














	<u>Date</u>	<u>Description</u>
6112	9/5/2012	Notice of Appeal. <i>(Notice of Appeal was not filed at the time, but inadvertently the Designation was filed)</i> Filing Fee Paid. Filed by Linda Bacon, John Crain, Michael & Dianna L. Elliott, Jeff and Darlene Gorrell, Jay D. Oyler, Djuana Reed, Sandy Smith, Larry Wesley and Tam Stout (related document(s)6050). (Perkins, Cathy) (Entered: 09/07/2012)
6050	8/23/2012	Statement of Issues on Appeal,(\$296.00 - No Appeal has been filed) Filed by John Crain, Sandy Smith. (Perkins, Cathy) (Entered: 08/30/2012)
6027	8/23/2012	Hearing Proceeding Memo: Hearing Held - APPEARANCES: WITNESSES: EVIDENCE: RULING: Approved Ord/Gassenheimer Rescheduled Motion to Approve Compromise or Settlement Regarding Deloitte Claim Funding and Allocation Filed by Paul Steven Singerman on behalf of Trustee Neil F. Luria, Plan Trustee (Singerman, Paul) Doc #5659 Objection to Trustee's Motion for Approval of Settlement Filed by Linda Bacon, John Crain, Michael & Dianna L. Elliott, Jeff and Darlene Gorrell, Jay D. Oyler, Djuana Reed, Sandy Smith, Larry Wesley and Tam Stout (related document(s)5659). (Perkins, Cathy) Doc #5810Proposed Orders, if applicable, should be submitted within three days after the date of the hearing - Local Rule 9072-1(c). This docket entry/document is not an official order of the Court. (Chap, Dkt) (Entered: 08/24/2012)
5974	8/15/2012	Certificate of Mailing - 1. Objection To Claim Numbers 219 And 3498 Filed By Sandy Smith, 2. Objection To Claim Numbers 3352 And 3500 Filed By Charles Tanner And Joni Cox-Tanner, 3. Sixty First Omnibus Objection To Claims (Claims Are Owed By Reo Specialists, LLC Or Home Mortgages Company), 4. Sixty Second Omnibus Objection To Claims (Claims Should Be Disallowed Under Section 502(D) Of The Bankruptcy Code), 5. Sixty Third Omnibus Objection To Claims (Claims Are Partially And/Or Fully Satisfied), 6. Objection To Claim No. 3058 Filed By Brian And Catherine Egan, 7. Objection To Claim No. 3499 Filed By Darlene And Jeff Gorrell, 8. Objection To Claim Numbers 395 And 3496 Filed By Katina Duran, 9. Objection To Claim Nos. 3419, 3472, And 3494 Filed By Larry And Tammy Stout, 10. Objection To Claim No. 475 Filed By Melinda Hedden, 11. Objection To Claim No. 3497 Filed By Michael And Dianna Elliott, 12. Objection To Claim No. 3057 Filed By Frank And Amelia Taddeo, 13. Objection To Claim No. 57 Filed By Tammy Gordon, 14. Objection To Claim No. 3325 Filed By Thomas Canterbury, 15. Objection To Claim No. 3453 Filed By Matthew And Kathleen Feller, 16. Objection To Claim No. 474 Filed By John Staats, 17. Objection To Claim Numbers 3414 And 3493 Filed By Jay Oyler, 18. Objection To Claim No. 338 Filed By Sorinel And Camelia Petreaca, 19. Objection To Claim No. 1227 Filed By John And Julie Crain, 20. Objection To Claim No. 3459 Filed By William And Frances Gregoire, 21. Objection To Claim No. 257 And 1071 Filed By Mary Pucket And Allene Whaley, 22. Objection To Claim No. 1523 Filed By John A. Bird And Terri L. Bird, 23. Objection To Claim No. 1089 Filed By Rodney Elinor, 24. Objection To Claim No. 3455 Filed By Billie J. Ford, 25. Objection To Claim No. 685 Filed By Janet M. Peck, 26. Objection To Claim No. 3495 Filed By Djuana Reed and 27. Objection To Claim No. 2612 Filed By Vernon Delger. Service Date 8-10-12. (Admin.) Filed by Other Prof. BMC Group (related document(s)5891, 5879, 5885, 5894, 5904, 5886, 5876, 5877, 5888, 5880, 5890, 5898, 5897, 5878, 5889, 5903, 5887, 5899, 5884, 5896, 5905, 5900, 5901, 5895, 5902, 5893, 5892). (BMC Group (JM)) (Entered: 08/15/2012)
5897	8/10/2012	Objection to Claim(s). 1227 of John and Julie Crain. Contains negative notice. Filed by Alisa Paige Mason on behalf of Trustee Neil F. Luria, Plan Trustee (Mason, Alisa) (Entered: 08/10/2012)
5836	8/3/2012	Hearing Proceeding Memo: Hearing Held - APPEARANCES: WITNESSES: EVIDENCE: RULING: Continued to August 23 @ 1:30 Blain to ntc. Motion to Approve Compromise or Settlement Regarding Deloitte Claim Funding and Allocation Filed by Paul Steven Singerman on behalf of Trustee Neil F. Luria, Plan Trustee (Singerman, Paul) Doc #5659 Objection to Trustee's Motion for Approval of Settlement Filed by Linda Bacon, John Crain, Michael & Dianna L. Elliott, Jeff and Darlene Gorrell, Jay D. Oyler, Djuana Reed, Sandy Smith, Larry Wesley and Tam Stout (related document(s)5659). (Perkins, Cathy) Doc #5810Proposed Orders, if applicable, should be submitted within three days after the date of the hearing - Local Rule 9072-1(c). This docket entry/document is not an official order of the Court. (Chap, Dkt) (Entered: 08/06/2012)
5812	7/31/2012	Objection to Order Striking Motion Requesting Resolution Upon Court in Reference to Creditors as Listed Above and Taylor, Bean and Whitaker Mortgage Corp., and It's Trust and Between It's Successors Filed by Joni Cox-Tanner, John Crain, Jeff and Darlene Gorrell, Jay D. Oyler, Sandy Smith, Larry Wesley and Tam Stout, Linda Bacon and Michael R. & Dianna L. Elliott Filed by Linda Bacon, John Crain, Michael & Dianna L. Elliott, Jeff and Darlene Gorrell, Jay D. Oyler, Djuana Reed, Sandy Smith, Larry Wesley and Tam Stout (related document(s)5704). (Perkins, Cathy) (Entered: 08/02/2012)
5811	7/31/2012	Objection to Order Striking Motion Requesting Resolution Upon Court in Reference to Creditors as Listed Above and Taylor, Bean and Whitaker Mortgage Corp., and It's Trust and Between It's Successors Filed by Joni Cox-Tanner, John Crain, Jeff and Darlene Gorrell, Jay D. Oyler, Sandy Smith, Larry Wesley and Tam Stout, Linda Bacon and Michael R. & Dianna L. Elliott Filed by Creditor John Crain (related document(s)5704). (Perkins, Cathy) (Entered: 08/02/2012)
5810	7/26/2012	Objection to Trustee's Motion for Approval of Settlement Filed by Linda Bacon, John Crain, Michael & Dianna L. Elliott, Jeff and Darlene Gorrell, Jay D. Oyler, Djuana Reed, Sandy Smith, Larry Wesley and Tam Stout (related document(s)5659). (Perkins, Cathy) (Entered: 08/02/2012)
5704	7/17/2012	Order Striking Motion Requesting Resolution Upon Court in Reference to Creditors as Listed Above and Taylor, Bean and Whitaker Mortgage Corp., and It's Trust and Between It's Successors Filed by Joni Cox-Tanner, John Crain, Jeff and Darlene Gorrell, Jay D. Oyler, Sandy Smith, Larry Wesley and Tam Stout, Linda Bacon and Michael R. & Dianna L. Elliott (related document(s)5641). Signed on 7/17/2012 (Perkins, Cathy) (Entered: 07/17/2012)
5641	6/29/2012	Motion Requesting Resolution Upon Court in Reference to Creditors as Listed Above and Taylor, Bean and Whitaker Mortgage Corp., and It's Trust and Between It's Successors Filed by Joni Cox-Tanner, John Crain, Jeff and Darlene Gorrell, Jay D. Oyler, Sandy Smith, Larry Wesley and Tam Stout (Perkins, Cathy ) (Entered: 07/10/2012)
5171	4/6/2012	Objection to Motion for Relief from Stay filed by Bank of America National Assoc. Filed by Creditor John Crain (related document(s)4918). (Perkins, Cathy) (Entered: 04/10/2012)
5124	4/3/2012	Objection to Motion for Relief from Stay for Bank of America National (Objection states group of creditors, but only Signed by Sandy Smith) Filed by Linda Bacon, Joni Cox-Tanner, John Crain, Katina L. Duran, Michael & Dianna L. Elliott, Jeff and Darlene Gorrell, Jay D. Oyler, Djuana Reed, Sandy Smith, Larry Wesley and Tam Stout (related document(s)4918). (Perkins, Cathy) (Entered: 04/03/2012)

5112	3/23/2012	<b>Motion in Disagreement to Signed Order 5042 Approving the Settlement Agreement by and Among Taylor Bean &amp; Whitaker Mortgage Corp. Plan Trustee and Sovereign Bank</b> Filed by Linda Bacon, Joni Cox-Tanner, John Crain, Michael & Dianna L. Elliott, Jeff and Darlene Gorrell, Jay D. Oyler, Djuana Reed, Sandy Smith, Larry Wesley and Tam Stout (related document(s)5042). (Perkins, Cathy ) (Entered: 03/27/2012)
5111	3/26/2012	<b>Motion in Disagreement to Signed Order 5042 Approving the Settlement Agreement by and Among Taylor Bean &amp; Whitaker Mortgage Corp. Plan Trustee and Sovereign Bank</b> Filed by Creditor John Crain (related document(s)5042). (Perkins, Cathy ) (Entered: 03/27/2012)
5110	3/26/2012	<b>Motion in Disagreement to Signed Order 5042 Approving the Settlement Agreement by and Among Taylor Bean &amp; Whitaker Mortgage Corp. Plan Trustee and Sovereign Bank</b> Filed by Linda Bacon, Joni Cox-Tanner, John Crain, Michael & Dianna L. Elliott, Jeff and Darlene Gorrell, Jay D. Oyler, Djuana Reed, Sandy Smith, Larry Wesley and Tam Stout (related document(s)5042). (Perkins, Cathy ) (Entered: 03/27/2012)
5109	3/26/2012	<b>Motion in Disagreement to Signed Order 5042 Approving the Settlement Agreement by and Among Taylor Bean &amp; Whitaker Mortgage Corp. Plan Trustee and Sovereign Bank</b> Filed by Linda Bacon, Joni Cox-Tanner, John Crain, Michael & Dianna L. Elliott, Jeff and Darlene Gorrell, Jay D. Oyler, Djuana Reed, Sandy Smith, Larry Wesley and Tam Stout (related document(s)5042). (Perkins, Cathy ) (Entered: 03/27/2012)
5107	3/23/2012	<b>Motion in Disagreement to Signed Order 5042 Approving the Settlement Agreement by and Among Taylor Bean &amp; Whitaker Mortgage Corp. Plan Trustee and Sovereign Bank</b> Filed by Linda Bacon, Joni Cox-Tanner, John Crain, Michael & Dianna L. Elliott, Jeff and Darlene Gorrell, Jay D. Oyler, Djuana Reed, Sandy Smith, Larry Wesley and Tam Stout (related document(s)5042). (Perkins, Cathy ) (Entered: 03/27/2012)
5106	3/23/2012	<b>Motion in Disagreement to Signed Order 5042 Approving the Settlement Agreement by and Among Taylor Bean &amp; Whitaker Mortgage Corp. Plan Trustee and Sovereign Bank</b> Filed by Linda Bacon, Joni Cox-Tanner, John Crain, Michael & Dianna L. Elliott, Jeff and Darlene Gorrell, Jay D. Oyler, Djuana Reed, Sandy Smith, Larry Wesley and Tam Stout (related document(s)5042). (Perkins, Cathy ) (Entered: 03/27/2012)
5104	3/22/2012	<b>Motion in Disagreement to Signed Order 5042 Approving the Settlement Agreement by and Among Taylor Bean &amp; Whitaker Mortgage Corp. Plan Trustee and Sovereign Bank</b> Filed by Linda Bacon, Joni Cox-Tanner, John Crain, Michael & Dianna L. Elliott, Jeff and Darlene Gorrell, Jay D. Oyler, Djuana Reed, Sandy Smith, Larry Wesley and Tam Stout (related document(s)5042). (Perkins, Cathy ) (Entered: 03/27/2012)
5102	3/22/2012	<b>Motion in Disagreement to Signed Order 5042 Approving the Settlement Agreement by and Among Taylor Bean &amp; Whitaker Mortgage Corp. Plan Trustee and Sovereign Bank</b> Filed by Linda Bacon, Joni Cox-Tanner, John Crain, Michael & Dianna L. Elliott, Jeff and Darlene Gorrell, Jay D. Oyler, Djuana Reed, Sandy Smith, Larry Wesley and Tam Stout (related document(s)5042). (Perkins, Cathy ) (Entered: 03/27/2012)
4831	1/31/2012	<b>Complaint by Sandy S Smith ; Larry Wesley and Tam Stout ; Linda Bacon ; Jeff and Darlene Gorrell ; Djuana Reed ; John Crain ; Charles &amp; Joni Cox-Tanner Tanner ; Jay D. Oyler against Taylor, Bean &amp; Whitaker Mortgage Corp ; Reo Specialties, LLC ; Home American Mortgages, Inc. 3:12-ap-00109-JAF; Nature of Suit(s): 67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny). (Freeman, Vickie) (Entered: 01/31/2012)</b>
4613	12/16/2011	<b>Memorandum regarding Motion for Reconsideration of Order Granting Emergency Ex Parte Motion to Extend</b> Filed by Creditor John Crain (related document(s)4543). (Perkins, Cathy) (Entered: 12/20/2011)
2698	2/15/2011	<b>Appellant Designation of Contents for Inclusion in Record on Appeal - Appellant John Crain's Directions To The Clerk</b> Filed by S. Hunter Malin on behalf of Creditor John Crain. Appellee designation due by 3/1/2011. (Malin, S.) (Entered: 02/15/2011)
2633	2/4/2011	<b>Proposed Order Granting John Crain's Motion For Extension Of Time To File Designation Of Items To Be Included In The Record On Appeal And A Statement Of The Issues Presented</b> Filed by S. Hunter Malin on behalf of Creditor John Crain (related document(s) 2604
2607	2/3/2011	<b>Proposed Order Granting John Crain's Motion For Extension Of Time To File Designation Of Items To Be Included In The Record On Appeal And A Statement Of The Issues Presented</b> Filed by S. Hunter Malin on behalf of Creditor John Crain (related document(s) 2604 ). (Malin, S.) (Entered: 02/03/2011)
2604	2/2/2011	<b>Motion to Extend Time To File Designation Of Items To Be Included In the Record On Appeal And A Statement Of The Issues Presented</b> Filed by S. Hunter Malin on behalf of Creditor John Crain (Malin, S.) (Entered: 02/02/2011)
2603	2/2/2011	<b>Notice of Appearance and Request for Notice</b> Filed by S. Hunter Malin on behalf of Creditor John Crain. (Malin, S.) (Entered: 02/02/2011)
2577	1/31/2011	<b>Notice of Filing Appeal Cover Sheet</b> Filed by Creditor John Crain (related document(s) 2536 ). (Perkins, Cathy) (Entered: 01/31/2011)
2536	1/24/2011	<b>Notice of Appeal. Filing Fee Not Paid or Not Required.</b> Filed by Creditor John Crain (related document(s) 2475 ). Appellant Designation due by 2/7/2011. (Perkins, Cathy) (Entered: 01/25/2011)
2475	1/12/2011	<b>Order on Motion for Production of Documents - The Motion is denied without prejudice on the terms and conditons set forth herein and The Debtor shall, within thirty (30) days of the entry of this Order provide Mr. Crain a copy of his loan file in its possession</b> (related document(s) 2111 ). Signed on 1/12/2011 (Perkins, Cathy) (Entered: 01/14/2011)
2122	11/5/2010	<b>Notice to Creditors and Other Parties in Interest Notice of Hearing on Motion For Production of Documents filed by John Crain</b> (related document(s) 2111 ). Hearing scheduled for 12/17/2010 at 10:00 AM at Jacksonville, FL - 300 North Hogan St. 4th Floor Courtroom 4D (related document(s) 2115 ). (Perkins, Cathy) (Entered: 11/05/2010)
2115	11/3/2010	<b>Notice of Hearing on Motion For Production of Documents</b> filed by John Crain (related document(s) 2111 ). Hearing scheduled for 12/17/2010 at 10:00 AM at Jacksonville, FL - 300 North Hogan St. 4th Floor Courtroom 4D. (Perkins, Cathy) (Entered: 11/03/2010)
2111	11/2/2010	<b>Motion For Production of Documents</b> Filed by Creditor John Crain (Perkins, Cathy ) (Entered: 11/02/2010)
2030	10/4/2010	<b>Notice of Appearance and Request for Notice</b> Filed by Creditor John Crain. (Perkins, Cathy) (Entered: 10/06/2010)














