however, that if the assets of the Company available for distribution to stockholders shall be insufficient for the payment of the amount which the holders of the outstanding shares of the Senior Preferred Stock shall be entitled to receive upon such dissolution, liquidation or winding up of the Company as aforesaid, then, all of the assets of the Company available for distribution to stockholders shall be distributed to the holders of outstanding shares of the Senior Preferred Stock pro rata based on the aggregate Liquidation Preference of the shares of Senior Preferred Stock held by each holder.

(b) "Liquidation Preference" shall initially mean \$1,000 per share and shall be:

(i) increased each time a Deficiency Amount (as defined in the Preferred Stock Purchase Agreement) is paid to the Company by an amount per share equal to the aggregate amount so paid to the Company divided by the number of shares of

Senior Preferred Stock outstanding at the time of such payment;

(ii) increased each time the Company does not pay the full Periodic Commitment Fee (as defined in the Preferred Stock Purchase Agreement) in cash by an amount per share equal to the amount of the Periodic Commitment Fee that is not paid in cash divided by the number of shares of Senior Preferred Stock outstanding at the time such payment is due;

(iii) increased on the Dividend Payment Date if the Company fails to pay in full the dividend payable for the Dividend Period ending on such date by an amount per share equal to the aggregate amount of unpaid dividends divided by the number of shares of Senior Preferred Stock outstanding on such date; and

(iv) decreased each time the Company pays down the Liquidation Preference pursuant to Section 3 or Section 4 of this Certificate by an amount per share equal to the aggregate amount of the pay down divided by the number of shares of Senior Preferred Stock outstanding at the time of such pay down.

(c) "Preferred Stock Purchase Agreement" means the Preferred Stock Purchase Agreement, dated September 7, 2008, between the Company and the United States Department of the Treasury.

(d) Neither the sale of all or substantially all of the property or business of the Company, nor the merger, consolidation or combination of the Company into or with any other corporation or entity, shall be deemed to be a dissolution, liquidation or winding up for the purpose of this Section 8.

9. Additional Classes or Series of Stock

The Board of Directors shall have the right at anytime in the future to authorize, create and issue, by resolution or resolutions, one or more additional classes or series of stock of the Company, and to determine and fix the distinguishing characteristics and the relative rights, preferences, privileges and other terms of the shares thereof; provided that, any such class or series of stock may not rank prior to or on parity with the Senior Preferred Stock without the prior written consent of the holders of at least two-thirds of all the shares of Senior Preferred Stock at the time outstanding.

10. Miscellaneous

(a) The Company and any agent of the Company may deem and treat the holder of a share or shares of Senior Preferred Stock, as shown in the Company's books and records, as the absolute owner of such share or shares of Senior Preferred Stock for the purpose of receiving payment of dividends in respect of such share or shares of Senior Preferred Stock and for all other purposes whatsoever, and neither the Company nor any agent of the Company shall be affected by any notice to the contrary. All payments made to or upon the order of any such person shall be valid and, to the extent of the sum or sums so paid, effectual to satisfy and discharge liabilities for moneys payable by the Company on or with respect to any such share or shares of Senior Preferred Stock.

(b) The shares of the Senior Preferred Stock, when duly issued, shall be fully paid and non-assessable.

(c) The Senior Preferred Stock may be issued, and shall be transferable on the books of the Company, only in whole shares.

(d) For purposes of this Certificate, the term “the Company” means the Federal Home Loan Mortgage Corporation and any successor thereto by operation of law or by reason of a merger, consolidation, combination or similar transaction.

(e) This Certificate and the respective rights and obligations of the Company and the holders of the Senior Preferred Stock with respect to such Senior Preferred Stock shall be construed in accordance with and governed by the laws of the United States, provided that the law of the Commonwealth of Virginia shall serve as the federal rule of decision in all instances except where such law is inconsistent with the Company’s enabling legislation, its public purposes or any provision of this Certificate.

