

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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|--------------------------------|---|------------------|
| FAIRHOLME FUNDS, INC., et al., |) | |
| |) | |
| <i>Plaintiffs-Appellants,</i> |) | Case No. 14-5254 |
| |) | |
| v. |) | |
| |) | |
| THE FEDERAL HOUSING |) | |
| FINANCE AGENCY, et al., |) | |
| |) | |
| <i>Defendants-Appellees.</i> |) | |

APPELLANTS’ PRELIMINARY STATEMENT OF ISSUES FOR APPEAL

Purporting to act as conservator for the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (the “Companies”), the Federal Housing Finance Agency (“FHFA”) signed a “Net Worth Sweep” agreement with the Department of Treasury that entitles Treasury to all of the Companies’ profits in perpetuity. The issues on appeal are:

1. Whether the Housing and Economic Recovery Act’s prohibition on judicial relief that would “restrain or affect” FHFA’s exercise of its powers and functions “as conservator” precludes any of the relief Plaintiffs have requested in this action. *See* 12 U.S.C. § 4617(f).

2. Whether the Housing and Economic Recovery Act’s provision that FHFA as conservator succeeds to “all rights, titles, powers, and privileges” of

shareholders with respect to the Companies and their assets bars any of Plaintiffs' claims in this action. *See* 12 U.S.C. § 4617(b)(2)(A)(i).

3. Whether Treasury and FHFA violated federal law because their decision to enter into the Net Worth Sweep agreement was, among other things, in excess of statutory authority and arbitrary and capricious.

4. Whether Plaintiffs' claims for breach of contract and breach of the implied covenant of good faith and fair dealing are ripe and sufficient to survive a motion to dismiss.

5. Whether the district court erred in denying Plaintiffs' motion to supplement the administrative record and for limited discovery.

November 17, 2014

Respectfully submitted,

/s/ Charles J. Cooper

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CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2014, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the D.C. Circuit by using the appellate CM/ECF system. I certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Charles J. Cooper

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