2024	10/1/2010	Notice of Appearance and Request for Notice Filed by Creditor John Crain. (Perkins, Cathy) (Entered: 10/01/2010)
1998	9/24/2010	Order Granting Motion To Continue/Reschedule Hearing on <i>Objection to Sale by John Crain</i> (Related Doc # 1913 ). Signed on 9/24/2010. Hearing scheduled for 10/8/2010 at 10:00 AM at Jacksonville, FL - 300 North Hogan St. 4th Floor Courtroom 4D. (Perkins, Cathy ) (Entered: 09/24/2010)
1913	9/9/2010	Motion to Continue/Reschedule Hearing On <i>Objection to the Motion for Approval of Settlement Agreement by and between Taylor Bean &amp; Whitaker Asserts to Colonial Bank/Ameribank, Bank of New York Mellon and to Compel Inspection</i> Filed by Creditor John Crain (related document(s) 1585 , 1789 ). (Perkins, Cathy ) (Entered: 09/09/2010)
1905	9/2/2010	<i>Objection to Motion for Approval of Settlement Agreement by and Between Debtor, the Federal Deposit Insurance Corp, as receiver of Colonial Bank and the Official Committee of Unsecured Creditors filed August 1, 2010</i> Filed by Creditor John Crain (related document(s) 1783 ). (Perkins, Cathy) (Entered: 09/07/2010)
1833	8/17/2010	Certificate of Mailing - <i>NOTICE OF PRELIMINARY HEARING [Re: Objection to Sale of Taylor Bean &amp; Whitaker Assets to Colonial Bank/US Ameribank, Bank of New York Mellon as Investor and to Compel Inspection of Original Court Document #1585 filed by John Crain - Docket No. 1789]. Service Date 8-16-10. (Admin.)</i> Filed by Other Prof. BMC Group (related document(s) 1811 ). (BMC Group (JM)) (Entered: 08/17/2010)
1811	8/16/2010	Notice of Hearing on Objection to Sale of Taylor Bean & Whitaker Assets to Colonial Bank/USAmeribank, Bank of New York Mellon as Investor and to Compel Insepction of Original Court Document #1585 filed by John Crain (related document(s) 1788 ). Hearing scheduled for 9/10/2010 at 10:00 AM at Jacksonville, FL - 300 North Hogan St. 4th Floor Courtroom 4D. (Perkins, Cathy) (Entered: 08/16/2010)
1789	8/11/2010	<i>Objection to Sale of TaylorBean &amp; Whitaker Assets to Colonial Bank/USAmeribank, Bank of New York Mellon as Investor and to Compel Inspection of Original Court Document No. 1585 Exhibit, filed June 22, 2010</i> Filed by Creditor John Crain. (Perkins, Cathy) (Entered: 08/12/2010)
1681	7/13/2010	Certificate of Mailing - <i>ORDER ON OBJECTION BY JOHN CRAIN TO DEBTOR'S MOTION FOR ORDER AUTHORIZING SALE OF CERTAIN MORTGAGE-BACKED SECURITIES. Service Date 7-12-10. (Admin.)</i> Filed by Other Prof. BMC Group (related document(s) 1678 ). (BMC Group (JM)) (Entered: 07/13/2010)
1678	7/9/2010	<i>Order on Objection by John Crain to Debtor's Motion for Order Authorizing Sale of Certain Mortgage-Backed Securities</i> (related document(s) 1361 , 1427 ). Signed on 7/9/2010 (Perkins, Cathy) (Entered: 07/12/2010)
1666	7/8/2010	<i>Proposed Order on Objection by John Crain to Debtor's Motion for Order Authorizing Sale of Certain Mortgage-Backed Securities</i> Filed by Edward J. Peterson on behalf of Debtor Taylor, Bean & Whitaker Mortgage Corp. (related document(s) 1361 ). (Peterson, Edward) (Entered: 07/08/2010)
1584	6/18/2010	<i>Response to Debtor's Response to the Objection to Sale of Mortgage-Backed Securities</i> Filed by Creditor John Crain. (Perkins, Cathy) (Entered: 06/22/2010)
1428	5/17/2010	Motion to Continue/Reschedule Hearing On <i>Objection to the Sale of Mortgage-Backed Securities</i> Filed by Creditor John Crain (related document(s) 1361 ). (Perkins, Cathy ) Modified on 5/18/2010 (Perkins, Cathy). (Entered: 05/18/2010)
1399	5/6/2010	Certificate of Mailing <i>NOTICE OF HEARING [Re: Objection to Sale of MortgageBacked Securities filed by John A. Crain - Docket No. 1361]. Service Date 5-5-10. (Admin.)</i> Filed by Other Prof. BMC Group (related document(s) 1388 ). (BMC Group (JM)) (Entered: 05/06/2010)
1388	5/5/2010	Notice of Hearing on Objection to the Sale of Mortgage-Backed Securities filed by John A. Crain (related document(s) 1361 ). Hearing scheduled for 5/21/2010 at 10:00 AM at Jacksonville, FL - 300 North Hogan St. 4th Floor Courtroom 4D. (Perkins, Cathy) (Entered: 05/05/2010)
5161	4/5/2012	Objection to Motion for Relief from Stay filed by Bank of America National Assoc.(Objection states group of creditors, but only signed by Larry W. & Tammy Stout) Filed by Creditor Larry Wesley and Tam Stout (related document(s)4918). (Perkins, Cathy) (Entered: 04/10/2012)

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	5124 4/3/2012	Objection to Motion for Relief from Stay for Bank of America National (Objection states group of creditors, but only Signed by Sandy Smith) Filed by Linda Bacon, Joni Cox-Tanner, John Crain, Katina L. Duran, Michael & Dianna L. Elliott, Jeff and Darlene Gorrell, Jay D. Oyler, Djuana Reed, Sandy Smith, Larry Wesley and Tam Stout (related document(s)4918). (Perkins, Cathy) (Entered: 04/03/2012)



5112	3/23/2012	<i>Motion in Disagreement to Signed Order 5042 Approving the Settlement Agreement by and Among Taylor Bean &amp; Whitaker Mortgage Corp. Plan Trustee and Sovereign Bank</i> Filed by Linda Bacon, Joni Cox-Tanner, John Crain, Michael & Dianna L. Elliott, Jeff and Darlene Gorrell, Jay D. Oyler, Djuana Reed, Sandy Smith, Larry Wesley and Tam Stout (related document(s)5042). (Perkins, Cathy ) (Entered: 03/27/2012)
5111	3/26/2012	<i>Motion in Disagreement to Signed Order 5042 Approving the Settlement Agreement by and Among Taylor Bean &amp; Whitaker Mortgage Corp. Plan Trustee and Sovereign Bank</i> Filed by Creditor John Crain (related document(s)5042). (Perkins, Cathy ) (Entered: 03/27/2012)
5110	3/26/2012	<i>Motion in Disagreement to Signed Order 5042 Approving the Settlement Agreement by and Among Taylor Bean &amp; Whitaker Mortgage Corp. Plan Trustee and Sovereign Bank</i> Filed by Linda Bacon, Joni Cox-Tanner, John Crain, Michael & Dianna L. Elliott, Jeff and Darlene Gorrell, Jay D. Oyler, Djuana Reed, Sandy Smith, Larry Wesley and Tam Stout (related document(s)5042). (Perkins, Cathy ) (Entered: 03/27/2012)
5109	3/26/2012	<i>Motion in Disagreement to Signed Order 5042 Approving the Settlement Agreement by and Among Taylor Bean &amp; Whitaker Mortgage Corp. Plan Trustee and Sovereign Bank</i> Filed by Linda Bacon, Joni Cox-Tanner, John Crain, Michael & Dianna L. Elliott, Jeff and Darlene Gorrell, Jay D. Oyler, Djuana Reed, Sandy Smith, Larry Wesley and Tam Stout (related document(s)5042). (Perkins, Cathy ) (Entered: 03/27/2012)
5107	3/23/2012	<i>Motion in Disagreement to Signed Order 5042 Approving the Settlement Agreement by and Among Taylor Bean &amp; Whitaker Mortgage Corp. Plan Trustee and Sovereign Bank</i> Filed by Linda Bacon, Joni Cox-Tanner, John Crain, Michael & Dianna L. Elliott, Jeff and Darlene Gorrell, Jay D. Oyler, Djuana Reed, Sandy Smith, Larry Wesley and Tam Stout (related document(s)5042). (Perkins, Cathy ) (Entered: 03/27/2012)
5106	3/23/2012	<i>Motion in Disagreement to Signed Order 5042 Approving the Settlement Agreement by and Among Taylor Bean &amp; Whitaker Mortgage Corp. Plan Trustee and Sovereign Bank</i> Filed by Linda Bacon, Joni Cox-Tanner, John Crain, Michael & Dianna L. Elliott, Jeff and Darlene Gorrell, Jay D. Oyler, Djuana Reed, Sandy Smith, Larry Wesley and Tam Stout (related document(s)5042). (Perkins, Cathy ) (Entered: 03/27/2012)
5104	3/22/2012	<i>Motion in Disagreement to Signed Order 5042 Approving the Settlement Agreement by and Among Taylor Bean &amp; Whitaker Mortgage Corp. Plan Trustee and Sovereign Bank</i> Filed by Linda Bacon, Joni Cox-Tanner, John Crain, Michael & Dianna L. Elliott, Jeff and Darlene Gorrell, Jay D. Oyler, Djuana Reed, Sandy Smith, Larry Wesley and Tam Stout (related document(s)5042). (Perkins, Cathy ) (Entered: 03/27/2012)
5102	3/22/2012	<i>Motion in Disagreement to Signed Order 5042 Approving the Settlement Agreement by and Among Taylor Bean &amp; Whitaker Mortgage Corp. Plan Trustee and Sovereign Bank</i> Filed by Linda Bacon, Joni Cox-Tanner, John Crain, Michael & Dianna L. Elliott, Jeff and Darlene Gorrell, Jay D. Oyler, Djuana Reed, Sandy Smith, Larry Wesley and Tam Stout (related document(s)5042). (Perkins, Cathy ) (Entered: 03/27/2012)
4831	1/31/2012	Complaint by Sandy S Smith ; Larry Wesley and Tam Stout ; Linda Bacon ; Jeff and Darlene Gorrell ; Djuana Reed ; John Crain ; Charles & Joni Cox-Tanner Tanner ; Jay D. Oyler against Taylor, Bean & Whitaker Mortgage Corp ; Reo Specialties, LLC ; Home American Mortgages, Inc. 3:12-ap-00109-JAF; Nature of Suit(s): 67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny). (Freeman, Vickie) (Entered: 01/31/2012)
4613	12/16/2011	Memorandum regarding Motion for Reconsideration of Order Granting Emergency Ex Parte Motion to Extend Filed by Creditor John Crain (related document(s)4543). (Perkins, Cathy) (Entered: 12/20/2011)
2698	2/15/2011	Appellant Designation of Contents for Inclusion in Record on Appeal - Appellant John Crain's Directions To The Clerk Filed by S. Hunter Malin on behalf of Creditor John Crain. Appellee designation due by 3/1/2011. (Malin, S.) (Entered: 02/15/2011)
2633	2/4/2011	Proposed Order Granting John Crain's Motion For Extension Of Time To File Designation Of Items To Be Included In The Record On Appeal And A Statement Of The Issues Presented Filed by S. Hunter Malin on behalf of Creditor John Crain (related document(s) 2604
2607	2/3/2011	Proposed Order Granting John Crain's Motion For Extension Of Time To File Designation Of Items To Be Included In The Record On Appeal And A Statement Of The Issues Presented Filed by S. Hunter Malin on behalf of Creditor John Crain (related document(s) 2604 ). (Malin, S.) (Entered: 02/03/2011)
2604	2/2/2011	Motion to Extend Time To File Designation Of Items To Be Included In the Record On Appeal And A Statement Of The Issues Presented Filed by S. Hunter Malin on behalf of Creditor John Crain (Malin, S.) (Entered: 02/02/2011)
2603	2/2/2011	Notice of Appearance and Request for Notice Filed by S. Hunter Malin on behalf of Creditor John Crain. (Malin, S.) (Entered: 02/02/2011)
2577	1/31/2011	Notice of Filing Appeal Cover Sheet Filed by Creditor John Crain (related document(s) 2536 ). (Perkins, Cathy) (Entered: 01/31/2011)
2536	1/24/2011	Notice of Appeal. Filing Fee Not Paid or Not Required. Filed by Creditor John Crain (related document(s) 2475 ). Appellant Designation due by 2/7/2011. (Perkins, Cathy) (Entered: 01/25/2011)
2475	1/12/2011	Order on Motion for Production of Documents - The Motion is denied without prejudice on the terms and conditons set forth herein and The Debtor shall, within thirty (30) days of the entry of this Order provide Mr. Crain a copy of his loan file in its possession (related document(s) 2111 ). Signed on 1/12/2011 (Perkins, Cathy) (Entered: 01/14/2011)
2122	11/5/2010	Notice to Creditors and Other Parties in Interest Notice of Hearing on Motion For Production of Documents filed by John Crain (related document(s) 2111 ). Hearing scheduled for 12/17/2010 at 10:00 AM at Jacksonville, FL - 300 North Hogan St. 4th Floor Courtroom 4D (related document(s) 2115 ). (Perkins, Cathy) (Entered: 11/05/2010)
2115	11/3/2010	Notice of Hearing on Motion For Production of Documents filed by John Crain (related document(s) 2111 ). Hearing scheduled for 12/17/2010 at 10:00 AM at Jacksonville, FL - 300 North Hogan St. 4th Floor Courtroom 4D. (Perkins, Cathy) (Entered: 11/03/2010)
2111	11/2/2010	Motion For Production of Documents Filed by Creditor John Crain (Perkins, Cathy ) (Entered: 11/02/2010)
2030	10/4/2010	Notice of Appearance and Request for Notice Filed by Creditor John Crain. (Perkins, Cathy) (Entered: 10/06/2010)