(f) Any notice, demand or other communication which by any provision of this Certificate is required or permitted to be given or served to or upon the Company shall be given or served in writing addressed (unless and until another address shall be published by the Company) to Freddie Mac, 8200 Jones Branch Drive, McLean, Virginia 22102, Attn: Executive Vice President and General Counsel. Such notice, demand or other communication to or upon the Company shall be deemed to have been sufficiently given or made only upon actual receipt of a writing by the Company. Any notice, demand or other communication which by any provision of this Certificate is required or permitted to be given or served by the Company hereunder may be given or served by being deposited first class, postage prepaid, in the United States mail addressed (i) to the holder as such holder’s name and address may appear at such time in the books and records of the Company or (ii) if to a person or entity other than a holder of record of the Senior Preferred Stock, to such person or entity at such address as reasonably appears to the Company to be appropriate at such time. Such notice, demand or other communication shall be deemed to have been sufficiently given or made, for all purposes, upon mailing.

(g) The Company, by or under the authority of the Board of Directors, may amend, alter, supplement or repeal any provision of this Certificate pursuant to the following terms and conditions:

(i) Without the consent of the holders of the Senior Preferred Stock, the Company may amend, alter, supplement or repeal any provision of this Certificate to cure any ambiguity, to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Certificate, provided that such action shall not adversely affect the interests of the holders of the Senior Preferred Stock.

(ii) The consent of the holders of at least two-thirds of all of the shares of the Senior Preferred Stock at the time outstanding, given in person or by proxy, either in writing or by a vote at a meeting called for the purpose at which the holders of shares of the Senior Preferred Stock shall vote together as a class, shall be necessary for

authorizing, effecting or validating the amendment, alteration, supplementation or repeal (whether by merger, consolidation or otherwise) of the provisions of this Certificate other than as set forth in subparagraph (i) of this paragraph (g). The creation and issuance of any other class or series of stock, or the issuance of additional shares of any existing class or series of stock, of the Company ranking junior to the Senior Preferred Stock shall not be deemed to constitute such an amendment, alteration, supplementation or repeal.

(iii) Holders of the Senior Preferred Stock shall be entitled to one vote per share on matters on which their consent is required pursuant to subparagraph (ii) of this paragraph (g). In connection with any meeting of such holders, the Board of Directors shall fix a record date, neither earlier than 60 days nor later than 10 days prior to the date of such meeting, and holders of record of shares of the Senior Preferred Stock on such record date shall be entitled to notice of and to vote at any such meeting and any adjournment. The Board of Directors, or such person or persons as it may designate, may establish reasonable rules and procedures as to the solicitation of the consent of holders of the Senior Preferred Stock at any such meeting or otherwise, which rules and procedures shall conform to the requirements of any national securities exchange on which the Senior Preferred Stock may be listed at such time.

(h) RECEIPT AND ACCEPTANCE OF A SHARE OR SHARES OF THE SENIOR PREFERRED STOCK BY OR ON BEHALF OF A HOLDER SHALL CONSTITUTE THE UNCONDITIONAL ACCEPTANCE BY THE HOLDER (AND ALL OTHERS HAVING BENEFICIAL OWNERSHIP OF SUCH SHARE OR SHARES) OF ALL OF THE TERMS AND PROVISIONS OF THIS CERTIFICATE. NO SIGNATURE OR OTHER FURTHER MANIFESTATION OF ASSENT TO THE TERMS AND PROVISIONS OF THIS CERTIFICATE SHALL BE NECESSARY FOR ITS OPERATION OR EFFECT AS BETWEEN THE COMPANY AND THE HOLDER (AND ALL SUCH OTHERS).

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Company this 27th day of September, 2012.

[Seal]

FEDERAL HOME LOAN MORTGAGE CORPORATION,
by
The Federal Housing Finance Agency, its Conservator

By: /s/ Edward J DeMarco
Edward J DeMarco
Acting Director

Signature Page to September 2012 Amended and Restated Certificate of Designation of Senior Preferred Stock