2024	10/1/2010	Notice of Appearance and Request for Notice Filed by Creditor John Crain. (Perkins, Cathy) (Entered: 10/01/2010)
1998	9/24/2010	Order Granting Motion To Continue/Reschedule Hearing on <i>Objection to Sale by John Crain</i> (Related Doc # 1913 ). Signed on 9/24/2010. Hearing scheduled for 10/8/2010 at 10:00 AM at Jacksonville, FL - 300 North Hogan St. 4th Floor Courtroom 4D. (Perkins, Cathy ) (Entered: 09/24/2010)
1913	9/9/2010	Motion to Continue/Reschedule Hearing On <i>Objection to the Motion for Approval of Settlement Agreement by and between Taylor Bean &amp; Whitaker Asserts to Colonial Bank/Ameribank, Bank of New York Mellon and to Compel Inspection</i> Filed by Creditor John Crain (related document(s) 1585 , 1789 ). (Perkins, Cathy ) (Entered: 09/09/2010)
1905	9/2/2010	<i>Objection to Motion for Approval of Settlement Agreement by and Between Debtor, the Federal Deposit Insurance Corp, as receiver of Colonial Bank and the Official Committee of Unsecured Creditors filed August 1, 2010</i> Filed by Creditor John Crain (related document(s) 1783 ). (Perkins, Cathy) (Entered: 09/07/2010)
1833	8/17/2010	Certificate of Mailing - <i>NOTICE OF PRELIMINARY HEARING [Re: Objection to Sale of Taylor Bean &amp; Whitaker Assets to Colonial Bank/US Ameribank, Bank of New York Mellon as Investor and to Compel Inspection of Original Court Document #1585 filed by John Crain - Docket No. 1789]. Service Date 8-16-10. (Admin.)</i> Filed by Other Prof. BMC Group (related document(s) 1811 ). (BMC Group (JM)) (Entered: 08/17/2010)
1811	8/16/2010	Notice of Hearing on Objection to Sale of Taylor Bean & Whitaker Assets to Colonial Bank/USAmeribank, Bank of New York Mellon as Investor and to Compel Insepction of Original Court Document #1585 filed by John Crain (related document(s) 1788 ). Hearing scheduled for 9/10/2010 at 10:00 AM at Jacksonville, FL - 300 North Hogan St. 4th Floor Courtroom 4D. (Perkins, Cathy) (Entered: 08/16/2010)
1789	8/11/2010	<i>Objection to Sale of TaylorBean &amp; Whitaker Assets to Colonial Bank/USAmeribank, Bank of New York Mellon as Investor and to Compel Inspection of Original Court Document No. 1585 Exhibit, filed June 22, 2010</i> Filed by Creditor John Crain. (Perkins, Cathy) (Entered: 08/12/2010)
1681	7/13/2010	Certificate of Mailing - <i>ORDER ON OBJECTION BY JOHN CRAIN TO DEBTOR'S MOTION FOR ORDER AUTHORIZING SALE OF CERTAIN MORTGAGE-BACKED SECURITIES. Service Date 7-12-10. (Admin.)</i> Filed by Other Prof. BMC Group (related document(s) 1678 ). (BMC Group (JM)) (Entered: 07/13/2010)
1678	7/9/2010	<i>Order on Objection by John Crain to Debtor's Motion for Order Authorizing Sale of Certain Mortgage-Backed Securities</i> (related document(s) 1361 , 1427 ). Signed on 7/9/2010 (Perkins, Cathy) (Entered: 07/12/2010)
1666	7/8/2010	<i>Proposed Order on Objection by John Crain to Debtor's Motion for Order Authorizing Sale of Certain Mortgage-Backed Securities</i> Filed by Edward J. Peterson on behalf of Debtor Taylor, Bean & Whitaker Mortgage Corp. (related document(s) 1361 ). (Peterson, Edward) (Entered: 07/08/2010)
1584	6/18/2010	<i>Response to Debtor's Response to the Objection to Sale of Mortgage-Backed Securities</i> Filed by Creditor John Crain. (Perkins, Cathy) (Entered: 06/22/2010)
1428	5/17/2010	Motion to Continue/Reschedule Hearing On <i>Objection to the Sale of Mortgage-Backed Securities</i> Filed by Creditor John Crain (related document(s) 1361 ). (Perkins, Cathy ) Modified on 5/18/2010 (Perkins, Cathy). (Entered: 05/18/2010)
1399	5/6/2010	Certificate of Mailing <i>NOTICE OF HEARING [Re: Objection to Sale of MortgageBacked Securities filed by John A. Crain - Docket No. 1361]. Service Date 5-5-10. (Admin.)</i> Filed by Other Prof. BMC Group (related document(s) 1388 ). (BMC Group (JM)) (Entered: 05/06/2010)
1388	5/5/2010	Notice of Hearing on Objection to the Sale of Mortgage-Backed Securities filed by John A. Crain (related document(s) 1361 ). Hearing scheduled for 5/21/2010 at 10:00 AM at Jacksonville, FL - 300 North Hogan St. 4th Floor Courtroom 4D. (Perkins, Cathy) (Entered: 05/05/2010)
5161	4/5/2012	Objection to Motion for Relief from Stay filed by Bank of America National Assoc.(Objection states group of creditors, but only signed by Larry W. & Tammy Stout) Filed by Creditor Larry Wesley and Tam Stout (related document(s)4918). (Perkins, Cathy) (Entered: 04/10/2012)

	<u>Date</u>	<u>Description</u>
	6112 9/5/2012	Notice of Appeal. ( <i>Notice of Appeal was not filed at the time, but inadvertently the Designation was filed</i> ) Filing Fee Paid. Filed by Linda Bacon, John Crain, Michael & Dianna L. Elliott, Jeff and Darlene Gorrell, Jay D. Oyler, Djuana Reed, Sandy Smith, Larry Wesley and Tam Stout (related document(s)6050). (Perkins, Cathy) (Entered: 09/07/2012)
	6050 8/23/2012	Statement of Issues on Appeal,(\$296.00 - No Appeal has been filed) Filed by John Crain, Sandy Smith. (Perkins, Cathy) (Entered: 08/30/2012)
	6027 8/23/2012	Hearing Proceeding Memo: Hearing Held - APPEARANCES: WITNESSES: EVIDENCE: RULING: Approved Ord/Gassenheimer Rescheduled Motion to Approve Compromise or Settlement Regarding Deloitte Claim Funding and Allocation Filed by Paul Steven Singerman on behalf of Trustee Neil F. Luria, Plan Trustee (Singerman, Paul) Doc #5659 Objection to Trustee's Motion for Approval of Settlement Filed by Linda Bacon, John Crain, Michael & Dianna L. Elliott, Jeff and Darlene Gorrell, Jay D. Oyler, Djuana Reed, Sandy Smith, Larry Wesley and Tam Stout (related document(s)5659). (Perkins, Cathy) Doc #5810Proposed Orders, if applicable, should be submitted within three days after the date of the hearing - Local Rule 9072-1(c). This docket entry/document is not an official order of the Court. (Chap, Dkt) (Entered: 08/24/2012)
	5974 8/15/2012	Certificate of Mailing - 1. Objection To Claim Numbers 219 And 3498 Filed By Sandy Smith, 2. Objection To Claim Numbers 3352 And 3500 Filed By Charles Tanner And Joni Cox-Tanner, 3. Sixty First Omnibus Objection To Claims (Claims Are Owed By Reo Specialists, LLC Or Home Mortgages Company), 4. Sixty Second Omnibus Objection To Claims (Claims Should Be Disallowed Under Section 502(D) Of The Bankruptcy Code), 5. Sixty Third Omnibus Objection To Claims (Claims Are Partially And/Or Fully Satisfied), 6. Objection To Claim No. 3058 Filed By Brian And Catherine Egan, 7. Objection To Claim No. 3499 Filed By Darlene And Jeff Gorrell, 8. Objection To Claim Numbers 395 And 3496 Filed By Katina Duran, 9. Objection To Claim Nos. 3419, 3472, And 3494 Filed By Larry And Tammy Stout, 10. Objection To Claim No. 475 Filed By Melinda Hedden, 11. Objection To Claim No. 3497 Filed By Michael And Dianna Elliott, 12. Objection To Claim No. 3057 Filed By Frank And Amelia Taddeo, 13. Objection To Claim No. 57 Filed By Tammy Gordon, 14. Objection To Claim No. 3325 Filed By Thomas Canterbury, 15. Objection To Claim No. 3453 Filed By Matthew And Kathleen Feller, 16. Objection To Claim No. 474 Filed By John Staats, 17. Objection To Claim Numbers 3414 And 3493 Filed By Jay Oyler, 18. Objection To Claim No. 338 Filed By Sorinel And Camelia Petreaca, 19. Objection To Claim No. 1227 Filed By John And Julie Crain, 20. Objection To Claim No. 3459 Filed By William And Frances Gregoire, 21. Objection To Claim No. 257 And 1071 Filed By Mary Pucket And Allene Whaley, 22. Objection To Claim No. 1523 Filed By John A. Bird And Terri L. Bird, 23. Objection To Claim No. 1089 Filed By Rodney Elinor, 24. Objection To Claim No. 3455 Filed By Billie J. Ford, 25. Objection To Claim No. 685 Filed By Janet M. Peck, 26. Objection To Claim No. 3495 Filed By Djuana Reed and 27. Objection To Claim No. 2612 Filed By Vernon Delger. Service Date 8-10-12. (Admin.) Filed by Other Prof. BMC Group (related document(s)5891, 5879, 5885, 5894, 5904, 5886, 5876, 5877, 5888, 5880, 5890, 5898, 5897, 5878, 5889, 5903, 5887, 5899, 5884, 5896, 5905, 5900, 5901, 5895, 5902, 5893, 5892). (BMC Group (JM)) (Entered: 08/15/2012)
	5897 8/10/2012	Objection to Claim(s). 1227 of John and Julie Crain. Contains negative notice. Filed by Alisa Paige Mason on behalf of Trustee Neil F. Luria, Plan Trustee (Mason, Alisa) (Entered: 08/10/2012)
	5836 8/3/2012	Hearing Proceeding Memo: Hearing Held - APPEARANCES: WITNESSES: EVIDENCE: RULING: Continued to August 23 @ 1:30 Blain to ntc. Motion to Approve Compromise or Settlement Regarding Deloitte Claim Funding and Allocation Filed by Paul Steven Singerman on behalf of Trustee Neil F. Luria, Plan Trustee (Singerman, Paul) Doc #5659 Objection to Trustee's Motion for Approval of Settlement Filed by Linda Bacon, John Crain, Michael & Dianna L. Elliott, Jeff and Darlene Gorrell, Jay D. Oyler, Djuana Reed, Sandy Smith, Larry Wesley and Tam Stout (related document(s)5659). (Perkins, Cathy) Doc #5810Proposed Orders, if applicable, should be submitted within three days after the date of the hearing - Local Rule 9072-1(c). This docket entry/document is not an official order of the Court. (Chap, Dkt) (Entered: 08/06/2012)
	5812 7/31/2012	Objection to Order Striking Motion Requesting Resolution Upon Court in Reference to Creditors as Listed Above and Taylor, Bean and Whitaker Mortgage Corp., and It's Trust and Between It's Successors Filed by Joni Cox-Tanner, John Crain, Jeff and Darlene Gorrell, Jay D. Oyler, Sandy Smith, Larry Wesley and Tam Stout, Linda Bacon and Michael R. & Dianna L. Elliott Filed by Linda Bacon, John Crain, Michael & Dianna L. Elliott, Jeff and Darlene Gorrell, Jay D. Oyler, Djuana Reed, Sandy Smith, Larry Wesley and Tam Stout (related document(s)5704). (Perkins, Cathy) (Entered: 08/02/2012)
	5811 7/31/2012	Objection to Order Striking Motion Requesting Resolution Upon Court in Reference to Creditors as Listed Above and Taylor, Bean and Whitaker Mortgage Corp., and It's Trust and Between It's Successors Filed by Joni Cox-Tanner, John Crain, Jeff and Darlene Gorrell, Jay D. Oyler, Sandy Smith, Larry Wesley and Tam Stout, Linda Bacon and Michael R. & Dianna L. Elliott Filed by Creditor John Crain (related document(s)5704). (Perkins, Cathy) (Entered: 08/02/2012)
	5810 7/26/2012	Objection to Trustee's Motion for Approval of Settlement Filed by Linda Bacon, John Crain, Michael & Dianna L. Elliott, Jeff and Darlene Gorrell, Jay D. Oyler, Djuana Reed, Sandy Smith, Larry Wesley and Tam Stout (related document(s)5659). (Perkins, Cathy) (Entered: 08/02/2012)
	5704 7/17/2012	Order Striking Motion Requesting Resolution Upon Court in Reference to Creditors as Listed Above and Taylor, Bean and Whitaker Mortgage Corp., and It's Trust and Between It's Successors Filed by Joni Cox-Tanner, John Crain, Jeff and Darlene Gorrell, Jay D. Oyler, Sandy Smith, Larry Wesley and Tam Stout, Linda Bacon and Michael R. & Dianna L. Elliott (related document(s)5641). Signed on 7/17/2012 (Perkins, Cathy) (Entered: 07/17/2012)
	5641 6/29/2012	Motion Requesting Resolution Upon Court in Reference to Creditors as Listed Above and Taylor, Bean and Whitaker Mortgage Corp., and It's Trust and Between It's Successors Filed by Joni Cox-Tanner, John Crain, Jeff and Darlene Gorrell, Jay D. Oyler, Sandy Smith, Larry Wesley and Tam Stout (Perkins, Cathy ) (Entered: 07/10/2012)
	5171 4/6/2012	Objection to Motion for Relief from Stay filed by Bank of America National Assoc. Filed by Creditor John Crain (related document(s)4918). (Perkins, Cathy) (Entered: 04/10/2012)
	5124 4/3/2012	Objection to Motion for Relief from Stay for Bank of America National (Objection states group of creditors, but only Signed by Sandy Smith) Filed by Linda Bacon, Joni Cox-Tanner, John Crain, Katina L. Duran, Michael & Dianna L. Elliott, Jeff and Darlene Gorrell, Jay D. Oyler, Djuana Reed, Sandy Smith, Larry Wesley and Tam Stout (related document(s)4918). (Perkins, Cathy) (Entered: 04/03/2012)

5112	3/23/2012	<i>Motion in Disagreement to Signed Order 5042 Approving the Settlement Agreement by and Among Taylor Bean &amp; Whitaker Mortgage Corp. Plan Trustee and Sovereign Bank</i> Filed by Linda Bacon, Joni Cox-Tanner, John Crain, Michael & Dianna L. Elliott, Jeff and Darlene Gorrell, Jay D. Oyler, Djuana Reed, Sandy Smith, Larry Wesley and Tam Stout (related document(s)5042). (Perkins, Cathy ) (Entered: 03/27/2012)
5111	3/26/2012	<i>Motion in Disagreement to Signed Order 5042 Approving the Settlement Agreement by and Among Taylor Bean &amp; Whitaker Mortgage Corp. Plan Trustee and Sovereign Bank</i> Filed by Creditor John Crain (related document(s)5042). (Perkins, Cathy ) (Entered: 03/27/2012)
5110	3/26/2012	<i>Motion in Disagreement to Signed Order 5042 Approving the Settlement Agreement by and Among Taylor Bean &amp; Whitaker Mortgage Corp. Plan Trustee and Sovereign Bank</i> Filed by Linda Bacon, Joni Cox-Tanner, John Crain, Michael & Dianna L. Elliott, Jeff and Darlene Gorrell, Jay D. Oyler, Djuana Reed, Sandy Smith, Larry Wesley and Tam Stout (related document(s)5042). (Perkins, Cathy ) (Entered: 03/27/2012)
5109	3/26/2012	<i>Motion in Disagreement to Signed Order 5042 Approving the Settlement Agreement by and Among Taylor Bean &amp; Whitaker Mortgage Corp. Plan Trustee and Sovereign Bank</i> Filed by Linda Bacon, Joni Cox-Tanner, John Crain, Michael & Dianna L. Elliott, Jeff and Darlene Gorrell, Jay D. Oyler, Djuana Reed, Sandy Smith, Larry Wesley and Tam Stout (related document(s)5042). (Perkins, Cathy ) (Entered: 03/27/2012)
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5106	3/23/2012	<i>Motion in Disagreement to Signed Order 5042 Approving the Settlement Agreement by and Among Taylor Bean &amp; Whitaker Mortgage Corp. Plan Trustee and Sovereign Bank</i> Filed by Linda Bacon, Joni Cox-Tanner, John Crain, Michael & Dianna L. Elliott, Jeff and Darlene Gorrell, Jay D. Oyler, Djuana Reed, Sandy Smith, Larry Wesley and Tam Stout (related document(s)5042). (Perkins, Cathy ) (Entered: 03/27/2012)
5104	3/22/2012	<i>Motion in Disagreement to Signed Order 5042 Approving the Settlement Agreement by and Among Taylor Bean &amp; Whitaker Mortgage Corp. Plan Trustee and Sovereign Bank</i> Filed by Linda Bacon, Joni Cox-Tanner, John Crain, Michael & Dianna L. Elliott, Jeff and Darlene Gorrell, Jay D. Oyler, Djuana Reed, Sandy Smith, Larry Wesley and Tam Stout (related document(s)5042). (Perkins, Cathy ) (Entered: 03/27/2012)
5102	3/22/2012	<i>Motion in Disagreement to Signed Order 5042 Approving the Settlement Agreement by and Among Taylor Bean &amp; Whitaker Mortgage Corp. Plan Trustee and Sovereign Bank</i> Filed by Linda Bacon, Joni Cox-Tanner, John Crain, Michael & Dianna L. Elliott, Jeff and Darlene Gorrell, Jay D. Oyler, Djuana Reed, Sandy Smith, Larry Wesley and Tam Stout (related document(s)5042). (Perkins, Cathy ) (Entered: 03/27/2012)
4831	1/31/2012	Complaint by Sandy S Smith ; Larry Wesley and Tam Stout ; Linda Bacon ; Jeff and Darlene Gorrell ; Djuana Reed ; John Crain ; Charles & Joni Cox-Tanner Tanner ; Jay D. Oyler against Taylor, Bean & Whitaker Mortgage Corp ; Reo Specialties, LLC ; Home American Mortgages, Inc. 3:12-ap-00109-JAF; Nature of Suit(s): 67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny). (Freeman, Vickie) (Entered: 01/31/2012)
4613	12/16/2011	Memorandum regarding <i>Motion for Reconsideration of Order Granting Emergency Ex Parte Motion to Extend</i> Filed by Creditor John Crain (related document(s)4543). (Perkins, Cathy) (Entered: 12/20/2011)
2698	2/15/2011	Appellant Designation of Contents for Inclusion in Record on Appeal - <i>Appellant John Crain's Directions To The Clerk</i> Filed by S. Hunter Malin on behalf of Creditor John Crain. Appellee designation due by 3/1/2011. (Malin, S.) (Entered: 02/15/2011)
2633	2/4/2011	Proposed Order <i>Granting John Crain's Motion For Extension Of Time To File Designation Of Items To Be Included In The Record On Appeal And A Statement Of The Issues Presented</i> Filed by S. Hunter Malin on behalf of Creditor John Crain (related document(s) 2604
2607	2/3/2011	Proposed Order <i>Granting John Crain's Motion For Extension Of Time To File Designation Of Items To Be Included In The Record On Appeal And A Statement Of The Issues Presented</i> Filed by S. Hunter Malin on behalf of Creditor John Crain (related document(s) 2604 ). (Malin, S.) (Entered: 02/03/2011)
2604	2/2/2011	<i>Motion to Extend Time To File Designation Of Items To Be Included In the Record On Appeal And A Statement Of The Issues Presented</i> Filed by S. Hunter Malin on behalf of Creditor John Crain (Malin, S.) (Entered: 02/02/2011)
2603	2/2/2011	Notice of Appearance and Request for Notice Filed by S. Hunter Malin on behalf of Creditor John Crain. (Malin, S.) (Entered: 02/02/2011)
2577	1/31/2011	Notice of Filing <i>Appeal Cover Sheet</i> Filed by Creditor John Crain (related document(s) 2536 ). (Perkins, Cathy) (Entered: 01/31/2011)
2536	1/24/2011	Notice of Appeal. Filing Fee Not Paid or Not Required. Filed by Creditor John Crain (related document(s) 2475 ). Appellant Designation due by 2/7/2011. (Perkins, Cathy) (Entered: 01/25/2011)
2475	1/12/2011	Order on <i>Motion for Production of Documents - The Motion is denied without prejudice on the terms and conditons set forth herein and The Debtor shall, within thirty (30) days of the entry of this Order provide Mr. Crain a copy of his loan file in its possession</i> (related document(s) 2111 ). Signed on 1/12/2011 (Perkins, Cathy) (Entered: 01/14/2011)
2122	11/5/2010	Notice to Creditors and Other Parties in Interest <i>Notice of Hearing on Motion For Production of Documents filed by John Crain</i> (related document(s) 2111 ). Hearing scheduled for 12/17/2010 at 10:00 AM at Jacksonville, FL - 300 North Hogan St. 4th Floor Courtroom 4D (related document(s) 2115 ). (Perkins, Cathy) (Entered: 11/05/2010)
2115	11/3/2010	Notice of Hearing on Motion For Production of Documents filed by John Crain (related document(s) 2111 ). Hearing scheduled for 12/17/2010 at 10:00 AM at Jacksonville, FL - 300 North Hogan St. 4th Floor Courtroom 4D. (Perkins, Cathy) (Entered: 11/03/2010)
2111	11/2/2010	<i>Motion For Production of Documents</i> Filed by Creditor John Crain (Perkins, Cathy ) (Entered: 11/02/2010)
2030	10/4/2010	Notice of Appearance and Request for Notice Filed by Creditor John Crain. (Perkins, Cathy) (Entered: 10/06/2010)

2024	10/1/2010	Notice of Appearance and Request for Notice Filed by Creditor John Crain. (Perkins, Cathy) (Entered: 10/01/2010)
1998	9/24/2010	Order Granting Motion To Continue/Reschedule Hearing on <i>Objection to Sale by John Crain</i> (Related Doc # 1913 ). Signed on 9/24/2010. Hearing scheduled for 10/8/2010 at 10:00 AM at Jacksonville, FL - 300 North Hogan St. 4th Floor Courtroom 4D. (Perkins, Cathy) (Entered: 09/24/2010)
1913	9/9/2010	Motion to Continue/Reschedule Hearing On <i>Objection to the Motion for Approval of Settlement Agreement by and between Taylor Bean &amp; Whitaker Asserts to Colonial Bank/Ameribank, Bank of New York Mellon and to Compel Inspection</i> Filed by Creditor John Crain (related document(s) 1585 , 1789 ). (Perkins, Cathy) (Entered: 09/09/2010)
1905	9/2/2010	Objection to <i>Motion for Approval of Settlement Agreement by and Between Debtor, the Federal Deposit Insurance Corp, as receiver of Colonial Bank and the Official Committee of Unsecured Creditors filed August 1, 2010</i> Filed by Creditor John Crain (related document(s) 1783 ). (Perkins, Cathy) (Entered: 09/07/2010)
1833	8/17/2010	Certificate of Mailing - <i>NOTICE OF PRELIMINARY HEARING [Re: Objection to Sale of Taylor Bean &amp; Whitaker Assets to Colonial Bank/US Ameribank, Bank of New York Mellon as Investor and to Compel Inspection of Original Court Document #1585 filed by John Crain - Docket No. 1789]. Service Date 8-16-10. (Admin.)</i> Filed by Other Prof. BMC Group (related document(s) 1811 ). (BMC Group (JM)) (Entered: 08/17/2010)
1811	8/16/2010	Notice of Hearing on Objection to Sale of Taylor Bean & Whitaker Assets to Colonial Bank/USAmeribank, Bank of New York Mellon as Investor and to Compel Insepction of Original Court Document #1585 filed by John Crain (related document(s) 1788 ). Hearing scheduled for 9/10/2010 at 10:00 AM at Jacksonville, FL - 300 North Hogan St. 4th Floor Courtroom 4D. (Perkins, Cathy) (Entered: 08/16/2010)
1789	8/11/2010	Objection to <i>Sale of TaylorBean &amp; Whitaker Assets to Colonial Bank/USAmeribank, Bank of New York Mellon as Investor and to Compel Inspection of Original Court Document No. 1585 Exhibit, filed June 22, 2010</i> Filed by Creditor John Crain. (Perkins, Cathy) (Entered: 08/12/2010)
1681	7/13/2010	Certificate of Mailing - <i>ORDER ON OBJECTION BY JOHN CRAIN TO DEBTOR'S MOTION FOR ORDER AUTHORIZING SALE OF CERTAIN MORTGAGE-BACKED SECURITIES. Service Date 7-12-10. (Admin.)</i> Filed by Other Prof. BMC Group (related document(s) 1678 ). (BMC Group (JM)) (Entered: 07/13/2010)
1678	7/9/2010	Order on <i>Objection by John Crain to Debtor's Motion for Order Authorizing Sale of Certain Mortgage-Backed Securities</i> (related document(s) 1361 , 1427 ). Signed on 7/9/2010 (Perkins, Cathy) (Entered: 07/12/2010)
1666	7/8/2010	Proposed Order on <i>Objection by John Crain to Debtor's Motion for Order Authorizing Sale of Certain Mortgage-Backed Securities</i> Filed by Edward J. Peterson on behalf of Debtor Taylor, Bean & Whitaker Mortgage Corp. (related document(s) 1361 ). (Peterson, Edward) (Entered: 07/08/2010)
1584	6/18/2010	Response to <i>Debtor's Response to the Objection to Sale of Mortgage-Backed Securities</i> Filed by Creditor John Crain. (Perkins, Cathy) (Entered: 06/22/2010)
1428	5/17/2010	Motion to Continue/Reschedule Hearing On <i>Objection to the Sale of Mortgage-Backed Securities</i> Filed by Creditor John Crain (related document(s) 1361 ). (Perkins, Cathy) Modified on 5/18/2010 (Perkins, Cathy). (Entered: 05/18/2010)
1399	5/6/2010	Certificate of Mailing <i>NOTICE OF HEARING [Re: Objection to Sale of MortgageBacked Securities filed by John A. Crain - Docket No. 1361]. Service Date 5-5-10. (Admin.)</i> Filed by Other Prof. BMC Group (related document(s) 1388 ). (BMC Group (JM)) (Entered: 05/06/2010)
1388	5/5/2010	Notice of Hearing on Objection to the Sale of Mortgage-Backed Securities filed by John A. Crain (related document(s) 1361 ). Hearing scheduled for 5/21/2010 at 10:00 AM at Jacksonville, FL - 300 North Hogan St. 4th Floor Courtroom 4D. (Perkins, Cathy) (Entered: 05/05/2010)
5161	4/5/2012	Objection to Motion for Relief from Stay filed by Bank of America National Assoc.(Objection states group of creditors, but only signed by Larry W. & Tammy Stout) Filed by Creditor Larry Wesley and Tam Stout (related document(s)4918). (Perkins, Cathy) (Entered: 04/10/2012)

IN THE CIRCUIT COURT OF THE 11TH  
JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

-----X  
NEIL F. LURIA, PLAN TRUSTEE OF THE  
TAYLOR, BEAN & WHITAKER TRUST

Plaintiff,

vs.

DELOITTE & TOUCHE LLP,

Defendant.  
-----X

CASE NO. \_\_\_\_\_

COMPLAINT

11-30967 CA 31

FILED FOR RECORD  
2011 SEP 26 PM 3:28  
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MIAMI-DADE COUNTY, FLA.

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Plaintiff Neil F. Luria, Plan Trustee of the Taylor, Bean & Whitaker Trust (the "Trustee" or "TBW") for his complaint against Defendant Deloitte & Touche LLP ("Deloitte"), alleges on information and belief as follows:

INTRODUCTION

DEBRA SANCHEZ

1. Defendant Deloitte audited TBW—one of the nation's largest mortgage originators—and certified TBW as a solvent, viable company with financial statements free of material misstatements each year from 2002 through 2008. Despite Deloitte's credentials and expertise as one of the "Big 4" accounting firms, those financial statements—and the rosy picture they depicted of TBW—were completely false.
2. Instead of being a profitable, investment-worthy enterprise as Deloitte certified it was, TBW in fact had been hijacked by certain members of its management to perpetrate a massive fraud that ultimately led to TBW's collapse and bankruptcy.
3. The fraud began in 2002—the same year Deloitte became TBW's auditor. The entire time Deloitte audited TBW, TBW's Chairman, Lee Farkas, with others (the "Looters"),

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perpetrated a fraud whereby they looted TBW and its subsidiary Ocala Funding, LLC ("Ocala"). As is true of all frauds, once they started, the Looters needed new, additional funds to steal. TBW and Ocala's funding from outside investors became a principal source of the cash needed for the Looters' fraud. But TBW and Ocala could only raise funds if TBW's financial statements, which included Ocala on a consolidated basis, were declared by certified public accountants like Deloitte to be free of material misstatement due to error or fraud. Thus, Deloitte's negligence, and willful blind eye, was the fuel without which the Looters' fraud would have sputtered out long before it resulted in the multi-billion dollar debt under which TBW collapsed.

4. Deloitte's grossly negligent audits breached its duty to TBW. As Deloitte has admitted under oath through the sworn testimony of its partner, Edward Corristan, it was Deloitte's duty to detect fraud at TBW: "[A]uditors are expected to identify fraud that would be material to the financial statements." Despite its duty, each year Deloitte certified that TBW's financial statements were "free of material misstatement" due to error or fraud.

5. As detailed below, Deloitte saw numerous red flags during its audits of TBW, any one of which should have alerted Deloitte to the fraud, yet Deloitte said nothing and continued to certify TBW's financial statements as "free of material misstatement whether caused by error or fraud." At all times, TBW had numerous officers, members of its board of directors and its subsidiary Ocala and its trustee, each of whom were innocent and could have stopped the fraud and—almost as important—stopped TBW's incurrence of billions of dollars of debt that it could not repay. Despite being aware of these numerous red flags, Deloitte never raised a concern with any TBW officer or member of TBW's board of directors or Ocala or its trustee. Had Deloitte

done so, the looting of TBW would have been stopped before TBW incurred billions of dollars of debt that the Looters used to keep their fraud going.

6. Moreover, Deloitte's public role as certified *public* accountants imposed a duty not just to TBW but also to the public when Deloitte certified TBW's financial statements. Deloitte's public role is so important that the United States *and* the Florida Supreme Courts have declared them "public watchdogs":

By certifying the public reports that collectively depict a corporation's financial status, **the independent auditor assumes a public responsibility** transcending any employment relationship with the client. The independent public accountant performing this special function **owes ultimate allegiance** to the corporation's creditors and stockholders, as well as **to investing public**. This "**public watchdog**" function demands that the accountant maintain total independence from the client at all times and requires **complete fidelity to the public trust**.

*KPMG Peat Marwick v. National Union Fire Ins.*, 765 So.2d 36, 38 (2000); *United States v.*

*Arthur Young & Co.*, 465 U.S. 805, 817-18, 104 S.Ct. 1495, 1503 (1984).

7. The ethical standards governing certified public accountants make clear Deloitte's responsibility: "A distinguishing mark of a profession is *acceptance of its responsibility to the public*." American Institute of Certified Public Accountants ("AICPA") Code of Prof. Conduct, ET § 53.

8. Deloitte's gross negligence caused significant harm. Deloitte's gross negligence harmed the public, as thousands lost their jobs, homes were lost, investors lost their money, and the mortgage financial crisis in Florida was enflamed.

9. Deloitte's gross negligence harmed TBW. In reliance on Deloitte's audit opinions certifying that the TBW consolidated financial statements were free of material misstatements, TBW received billions of dollars in funding that enabled the Looters to continue and grow their fraud on TBW and Ocala. Those billions served not to further the development of business to



TBW, but to mask looting that already took place and perpetuate a fraud that would cause the Looters to destroy TBW.

10. When Deloitte's gross negligence finally came to light and the falsity of the financial statements was discovered, TBW had lost over \$6 billion. TBW filed for bankruptcy and members of the very management Deloitte was supposed to be the public watchdog over were indicted and convicted of fraud for their roles in looting TBW and Ocala.

11. By this action, Plaintiff TBW seeks to hold Deloitte responsible for its negligence that allowed the Looters to fund their fraud by stealing from TBW and for the more than \$6 billion dollars in damages it caused TBW.

#### **PARTIES, JURISDICTION AND VENUE**

12. Plaintiff Neil F. Luria is the Plan Trustee of the Taylor, Bean & Whitaker Trust (the "Trust"). Taylor, Bean & Whitaker Mortgage Corporation filed for Chapter 11 bankruptcy on August 24, 2009 in United States Bankruptcy Court for the Middle District of Florida, Case No. 09-bk-07047-JAF. TBW was headquartered in Ocala, Florida, and did substantial business in Miami-Dade County, including the operation of an office in Miami-Dade County that issued mortgage loans. The Trust was established pursuant to the Third Amended and Restated Joint Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors dated June 22, 2011, as amended (the "Plan"). The Bankruptcy Court confirmed the Plan on July 21, 2011 pursuant to the "Order Confirming Third Amended and Restated Joint Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors."

13. Defendant Deloitte & Touche LLP is a limited liability partnership and its partners reside in Florida.

14. Jurisdiction is proper in the Circuit Court because Plaintiff seeks damages in excess of \$15,000.

15. Venue is appropriate in Miami-Dade County because TBW had operations in Miami-Dade County and Defendant Deloitte transacts its customary business in Miami-Dade County, Deloitte maintains an office in Miami-Dade County at 333 SE 2d Avenue, Suite 3600, Miami, Florida 33131, its partners reside and work in Miami-Dade County, and it has representatives and agents in Miami-Dade County.

16. Deloitte is subject to personal jurisdiction in Florida pursuant to Florida Statutes §48.193 because, as set forth more fully herein, it has conducted substantial and not isolated business and activities within Florida, and it has itself or through an agent, including but not limited to its partners, operated, conducted, engaged in or carried on business in this State which gave rise to this cause of action, committed a tortious act in this State, or caused injury to persons or property in Florida resulting from its activities within and outside of this State in connection with services provided in Florida or the solicitation of business in this State.

**RELEVANT TIME PERIOD AND CHOICE OF LAW**

17. By this Complaint, TBW asserts claims arising out of Deloitte's grossly negligent audits for the financial statements dated 2002-2006 and for the audit work Deloitte conducted in 2009. TBW does not here assert claims arising out of Deloitte's audits of the financial statements dated 2007 and 2008 because those will be the subject of a separate proceeding.

18. As certified public accountants, only Deloitte was licensed by the State of Florida to audit TBW's financial statements, which were consolidated with certain subsidiaries, including wholly-owned subsidiary Ocala. Deloitte's duty was to determine if those financial statements "present[ed] fairly, in all material respects, the financial position of the Company"

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such that "the financial statements [were] free of material misstatement, whether caused by error or fraud."

19. TBW's claims for Deloitte's grossly negligent audits it performed in 2002-2006 and 2009, are governed by Florida law. TBW was headquartered in Florida, Deloitte's audits were conducted in Florida, including by sending Deloitte employees to TBW's Florida offices, and TBW's injury from Deloitte's gross negligence—losses of billions of dollars—occurred in Florida.

### FACTS

#### **I. TBW's Business: Mortgage Origination**

20. TBW was a mortgage origination company. Incorporated in 1991 in the State of Florida, it grew to become one of the largest privately held independent (*i.e.*, non-bank owned) mortgage origination companies in the United States. By July 2009, TBW originated over \$30 billion in loans per year and was servicing 512,000 mortgage loans. It employed over 2,500 people, mostly out of its headquarters in Ocala, Florida and in Miami-Dade County.

21. TBW's business model was to originate and service mortgage loans. Typically, it did not hold the mortgages that it originated and did not collect principal and interest payments for its own account, as a traditional mortgage provider might. Instead, it resold them ("loan sales") or packaged the mortgages into pools and sold participation interests in (or "securitized") them for investment by third-party investors.

22. In large part, the sales were made in the secondary market to third-party investors including the Federal Home Loan Mortgage Corporation ("Freddie Mac") or to commercial financial institutions like Citibank or Wells Fargo who either held the loans or securitized them. In most cases, the securitizations were sold to investors who bought interests in the mortgage

payment streams, which interests were guaranteed by Freddie Mac or the Government National Mortgage Association ("Ginnie Mae").

23. TBW's income was derived principally from servicing the loans it sold to or securitized for investors. TBW earned that income by collecting mortgage payments from homeowners or mortgagees and disbursing them to the third-party investors in the loans. Although its servicing operation was technically separate from its acquisition and resale operations, TBW was dependent upon generating new mortgage sales (and then resales or securitizations with the support of Freddie Mac and Ginnie Mae) to keep its servicing operations growing.

## II. Financing TBW

24. TBW could not finance its business alone. TBW had regular, immediate cash needs to fund home purchases upon their closings, and interim finance needs to bridge the gap between financing loans at closing and locating investors for resale or securitization.

25. TBW also had operational financing needs to fund its own purchases of whole loans, repurchase obligations related to the loans it sold or securitized, and funding its loan servicing operations. Because processing \$30 billion of mortgages a year was a cash-intensive enterprise that required more financing firepower than it possessed alone, TBW depended on other lenders to finance its operations.

26. In the short term, TBW relied on a variety of lines of credit and financing vehicles, initially with a banking partner Colonial Bank ("Colonial"), and later, through Ocala, a wholly owned subsidiary, and investments placed through Ocala.

27. Financing from Colonial came in the form of two facilities, a "COLB" facility and an "AOT" facility. COLB was a mortgage loan participation facility at Colonial Bank through

which Colonial Bank purchased interests in residential mortgage loans from TBW pending resale of the loans to third-party investors. When TBW subsequently resold those mortgages—which it was designed to do within 90 days of the COLB funding—Colonial Bank intended to recoup its investment. TBW retained legal title to the sold mortgages while remaining solely responsible for servicing the participating loans.

28. The AOT facility was likewise designed as a holding pattern for loans, this one to temporarily finance loans that would ultimately be securitized or sold in pools. Like the COLB facility, purchases under the AOT facility included a “sale” of the mortgage loans to Colonial Bank, pending their resale to a third-party investor.

29. As a condition for Colonial’s funding of the COLB and AOT facilities, TBW had to certify that it was solvent and had to provide Colonial with copies of TBW’s clean audited financial statements. Colonial relied on Deloitte’s clean audit opinions certifying TBW as a solvent company with sufficient assets when funding the COLB and AOT facilities. If Deloitte had conducted its audit in accordance with Generally Accepted Auditing Standards (“GAAS”), as it was required to do, the material misstatement in the TBW financial statements would have been discovered and the lending would have stopped.

30. Through these facilities, TBW was able to receive short term financing while retaining the ability to resell the participating loans. As of the date of TBW’s final audited financial statements, the balance owed on the COLB and AOT facilities was \$1.27 billion and \$1.84 billion, respectively.

31. Ocala was formed in January 2005 to offer additional financing to TBW, both to fund closings on home purchases as well as to provide bridge financing until those mortgages could be resold or securitized. It was established as a bankruptcy remote subsidiary of TBW.

Moody's and Standard and Poor's, the two rating agencies that rated the Ocala Notes, required that Ocala be separate and apart from TBW as a condition to their investment grade rating of the Ocala Notes. Ocala therefore was required by its formation documents to be separate from TBW, and did maintain separate accountants, books and records. Ocala further had a separate member who was independent from TBW. Ocala therefore was and is a separate entity from TBW. In fact, pursuant to a final order of the United States Bankruptcy Court for the Middle District of Florida, Ocala has a \$1.6 *billion* allowed claim *against* TBW.

32. The majority of the mortgages purchased by Ocala from TBW were in turn sold by Ocala to Freddie Mac. To raise the funds necessary to purchase mortgages from TBW, Ocala issued asset-backed commercial paper or promissory notes, (*i.e.*, the "Ocala Notes").

33. The Ocala Notes were required to be over-collateralized. Specifically, Ocala was required to maintain collateral for the Ocala Notes in the form of cash or mortgage loans in an amount greater than the value of the outstanding Ocala Notes issued. The collateral took various forms through the course of the transaction cycle. First, the mortgages purchased by Ocala would be the collateral securing the Ocala Notes. Then, when Ocala sold the mortgages to Freddie Mac, the proceeds would in turn become the collateral securing the Ocala Notes. Under the Ocala Note agreements, as long as certain conditions were met, the proceeds from Ocala's sale of the mortgages could then be used to purchase new mortgages from TBW.

34. The amount and nature of the collateral was reported as part of the consolidated financial statements that Deloitte audited and certified as containing no material misstatement due to error or fraud.

35. As with the COLB and AOT facilities, TBW's financial statements were a condition to the sale of the Ocala Notes. Thus, Ocala's continued funding of TBW-originated

mortgages was expressly dependent on Deloitte's continuing representation that the TBW audited financial statements were "fairly stated" and free of material misstatement. There were two dedicated financial institutional investors in the Ocala Notes, Deutsche Bank AG ("DB") and BNP Paribas Mortgage Company ("BNP"). The Ocala facility agreements specifically identify Ocala and its trustee, DB and BNP as recipients of TBW's financial statements.

### III. Deloitte: Auditors of TBW's Consolidated Financial Statements

36. Deloitte served as TBW's auditors for fiscal years 2002 through 2009. Deloitte's duty was to obtain reasonable assurance about whether the financial statements were free of material misstatement, whether caused by error or fraud. As Deloitte admits, a purpose of their audit was to detect fraud by management. In fact, Deloitte was required to view management's assertions with "professional skepticism."

37. Deloitte understood that its audits would be used to increase TBW's debt and relied upon by creditors, Ginnie Mae and Freddie Mac, and purchasers of TBW's mortgages. In sworn testimony, Deloitte's engagement partner, Edward Corrigan, has confirmed Deloitte's understanding that Deloitte had a duty to the users of the financial statements: "[T]he responsibility that we have is to the entity or the people that engage us and then the users of the financial statements."

38. Deloitte also specifically confirmed that DB and BNP, as purchasers of Ocala Notes, were some of those users to which Deloitte owed a duty:

Q. Now, you said you understood you had a duty at least to the users of the financial statements. Did you understand who those users would be?

A. ...  
In this specific case, it would be—reports filed with Ginnie Mae, with HUD, with Freddie Mac, and with other creditors.

Q. And who did you understand were the other creditors?

A. ...  
Oh, not necessarily in any particular order but in '08, I believe, **Deutsche Bank** and **BNP**.

39. Consistent with its responsibility, Deloitte purported to conduct an audit of each of TBW's fiscal year-end financial statements, dated April 30, 2002 through April 30, 2008, the date of Deloitte's final completed audit of TBW's financial statements and conducted audit work through July 2009 for the never issued financial statements as of fiscal year ending April 30, 2009.

40. After each such audit, year after year and without fail, Deloitte represented that TBW's financial statements presented fairly, in all material respects, its financial position and the results of its operations, changes in net assets, and cash flow for each year, in conformity with GAAP.

**IV. Deloitte's Error: Fraud at TBW, Looting of Ocala, and Material Misstatements in TBW's Financial Statements**

41. Deloitte was wrong.

42. In fact, beginning as early as 2002, TBW's operations—and its financial statements—were infected with a growing, and ultimately massive, fraud.

43. The fraud itself was straightforward. With the assistance of conspirators at its principal short term financier, Colonial Bank, at which TBW maintained more than 116 accounts, 110 of which were dedicated to loan servicing, certain members of TBW's management, including Lee Farkas, TBW's Chairman, *e.g.*, the Looters, looted funds from TBW and Ocala.



44. These Looters acted adversely to the interests of TBW and Ocala by stealing money and saddling TBW with debt that—because of the Looters' fraud—was massively under collateralized and could never be repaid.

45. Mr. Farkas and each of the Looters owed TBW a fiduciary duty and by acting adversely to TBW, breached that duty.

46. At all times during the Looters' fraud, there were innocent officers and directors at TBW who—had Deloitte informed them of red flags in the financial operations and statements of TBW—would have taken steps to end the fraud, including the looting and the incurrence of debt TBW could not repay.

47. At the outset, the fraud consisted simply of shifting money among different accounts at Colonial with the intention of disguising overdrafts TBW incurred in its main operating account. By shifting, or "sweeping," overnight money from auxiliary accounts into its master account and then returning the money the following day, the Looters sought to maintain the impression that they were not overdrawing on the accounts.

48. When the deficit grew larger, however, this simple device became inadequate to cover the Looters' fraud. Accordingly, as early as 2003, the Looters began to draw down on the COLB facility. Because use of the COLB facility was predicated on sales of mortgage loans, however, the fraudsters had to manufacture false mortgage data to support phantom sales.

49. They did so. The false data supplied to Colonial Bank to support the phantom sales increased year by year and grew more varied in type. Specifically, as the basis for sales, the Looters included for sale mortgage loans that had already been committed or sold to third party investors, mortgage loans that simply did not exist, and mortgages whose value was aged

or otherwise materially impaired. As the fraud grew, the Looters created new fake mortgage loans to replace the old ones.

50. As the Looters scrambled to keep the fraud going, the Looters focused more and more on the AOT facility. From at least mid-2004, the Looters caused TBW to sell hundreds of millions of dollars of additional fictitious securitizations to Colonial through the AOT facility, which in reality had no pools of loans collateralizing them.

51. The Looters also looted hundreds of millions of dollars from Ocala for their own benefit and adverse to the interests of TBW. As a result, the Ocala Notes were drastically under-collateralized. Specifically, the Looters took hundreds of millions of dollars from Ocala's bank account to further their fraud. The looting caused there to be "double-sold" and even "triple-sold" mortgages where Colonial Bank, Ocala and Freddie Mac all believed they owned the same mortgages. In order to continue their looting, the Looters misrepresented the amount of collateral for the Ocala Notes so that Ocala could continue to issue the Ocala Notes under the terms of the Ocala facility agreements. Despite obvious red flags, Deloitte did not reveal this fraud.

52. For their looting to work, the Looters depended on grossly negligent audits from Deloitte. Again, Deloitte repeatedly overlooked or chose to ignore the red flags that gave notice of the material misstatements and the looting.

53. As a result, TBW took on debt it could not pay back and Ocala experienced significant shortfalls in the amount of collateral it actually possessed to back the outstanding Ocala Notes. Where the Ocala Notes were required to have collateral (in cash or loans) *in excess* of the amounts of the commercial paper it purchased from Ocala, misappropriated funds and double-sold mortgages in fact resulted in a shortfall of that collateral in excess of \$1 billion.

54. Finally, and obviously, this fraud impacted TBW's financial statements, which grossly overstated its assets and its income, and understated its liabilities. TBW's falsified operations trickled down—flooded down—and resulted in the material misstatement of TBW's financial statements. Receivables allegedly owed to TBW for fake mortgage loan sales were not owed, and income earned on those sales was overstated. Similarly, income of mortgage loans held for sale was overstated.

55. At bottom, more than half a billion dollars of assets on TBW's financial statements—assets that gave comfort to TBW's innocent officers and directors to continue the financing of TBW's operations—did not exist.

56. Deloitte's negligence allowed the Looters to completely rob TBW not only of the assets it had but also to obtain additional funds to steal.

#### V. Deloitte's Gross Negligence

57. Deloitte did not miss the fraud by accident, but as the result of turning a blind eye to red flags of material misstatements and fraud, gross negligence in violating GAAS, failing to understand TBW's business, failing to answer its own legitimate questions that would have uncovered the fraud, and failing to recognize—even to this day—the bogus explanations of “off balance sheet transaction” as an obvious fraud.

58. In performing audits of financial statements, certified public accountants must follow GAAS. These include:

- *Professional skepticism.* The auditor must exercise professional skepticism and independence in mental attitude;
- *Professional care.* The auditor must exercise due professional care in the performance of the audit and the preparation of the audit report;

- *Evidential matter.* The auditor must obtain sufficient competent evidential matter by inspection, observation, inquiries, and confirmations to afford a reasonable basis for an opinion regarding the financial statements under audit;
- *Reliance on objective evidence.* The auditor is not permitted to rely exclusively on representations from management, but must seek and obtain reliable information from independent sources, including third parties; and
- *Audit planning.* The auditor is responsible for planning an audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud.

59. As certified public accountants, Deloitte is a "public watchdog" whose duties run not only to the company that employs it, but to the investing public who relies on its professional, independent assessment of a company's financial statement when making investment decisions. A CPA's failure to honor this duty—or worse still, its willful ignorance of the duty in the name of audit fees or business relationships with its audit client—undermines the company and its investors both.

60. Deloitte's duty also included a duty to disclose any material issue concerning the financial statements to TBW, including its board of directors, if necessary.

61. In violation of these professional standards, Deloitte grossly breached its duties in the conduct of its professional work. Deloitte did not conduct its audits in accordance with the professional standard governing accountants, including GAAS.

62. Deloitte was on notice of numerous red flags demonstrating atypical business practices without reasonable justification and willfully chose to ignore them. Deloitte identified or recklessly ignored evidence that hundreds of millions, at times, billions, in sales of mortgages were actually loans, and that TBW was in breach of its contracts requiring it to transfer immediately 99% of the mortgages. Despite these red flags, Deloitte certified the loans as sales,

causing the TBW financial statements from 2002 through 2006 to be materially misstated. By doing so, Deloitte further certified materially overstated assets and revenues, and that TBW could continue to operate as a mortgage lender,

63. In violation of GAAS, Deloitte failed to understand TBW's business, particularly as to the financing through Ocala. Deloitte identified or recklessly ignored red flags demonstrating that there was grossly insufficient collateral for the Ocala Notes, and that the explanations from management were obviously false. Moreover, Deloitte violated GAAS by not applying adequate audit procedures to determine that there was insufficient collateral for the mortgage operations, and that fake mortgages were being reflected on the financial statements and sold to third parties.

64. Even more fundamentally, Deloitte failed to follow GAAS and the professional standards to detect fraud. Had Deloitte not violated GAAS and the professional standards, Deloitte would have discovered the material misstatements in TBW's financial statements and the looting of TBW.

#### **VI. Bankruptcy: TBW's Demise**

65. Deloitte's gross negligence proximately caused TBW in excess of \$6 billion dollars in harm.

66. As a result of Deloitte's gross negligence, the Looters were able to hide, maintain and grow the fraud. The financial statements of TBW, including the consolidated balance sheet including the financial position of Ocala, were materially misstated.

67. That there could have been a different result is clear from Deloitte's conduct during the course of its 2009 audit. In that audit Deloitte finally conducted some GAAS-compliant work and challenged the Looters on some of their explanations. When Deloitte

received incomplete responses and the Looters refused to provide the necessary information, Deloitte determined there was a scope violation under GAAS. As a result, Deloitte finally did what it should have—and could have—done years earlier—refused to complete the 2009 audit and resigned. Yet, Deloitte's gross negligence continued because it still did not reveal the fraud.

68. Indeed, because Deloitte knew Ocala, DB and BNP, among others, were recipients of Deloitte's Independent Audit Opinions and relying upon them, Deloitte had a duty to inform those recipients that they could no longer rely on Deloitte's prior audits. In breach of its duty to disclose, Deloitte said nothing. Had Deloitte done so, Ocala, DB and BNP and the other recipients would have not continued to rely on the audited financial statements and would not have made decisions in reliance on the accuracy of audited financial statements, including Ocala, DB and BNP's decision to renew the Ocala lending facility. Deloitte's decision to stay silent in the face of its duty to correct its prior misrepresentations resulted in additional billions being looted and added to the debt TBW could not repay.

69. As the result of Deloitte's even limited actions in 2009 to resign demonstrates, if Deloitte would have done its job in prior years, the harm to TBW could have been stopped. In part due to Deloitte's walk off, on August 3, 2009, federal authorities executed search warrants on TBW's headquarters and TBW's operations were suspended on August 4, 2009. Soon thereafter, TBW's board of directors resigned and replaced by a new board. Twenty days later, TBW filed for Chapter 11 bankruptcy.

70. Mr. Farkas and others have either pled guilty or been convicted for their involvement in the fraud on TBW and Ocala.

71. The factual basis for TBW's causes of action against Deloitte was not discovered, including the harm caused by Deloitte to TBW, until after TBW filed for bankruptcy. Nor could

the facts supporting TBW's claims against Deloitte have been discovered prior to TBW filing for bankruptcy because only Deloitte had the duty as a certified public accountant to opine on the accuracy of TBW's financial statements.

**CAUSES OF ACTION**

**FIRST CAUSE OF ACTION**

**PROFESSIONAL MALPRACTICE — NEGLIGENCE**

72. TBW repeats and realleges each and every allegation above as if fully set forth herein.

73. Deloitte is a certified public accounting firm that audited the consolidated financial statements of TBW and performed accounting services for TBW. Deloitte owed a duty to its audit client, TBW, to audit the consolidated financial statements for TBW and to perform those audits in conformance with GAAS, the professional standards set forth in Deloitte's own audit manuals, and to form and express opinions about whether those consolidated financial statements were presented fairly, in all material respects, in conformity with GAAP. Deloitte's duty was to plan and perform its "audits to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud."

74. Deloitte knew that TBW and its subsidiary Ocala were required to provide Deloitte's audited financial statements to a limited group of investors in TBW and its wholly-owned subsidiary and lender, Ocala. Specifically, Deloitte was aware and intended that TBW's financial statements and the Independent Auditors' Reports it provided in connection therewith would be furnished by TBW to Ocala, DB and BNP for the purposes of influencing their decisions to finance or to continue financing TBW's mortgage origination operations.

75. Deloitte breached its duty by making at least the following untrue statements in the Independent Auditors' Reports: (i) TBW's consolidated financial statements presented fairly, in all material respects, the financial position of TBW and its subsidiaries in conformity with GAAP, (ii) Deloitte had a reasonable basis for making the statements contained in its Independent Auditors' Reports, (iii) Deloitte conducted its audits in accordance with GAAS; and (iv) the financial statements were free of material misstatements.

76. In reliance upon those negligent or grossly negligent misrepresentations made by Deloitte, TBW's innocent decision makers operated TBW with misinformation of TBW's financial position, and authorized TBW's operations to continue, including the incurrence of additional debt, and including the issuance of over a billion dollars in Ocala Notes. Had any one of these innocents known TBW's real financial condition, they would have stopped the fraud and taken steps to maximize the value of TBW, and would have stopped TBW's incurrence of debt and lending activities immediately. Instead, relying on Deloitte's certifications of financial statements showing TBW to be solvent, TBW took on more and more debt and obligations, so that when the fraud was discovered, it had billions of dollars in debt it could not repay and TBW had to file for bankruptcy.

77. In performing its audits in connection with the consolidated financial statements for TBW, numerous "red flags" were made apparent to Deloitte indicating that TBW's financial misstatements were materially misstated. The presence of these "red flags" reflected a high likelihood that TBW could face significant injury.

78. Deloitte was either aware of or acted in reckless and conscious disregard of these "red flags." Deloitte deliberately chose not to investigate further, as its duties to act with reasonable care and due diligence required, and as would have revealed the material



misstatements in the financial statements and ultimately the fraud being committed by certain officers of TBW. Deloitte deliberately chose instead to provide Independent Audit Reports that gave no indication of the "red flags" it had encountered and failed to investigate.

79. Deloitte was either aware of or acted in reckless and conscious disregard of the fact that its decision to provide unqualified opinions concerning the accuracy of the financial statements would lull TBW's innocent directors and officers into a false sense of security and would facilitate the fraud that the Looters were committing upon them, and thus would create a high likelihood that TBW would be harmed.

80. Deloitte's conduct thus amounted to a reckless disregard of and indifference to TBW's rights.

81. As a direct and proximate result of its reliance upon Deloitte's grossly negligent audits and resulting misrepresentations, TBW incurred a loss in excess of \$6 billion.

## **SECOND CAUSE OF ACTION**

### **AIDING AND ABETTING BREACH OF FIDUCIARY DUTY**

82. TBW repeats and realleges each and every allegation above as if fully set forth herein.

83. Deloitte knew that the Looters were breaching their fiduciary duties to TBW, and substantially assisted the Looters in their breaches, thereby causing harm to TBW.

84. In performing its audits in connection with the consolidated financial statements for TBW, numerous "red flags" demonstrating highly atypical practices without business justifications at TBW were made apparent to Deloitte indicating that TBW's financial misstatements were materially misstated. The presence of these "red flags" reflected a high likelihood that TBW could face significant injury.

85. Deloitte either had knowledge of or acted in reckless and conscious disregard to these "red flags." Deloitte deliberately chose not to investigate further, as its duties to act with reasonable care and due diligence required, and as would have revealed the material misstatements in the financial statements and ultimately the fraud being committed by certain officers of TBW. Deloitte failed to disclose those red flags and deliberately and willfully chose instead to provide Independent Audit Reports that gave no indication of the "red flags" it had encountered and failed to investigate.

86. TBW's officers and directors owed TBW a fiduciary duty. Certain of those officers and directors, including TBW's Chairman, Lee Farkas, committed a fraud against TBW and Ocala, looting its assets and directing TBW and Ocala to incur debt the Looters knew would be drastically undercollateralized and could not be repaid. These Looters breached their fiduciary duty to TBW.

87. The red flags that Deloitte willfully ignored were due to the Looters' breaches of fiduciary duty and all of them demonstrated that TBW was engaging in atypical business practices lacking in business justification. When Deloitte willfully chose to ignore the red flags, TBW's financial statements were materially misstated due to the Looters' fraud undertaken in breach of their fiduciary duties. Thus, Deloitte knew of the red flags that showed that the Looters at TBW were breaching their fiduciary duty. Deloitte acted with gross negligence when it chose to ignore those red flags.

88. Deloitte, as TBW's auditor, had a duty to disclose those red flags and their significance to TBW. TBW also had a duty to disclose because it knew that TBW and Ocala's investors were recipients of Deloitte's Independent Audit Opinions and it was foreseeable that those investors would rely on Deloitte's Audit Opinions.

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89. Deloitte also had a duty *not* to issue its opinions that TBW's consolidated financial statements were free of material misstatement when Deloitte had specific knowledge of red flags that the financial statements were in fact materially misstated.

90. By affirmatively choosing to issue its clean opinions despite its knowledge of the red flags, Deloitte substantially assisted the Looters in breaching their fiduciary duty because by ignoring obvious red flags and providing unqualified opinions of TBW's financial audits—Deloitte both allowed the fraud to continue and to grow exponentially.

91. Deloitte substantially assisted in the first instance because had Deloitte investigated any one of the red flags, as it was duty-bound to do as TBW's auditor, the fraudulent numbers in the financial statements would have been discovered and the fraud revealed.

92. Deloitte also substantially assisted because Deloitte's clean opinion on the TBW's consolidated financial statements was a condition to TBW's ability to obtain additional funding—those monies were a substantial part of what was looted from TBW and Ocala. That funding would not have been available to TBW and Ocala absent Deloitte's substantial assistance to the Looters by its deliberate choice to ignore the red flags and issue clean audit opinions. Finally, Deloitte had knowledge of or acted in reckless and conscious disregard to the fact that its decision to provide unqualified opinions concerning the accuracy of the financial statements would lull TBW's innocent directors and officers into a false sense of security and would facilitate the fraud that the Looters were committing upon them, and thus would create a high likelihood that TBW would be harmed.

93. As a result of Deloitte's negligence and aiding and abetting the Looters' breach of fiduciary duties, TBW collapsed under the weight of its debt taken on in reliance on Deloitte's

audits. As a direct and proximate result of its reliance upon Deloitte's grossly negligent audits and resulting misrepresentations, TBW incurred a loss of approximately \$6 billion.

**PRAYER FOR RELIEF**

WHEREFORE, TBW respectfully requests judgment against Defendant, under all applicable causes of action, as follows:

1. actual, compensatory and consequential damages in an amount to be proven;
2. rescission or rescissory damages;
3. pre-judgment and post-judgment interest as allowed by law; and
4. such other and further legal and equitable relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby requests a trial by jury of all issues so triable.

Dated: September 26, 2011

Respectfully submitted,

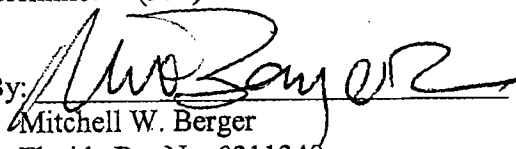
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[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

No. 09-14739	FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT APR 26, 2010 JOHN LEY CLERK
D. C. Docket No. 09-22384 CV-AJ	

BANK OF AMERICA NATIONAL  
ASSOCIATION,

Plaintiff-Appellee,

versus

COLONIAL BANK, et al.,

Defendants,

FEDERAL DEPOSIT INSURANCE  
CORPORATION,

Defendant-Appellant.

No. 09-14844

D. C. Docket No. 09-22384 CV-AJ

IN RE:

FDIC,

Petitioner.

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Appeals from the United States District Court  
for the Southern District of Florida

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(April 26, 2010)

Before O'CONNOR,\* Associate Justice Retired, CARNES and ANDERSON,  
Circuit Judges,

ANDERSON, Circuit Judge:

This case arises from the collapse of Colonial Bank ("Colonial"), the fifth-largest bank failure in the near 77-year history of the Federal Deposit Insurance Corporation ("FDIC"). Bank of America, N.A. ("Bank of America"), brought this action against Colonial, alleging it wrongfully refused to return thousands of mortgage loans and their proceeds, valued in excess of \$1 billion, to which Bank of America had legal title. On August 13, 2009, the district court entered a temporary restraining order ("TRO") against Colonial, prohibiting the bank from taking any action with respect to the disputed assets. The next day, the FDIC was appointed as receiver for Colonial, and was promptly substituted as defendant in this case. Thereafter, the district court converted the TRO into a preliminary injunction against the FDIC, rejecting the FDIC's arguments that the district court lacked

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\* Honorable Sandra Day O'Connor, Associate Justice (Retired) of the United States Supreme Court, sitting by designation.

jurisdiction to enjoin the FDIC as receiver and that Bank of America must first exhaust the administrative claims process prior to seeking a judicial remedy. The FDIC filed both a timely appeal of the district court's preliminary injunction order and a petition for a writ of mandamus to dissolve the district court's preliminary injunction. We consolidated the two actions and expedited this appeal.

Our inquiry in this case is limited to the threshold question of subject matter jurisdiction. The FDIC argues that the anti-injunction provision of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), 12 U.S.C. §1821(j), deprived the district court of jurisdiction to enjoin the FDIC because the preliminary injunction unlawfully restrained the FDIC's exercise of its receivership powers and functions. Because we conclude that the FDIC's proposed actions with respect to the loans and loan proceeds at issue fall squarely within its statutory receivership powers and functions, we hold that 12 U.S.C. § 1821(j) stripped the district court of its jurisdiction to enter the preliminary injunction. Accordingly, we vacate the district court's order and remand with instructions to dismiss Bank of America's motion for a preliminary injunction for lack of jurisdiction.

#### I. FACTS AND PROCEDURAL HISTORY

The loans and loan proceeds at issue in this case originated from a series of



June 2008 agreements between LaSalle Bank N.A. ("LaSalle"), Ocala Funding, LLC ("Ocala"), and Taylor, Bean & Whitaker Mortgage Corp. ("Taylor Bean"). LaSalle, representing certain secured parties as their custodian and collateral agent, provided capital for Ocala to purchase various mortgage notes originated and serviced by Taylor Bean for the benefit of the secured parties. Bank of America, as LaSalle's successor-in-interest, became the trustee and collateral agent for the secured parties and perfected its security interest by taking possession of the loans and loan documents.

From June to August 2009, Bank of America then issued a series of Transmittal Letters to Colonial, which provided notice of its security interest in the loans and established that Bank of America would deliver the loans to Colonial and in return Colonial would hold the loans in trust and serve as custodian, agent, and bailee for and on behalf of the secured parties. Under the agreement, Colonial was also obligated to facilitate the sale of the loans to Freddie Mac. Upon Colonial's receipt of the loans, it had fifteen days either to remit sale proceeds or return unsold loans to Bank of America. Freddie Mac, in connection with its purchase of more than 6,000 of these loans, delivered over \$1 billion in loan proceeds to Colonial.

In early August 2009, with the news of Colonial's demise spreading, Bank of America requested that Colonial return the loans and loan proceeds. When

Colonial refused, Bank of America presented Colonial with a Demand for Documents and Proceeds, which attempted to revoke the governing Transmittal Letters and terminate Colonial's rights to continued possession of the loans. Colonial again refused to comply with Bank of America's demand. On August 12, 2009, Bank of America filed its complaint in federal court, setting forth five causes of action—replevin, imposition of constructive trust, breach of bailee letters, unjust enrichment, and civil theft—and filed an accompanying motion for a TRO and preliminary injunction against Colonial.

On August 13, 2009, the district court granted Bank of America's motion, issued an ex parte TRO, and enjoined Colonial from selling, pledging, assigning, liquidating, encumbering, transferring, or otherwise disposing of all or any portion of the loans and loan proceeds related to the loans. The following day, the Alabama State Banking Department appointed the FDIC as receiver for Colonial, and the FDIC subsequently moved to be substituted for Colonial in this lawsuit. On August 21, 2009, the FDIC filed an emergency motion to dissolve the TRO, arguing that 12 U.S.C. § 1821(j) stripped the court of jurisdiction to restrain or affect the exercise of its powers or functions as receiver. In its motion, the FDIC asserted that Bank of America could pursue its claim through the administrative claims procedures set forth in FIRREA. See 12 U.S.C. § 1821(d)(3)–(13). In

response, Bank of America argued that it was not a creditor subject to the claims administration process; that the loans never belonged to Colonial and were therefore not a part of the receivership estate; and, thus, that § 1821(j)'s jurisdictional bar did not apply.

The district court rejected the FDIC's jurisdictional challenge and converted the TRO into a preliminary injunction against the FDIC in a final order on September 8, 2009, determining that "assets possessed by, but not belonging to, the failed bank are outside the receivership estate, and the FDIC's attempts to dispose of these assets is therefore not protected by the jurisdiction-stripping provisions of FIRREA." The district court reasoned that the FDIC's attempt to control such assets constituted an act beyond its receivership powers, and FIRREA's jurisdictional prohibitions do not "extend to situations in which the FDIC as receiver asserts authority beyond that granted to it as receiver."

The FDIC filed timely notice of an appeal of the district court's preliminary injunction order on September 9, 2009. On September 15, 2009, the FDIC moved for a stay of this lawsuit pursuant to 12 U.S.C. § 1821(d)(12)(A)(ii) and (B), arguing that once the FDIC as receiver requests a stay of a judicial action, the plaintiff may only proceed with the action after exhausting the administrative remedies described in FIRREA. On October 19, 2009, the district court granted the



stay due to the mandatory nature of FIRREA's stay provision but left the preliminary injunction against the FDIC intact. Bank of America delivered an administrative claim to the FDIC on November 19, 2009. This appeal and the FDIC's petition for a writ of mandamus ensued.<sup>1</sup>

## II. DISCUSSION

Although we review the district court's entry of a preliminary injunction under a deferential abuse-of-discretion standard, the legal conclusions upon which an injunction is based are subject to more exacting de novo review. Fla. State Conference of N.A.A.C.P. v. Browning, 522 F.3d 1153, 1166 (11th Cir. 2008).

Section 1821(j) of FIRREA provides in relevant part:

no court may take any action . . . to restrain or affect the exercise of powers or functions of the [FDIC] as a conservator or a receiver.

12 U.S.C. § 1821(j). This provision has been interpreted broadly to bar judicial intervention whenever the FDIC is acting in its capacity as a receiver or conservator, even if it violates its own procedures or behaves unlawfully in doing so. Bursik v. One Fourth St. N., Ltd., 84 F.3d 1395, 1397 (11th Cir. 1996); Nat'l Trust for Historic Pres. v. FDIC, 995 F.2d 238, 240 (D.C. Cir. 1993), vacated, 5

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<sup>1</sup> Due to our disposition of this expedited appeal in the FDIC's favor, we need not entertain the FDIC's petition for the extraordinary remedy of a writ of mandamus seeking the same relief. Accordingly, the FDIC's petition for a writ of mandamus is denied as moot.

F.3d 567 (D.C. Cir. 1993), reinstated in relevant part, 21 F.3d 469 (D.C. Cir. 1994). See also RPM Invs., Inc. v. Resolution Trust Corp., 75 F.3d 618, 620 n.2 (11th Cir. 1996) (“The ‘exceptions’ to § 1821(j)’s jurisdictional bar are extremely limited.”). Therefore, our jurisdictional inquiry under §1821(j) is quite narrow. First, we evaluate whether the FDIC’s challenged actions constitute the exercise of a receivership power or function. See RPM Invs., Inc., 75 F.3d at 620. If so, the FDIC is protected from all court action that would “restrain or affect” the exercise of those powers or functions pursuant to § 1821(j), and we proceed to the secondary inquiry of whether the district court’s actions do in fact restrain or affect the FDIC as receiver. Id.

The district court found and Bank of America argues that the FDIC would exceed its statutory powers and functions as receiver by controlling and disposing of the loans and loan proceeds at issue. We disagree. Such actions fall squarely within the powers and functions granted to the FDIC by Congress in FIRREA. For example, § 1821(d)(2)(G) grants the receiver the power to “transfer any asset or liability of the institution in default (including assets and liabilities associated with any trust business) without any approval, assignment, or consent with respect to such transfer.” Section 1821(d)(2)(H) grants the receiver the broad power to “pay all valid obligations” of the failed financial institution. And § 1821(d)(3) grants

the receiver the power to determine all claims against the institution in accordance with the comprehensive administrative claims procedures set forth in § 1821(d)(3)–(13). Further, under § 1821(d)(2)(J)(i), the FDIC also enjoys “such incidental powers” as shall be necessary to carry out those powers expressly granted by statute.

By marshaling the items found on hand at Colonial at the time of its failure, including custodial items held in trust, beginning the process of identifying their proper nature and ownership, and ultimately disposing of these items to parties with valid claims, the FDIC would engage in at least one if not all of these statutory receivership functions. Not only do these functions fall squarely within the FDIC’s statutory powers contained in FIRREA, common sense and common experience make plain that such functions are routinely undertaken by receivers. Indeed, there is no other party, except the FDIC as receiver, that could perform such functions. And Congress expressly mandated that no court—at the behest of other parties—may take any action to restrain or affect the exercise of the FDIC’s powers or functions as receiver. 12 U.S.C. § 1821(j).

Moreover, as previously noted, “the availability of injunctive relief does not hinge on our view of the proper exercise of otherwise-legitimate powers.” Gross v. Bell Sav. Bank PA SA, 974 F.2d 403, 408 (3d Cir. 1992). See also Bursik, 84 F.3d

at 1397. Thus, Bank of America's fear that the FDIC will make an erroneous determination of ownership is immaterial to our analysis because it is merely a fear of the FDIC's improper performance of its legitimate receivership functions. Congress contemplated the reality that the FDIC may err in its determination of receivership claims and provided all claimants with the remedy of de novo review in federal court of the FDIC's claims determination. 12 U.S.C. § 1821(d)(6) (providing for the option of filing suit after the FDIC's initial determination to allow or disallow a claim in one of two specified federal courts); id. § 1821(d)(7)(A) (providing for judicial review of the FDIC's final administrative determination).

There can also be no question that the district court would "restrain or affect" the exercise of these powers or functions by enjoining the FDIC from "selling, pledging, assigning, liquidating, encumbering, transferring, or otherwise disposing of all or any portion of the loans and loan proceeds related to the Ocala loans." Under this broad injunction, the FDIC is left solely to possess the loans, unable to exercise the congressional mandate that it "shall pay all valid obligations" of the failed bank, 12 U.S.C. § 1821(d)(2)(H), or process any administrative claims relating to the loans. In essence, injunctive relief, like that issued here, violates the heart of what is commonly termed FIRREA's "anti-injunction provision." See,

e.g., Hindes v. FDIC, 137 F.3d 148, 160 (3d Cir. 1998); Sharpe v. FDIC, 126 F.3d 1147, 1154 (9th Cir. 1997); Elmco Props., Inc. v. Second Nat'l Fed. Sav. Ass'n, 94 F.3d 914, 923 (4th Cir. 1996). See also, e.g., Nat'l Trust for Historic Pres., 995 F.2d at 239 (concluding that an injunction against a planned sale of an historic property of the failed bank would “surely ‘restrain or affect’ the FDIC’s exercise of those powers or functions”); Gross, 974 F.2d at 408 (concluding that an injunction requiring the receiver to release certain deposits would “restrain or affect” the receiver’s exercise of its powers and functions); Tillman v. Resolution Trust Corp., 37 F.3d 1032, 1036 (4th Cir. 1994) (concluding that an injunction restraining a foreclosure sale violated FIRREA’s anti-injunction provision).

Nor is our analysis affected by Bank of America’s argument that the disputed items were custodial assets, unowned by Colonial, much like the contents of a safe deposit box. Even assuming arguendo that the nature of the assets at issue is purely custodial and that title to the loans and their proceeds never transferred to Colonial, § 1821(j) would still clearly bar judicial restraint of the FDIC as long as it acts in its receivership capacity. In interpreting a statutory provision, “we must presume that Congress said what it meant and meant what it said.” United States v. Steele, 147 F.3d 1316, 1318 (11th Cir. 1998) (en banc). “Additionally, we must assume that the ordinary meaning of a statute’s language accurately expresses [its]



legislative purpose.” Yu v. U.S. Att’y Gen., 568 F.3d 1328, 1332 (11th Cir. 2009) (quotation marks and citation omitted). Applying these presumptions, the plain language of § 1821(j) clearly and unambiguously reflects congressional intent to bar courts from granting the precise type of injunctive relief sought here so long as the receiver is not acting in some capacity other than receiver or conservator or attempting to exercise powers and functions beyond those granted by FIRREA. Thus, we decline to carve out an “non-owned assets” exception to § 1821(j) that stands in direct contradiction to the statute’s plain meaning. No language in § 1821(j) so limits the breadth of its jurisdictional bar or the “powers and functions” of the FDIC. To the contrary, at least one subsection expressly includes non-owned custodial assets associated with trust business among the FDIC’s powers and functions as receiver. See § 1821(d)(2)(G) (“including assets and liabilities associated with any trust business”).<sup>2</sup>

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<sup>2</sup> We need not, and do not, address the appropriate resolution of the extreme hypotheticals suggested by Bank of America (e.g., the refusal of the FDIC to return clearly stolen property to the true owner, or property conceded by the FDIC to be owned by a claimant with respect to which the FDIC concededly has no interest, claim, or function). Although Bank of America baldly asserts that the FDIC made such concessions in the district court, we have carefully parsed the record and found no such concession. Rather, the FDIC’s clear position in the district court was that § 1821(j) barred the district court from entering the preliminary injunction and that the FDIC’s proper receivership function was to initially determine the proper ownership and disposition of the loans and loan proceeds subject to Bank of America’s statutory right to pursue the issue in the administrative claims process and thereafter in de novo judicial proceedings. Accordingly, we express no opinion on whether the FDIC would be exercising a receivership function if it refused to turn over property to a conceded true owner with respect to which the FDIC concededly had no interest, claim, or function.

Furthermore, no circuit court case has ever limited the application of § 1821(j) to assets “owned” by a failed financial institution. The only two district court opinions addressing § 1821(j) that arguably support Bank of America’s position have only recognized such a limitation implicitly. See Cummings Props. Mgmt., Inc. v. FDIC, 786 F. Supp. 144, 145–46 (D. Mass. 1992) (holding that the threshold issue of whether an ATM situated on property leased to a failed bank is a fixture, and thus whether it may be removed by the FDIC as part of liquidation, was appropriate for judicial review), vacated as moot due to settlement, No. 92-1504, 1992 WL 366909 (1st Cir. Sept. 1, 1992); Steamboat Ventures v. FDIC, No. 1:09-cv-01399, 2009 WL 4797832, at \*3 (N.D. Ga. Dec. 8, 2009) (holding that § 1821(j) does not deprive a court of jurisdiction to enjoin the FDIC from initiating foreclosure proceedings where the failed bank’s security interest in the property proposed for sale had been extinguished prior to the FDIC’s takeover). However, neither of these two cases involved cash or loan documents contained in the failed bank’s accounts, whether general or custodial, upon the bank’s failure. In addition, neither case examined whether the injunction sought would restrain the FDIC’s exercise of a proper receivership power or function. To the extent that these two lower court cases support the broad “non-owned assets” exception advanced by Bank of America, we do not find them persuasive.

We also decline to consider the parties' arguments with respect to § 1821(d)(13)(D), which is a distinct jurisdiction-stripping provision contained within FIRREA's administrative claims procedures.<sup>3</sup> Section 1821(j) provides ample support for the FDIC's jurisdictional defense, and there is no need for the FDIC to rely in addition on § 1821(d)(13)(D). Moreover, we need not attempt to harmonize § 1821(j) and § 1821(d)(13)(D) because our circuit, among others, has recognized that § 1821(j)'s breadth is in no way dependent on or limited by § 1821(d)(13)(D). See RPM Invs., Inc., 75 F.3d at 621–22. Accordingly, we hold that § 1821(j) deprived the district court of jurisdiction to issue the preliminary injunction against the FDIC, and we have no need to address § 1821(d)(13)(D).

The operation of § 1821(j) does not leave Bank of America without a remedy. Its claim is one that can and should be pursued through the administrative claims process. See 12 U.S.C. § 1821(d)(3)–(13). The FDIC has consistently maintained in its pleadings before the district court and submissions to this court that it will adjudicate Bank of America's claim administratively. The FDIC's position is consistent with the case law, which illustrates that claims similar to

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<sup>3</sup> Section 1821(d)(13)(D) states: "[N]o court shall have jurisdiction over . . . (i) any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any depository institution for which the Corporation has been appointed receiver . . . or (ii) any claim relating to any act or omission of such institution or the Corporation as receiver."

Bank of America's have been subject to FIRREA's administrative claims process. See Merrill Lynch Mortgage Capital, Inc. v. FDIC, 293 F. Supp. 2d 98, 101–03 (D.D.C. 2003) (reviewing de novo the FDIC's administrative claims determination with respect to large pools of residential mortgages held in custodial counts and serviced by a failed bank). Bank of America's only argument that the administrative claims process is inapplicable to its claim is a conclusory assertion that the loans and their proceeds are contained in special accounts and that special accounts are not subject to the administrative claims process. Assuming arguendo that Bank of America's claim relates to a special account, Bank of America has cited no authority in support of its position, and our independent research has uncovered none. To the contrary, the only authority of which we are aware—Merrill Lynch—indicates that similar claims are indeed subject to the administrative claims process. See id. at 101–02.

Additionally, our sister circuits have held that all manner of claims are appropriate for resolution through the administrative claims process. See, e.g., McCarthy v. FDIC, 348 F.3d 1075, 1081 (9th Cir. 2003) (claims by debtors of a failed bank arising out of acts of the receiver, as opposed to the failed bank, are subject to FIRREA's administrative claims process); Freeman v. FDIC, 56 F.3d 1394, 1402 (D.C. Cir. 1995) (claims by debtors of a failed bank alleging the

fraudulent restructuring of their home mortgage loan are subject to the administrative claims process); Bueford v. Resolution Trust Corp., 991 F.2d 481, 484 (8th Cir. 1993) (employment discrimination claims by former employees of the failed bank are subject to the administrative claims process); Henderson v. Bank of New England, 986 F.2d 319, 321 (9th Cir. 1993) (claims by a denied credit card applicant seeking damages and the right to discover derogatory credit card information are subject to the administrative claims process); Meliezer v. Resolution Trust Co., 952 F.2d 879, 883 (5th Cir. 1992) (negligence claim by home mortgage owners against a failed bank for issuing a loan accompanied by insufficient fire and hazard insurance is subject to the administrative claims process); Resolution Trust Corp. v. Elman, 949 F.2d 624, 628 (2d Cir. 1991) (claim by attorney of failed bank for the return of the bank's files until bank's satisfaction of the attorney's retaining lien is subject to the administrative claims process). The instant claims are not remotely similar to the few claims which courts have found not to be subject to FIRREA's administrative claims process. See, e.g., Homeland Stores, Inc. v. Resolution Trust Corp., 17 F.3d 1269, 1273–75 (10th Cir. 1994) (claims against the receiver, as opposed to the failed bank, for actions in connection with its management of a shopping center, which was an asset of the failed institution, are not subject to the administrative claims process); Nat'l Trust

for Historic Pres., 995 F.2d at 242 (claim by the National Trust for Historic Preservation alleging violations of the National Historic Preservation Act was not subject to the administrative claims process); Rosa v. Resolution Trust Corp., 938 F.2d 383, 394–95 (3d Cir. 1991) (claim by pension plan participants seeking an order barring the retroactive termination of the plan cannot be determined, allowed, disallowed, or paid and therefore is not susceptible to resolution in the administrative claims process). Accordingly, if Bank of America’s claim to the disputed items is as clear as its assertions indicate, it is probable that its claim will be honored in the administrative claims process; if not, Bank of America has its statutory right to de novo review in federal district court. 12 U.S.C. § 1821(d)(6), (d)(7)(A). See also Merrill Lynch Mortgage Capital, Inc., 293 F. Supp. 2d at 101–03. Bank of America has not argued at any stage of this litigation that the administrative claims process is somehow inadequate to adjudicate its claim of ownership of the loans and loan proceeds, only that the process is inapplicable to its claim.<sup>4</sup> Therefore, any such claim is deemed abandoned.

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<sup>4</sup> We note that although Bank of America never argued that the administrative claims process was legally inadequate, it did express concern at oral argument that it may not receive one hundred cents on the dollar for its claim. However, as indicated in Merrill Lynch, 293 F. Supp. 2d at 110, Bank of America can claim priority. It can also seek expedited review.

FIRREA provides for expedited review of claims asserting perfected security interests in the assets of the failed institution, where the claimant alleges irreparable injury should the routine claims process be followed. See 12 U.S.C. § 1821(d)(8)(A). “Yet this provision only further emphasizes that the statutory recourse of all creditors . . . is with the [FDIC] in the first instance.”

Accordingly, we hold that the administrative claims process is the appropriate mechanism to evaluate Bank of America's claim. Bank of America must exhaust FIRREA's administrative claims process before turning to the federal courts for de novo judicial review.

### III. CONCLUSION

In conclusion, we VACATE the district court's preliminary injunction order against the FDIC and REMAND with instructions to DISMISS Bank of America's motion for injunctive relief for lack of jurisdiction.

VACATED and REMANDED; DISMISSED for lack of jurisdiction.

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Elman, 949 F.2d at 628. Indeed, the fact that FIRREA specifically contemplates the adjudication of such claims, which are similar to Bank of America's claim here, is further evidence that Congress intended their resolution through the administrative process.

We also note that FIRREA corrected some of the deficiencies in the administrative claims processes found in prior similar statutes. Appropriate time limitations on a receiver's consideration of whether to pay or disallow administrative claims—now a part of FIRREA—were markedly absent from the Home Owners' Loan Act, which was under Supreme Court scrutiny in Coit Independence Joint Venture v. Federal Savings & Loan Insurance Corp., 489 U.S. 561, 109 S. Ct. 1361 (1989). For this reason, the Supreme Court held that the Home Owners' Loan Act's administrative scheme was inadequate because it gave the Federal Savings and Loan Insurance Corporation ("FSLIC") unfettered authority to bury large claims in the administrative process indefinitely. Coit, 489 U.S. at 586, 109 S. Ct. at 1375. Therefore, exhaustion of administrative remedies was not required before creditors sought de novo consideration of their claims in court. Id. at 587, 109 S. Ct. at 1375–76. FIRREA, however, limits the FDIC's consideration of claims to a 180-day period, which may only be extended by a written agreement between the claimant and the FDIC. 12 U.S.C. § 1821(d)(5)(A)(i), (ii).

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

In re:

Chapter 11

TAYLOR, BEAN & WHITAKER  
MORTGAGE CORP., *et al.*,

Debtors.

Case No. 3:09-bk-07047-JAF  
Case No. 3:09-bk-10022-JAF  
Case No. 3:09-bk-10023-JAF  
(Jointly Administered Under  
Case No. 3:09-bk-07047-JAF)

NEIL F. LURIA, as Trustee to the TAYLOR,  
BEAN & WHITAKER PLAN TRUST,

Adv. Pro. No. \_\_\_\_\_

Plaintiff,

v.

ACE AMERICAN INSURANCE COMPANY,

Defendant.

**COMPLAINT TO AVOID PREFERENTIAL TRANSFERS AND TO RECOVER  
PROPERTY TRANSFERRED PURSUANT TO 11 U.S.C. § 550**

Neil F. Luria, as Trustee for the Taylor, Bean & Whitaker Plan Trust (the "Plaintiff"), pursuant to 11 U.S.C. §§ 547 and 550, sues<sup>1</sup> the Defendant, Ace American Insurance Company (the "Defendant") to avoid and recover preferential transfers, and in support thereof, alleges:

<sup>1</sup> Plaintiff reserves the right to bring additional claims against the Defendant and nothing contained herein shall be deemed a waiver of any rights or causes of action that the Plaintiff may have against the Defendant. Also, to the extent that the Defendant has filed a proof of claim or has a claim listed on the Debtor's schedules as undisputed, liquidated, and not contingent, or has otherwise requested payment from the Debtor or the Debtor's chapter 11 estate (collectively, the "Claims"), Plaintiff reserves the right to object to such Claims for any reason including, but not limited to, 11 U.S.C. § 502(a) through (j), and this Complaint is not intended to be, nor should it be construed as a waiver of such right. If the Defendant has a claim against the estate then this Complaint commences an objection to the allowance thereof because the Defendant has failed to disgorge a preferential transfer it received.



### JURISDICTION

1. This adversary proceeding is brought to recover preferential transfers pursuant to Sections 547 and 550 of the Bankruptcy Code.

2. This Court has jurisdiction over the subject matter of this proceeding pursuant to 28 U.S.C. § 1334(b). This is a core proceeding for which the Court is authorized to hear and determine all matters regarding this case in accordance with 28 U.S.C. § 157(b)(2)(F).<sup>2</sup>

### PARTIES AND PROCEDURAL BACKGROUND

3. Taylor, Bean & Whitaker Mortgage Corp. (the "Debtor") commenced its bankruptcy case on August 24, 2009 (the "Petition Date") by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

4. On July 21, 2011, the Bankruptcy Court entered its order confirming the *Third Amended and Restated Joint Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors* (the "Plan") (Order, D.E. # 3420). Pursuant to the Plan, and the Taylor, Bean & Whitaker Plan Trust, the Plaintiff, as Trustee of the Plan, is empowered to commence this case against the Defendant.

<sup>2</sup> By filing this Complaint in the office of the Clerk of the Bankruptcy Court Plaintiff is necessarily filing it within the District Court as the Bankruptcy Court is, at the very least for administrative purposes, a unit of the District Court. 28 U.S.C. § 151. Moreover, the District Court's Order of Assignment of Cases Arising Under Title 11, United States Code, No. 84-MISC-152 mandates that actions arising in or under or related to cases under title 11 of the United States Code be immediately referred the Bankruptcy Court, and by longstanding practice such adversary proceedings are therefore filed at the office of the Clerk of the Bankruptcy Court and not the office of the Clerk of the District Court. At least one federal court opinion outside this circuit purporting to apply the teaching of the recently decided case by the United States Supreme Court, *Stern v. Marshall*, 131 S.Ct. 2594 (2011), suggested that adversary proceedings like this one are outside the Bankruptcy Court's jurisdiction to hear or determine, necessitating dismissal of the complaint without consideration of the more reasonable option of simply withdrawing the reference so that an Article III district judge will be the judicial officer to enter judgment. While Plaintiff vigorously disagrees with such opinion(s), in an abundance of caution, Plaintiff requests that, in the event that it is later determined by this or any other court of competent jurisdiction that the Bankruptcy Court may not enter final judgment in this adversary proceeding, the District Court's reference of this adversary proceeding be withdrawn or be deemed withdrawn, as necessary, so that the merits of the complaint may be heard by a constitutionally authorized judicial officer and not dismissed.

5. The Defendant is an entity with a principal place of business at 436 Walnut Street, Philadelphia, PA 19106.

6. Prior to the Petition Date, the Debtor made payment(s) to the Defendant totaling \$172,157.73 (the "Payments"). The Plaintiff sent a letter to the Defendant demanding the return of the Payments. As of the date of the filing of this complaint, the Defendant has not paid the amount demanded by the Plaintiff.

**COUNT I – AVOIDANCE OF PREFERENTIAL TRANSFERS  
PURSUANT TO SECTION 547(b) OF THE BANKRUPTCY CODE**

7. Plaintiff realleges the allegations set forth in paragraphs 1 through 6, and incorporates those allegations by reference.

8. On or within 90 days before the Petition Date, that is, between May 25, 2009 and August 24, 2009 (the "Preference Period"), the Debtor continued to operate its business affairs, including the transfer of property, either by checks, cashier checks, wire transfers or otherwise to certain entities, including the Defendant.

9. The Debtor transferred property of the Debtor to the Defendant during the Preference Period in an amount not less than \$172,157.73 (the "90-Day Transfers"). Attached hereto as "Exhibit A"; and incorporated herein by reference, is a list of the Transfers presently known to Plaintiff to have been made by the Debtor to the Defendant. The exhibit includes: (i) the name of the Defendant, (ii) the Defendant's address, (iii) the check or wire number of each transfer, (iv) the amount of each transfer, and (v) the date each check cleared the bank.

10. During the pendency of this adversary proceeding, Plaintiff may learn (through discovery or otherwise) of additional transfers made to the Defendant during the Preference Period. Plaintiff reserves the right to amend this Complaint to include: (i) further information regarding the transfers, (ii) additional transfers, (iii) modifications of and/or revision to the

Defendant's name, and/or (iv) additional defendants (collectively, the "Amendments"), that may become known and to request that the Amendments relate back to this original Complaint.

11. The Defendant was a creditor of the Debtor within the meaning of 11 U.S.C. § 101(10)(A) at the time of the 90-Day Transfers. At the time of the Transfers, the Defendant had or claimed a right to payment on account of an obligation owed to the Defendant by the Debtor.

12. The 90-Day Transfers were to or for the benefit of a creditor within the meaning of Section 547(b)(1) of the Bankruptcy Code because the 90-Day Transfers either reduced or fully satisfied a debt then owing by the Debtor to the Defendant.

13. The 90-Day Transfers were for, or on account of, antecedent debt(s) owed by the Debtor before the Transfers were made and the antecedent debts to which each Transfer related are identified on the attached Exhibit A.

14. The source of the funds for the 90-Day Transfers were property of the Debtor or property in which the Debtor had an interest.

15. Inasmuch as on the date of each 90-Day Transfer, the fair value of the Debtor's assets was much less than the total amount of the debts it owed, as set forth in detail in the various reports filed in the Bankruptcy Case and in the *Second Amended and Restated Disclosure Statement* filed by the Debtor in the Bankruptcy Case [D.E. # 2144], the Debtor was insolvent at all times during the 90 days prior to the Petition Date.

16. As a result of the 90-Day Transfers, the Defendant received more than it would have received if: (i) the Debtor's case were a case under chapter 7 of the Bankruptcy Code, (ii) the 90-Day Transfers had not been made, and (iii) the Defendant received payment of its claims under the provisions of the Bankruptcy Code.

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17. In accordance with the foregoing, the 90-Day Transfers are avoidable pursuant to 11 U.S.C. § 547(b).

**WHEREFORE**, the Plaintiff requests the Court to enter a Judgment:

- a. Declaring the 90-Day Transfers, in the amount of \$172,157.73, to have been preferential transfers pursuant to Section 547 of the Bankruptcy Code;
- b. Disallowing any claim that the Defendant may have against the Debtor;
- c. Avoiding the 90-Day Transfers as preferential transfers in violation of Section 547(b) of the Bankruptcy Code;
- d. Requiring the payment of the 90-Day Transfers to the Plaintiff; and
- e. Granting such other and further relief as may be just and proper.

**COUNT II – RECOVERY OF PROPERTY  
PURSUANT TO SECTION 550 OF THE BANKRUPTCY CODE**

18. Plaintiff realleges the allegations set forth in paragraphs 1 through 17 and incorporates those allegations by reference.

19. The 90-Day Transfers are avoidable pursuant to Section 547 of the Bankruptcy Code and, as a result, the Transfers are recoverable by the Plaintiff pursuant to Section 550 of the Bankruptcy Code.

**WHEREFORE**, the Plaintiff requests that the Court:

- a. Entering a money judgment against the Defendant for the amount of the avoided Transfers, plus interest at the applicable federal statutory rate, reasonable attorneys' fees, and costs and expenses to the extent permissible by applicable law;
- b. Disallowing any claim that the Defendant may have against the Debtor; and
- c. Granting such other and further relief as may be just and proper.

Dated: December 1, 2011

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Paul Steven Singerman  
Florida Bar No. 378860  
singerman@bergersingerman.com  
Kristopher Aungst  
Florida Bar No. 55348  
kaungst@bergersingerman.com

**Exhibit A**

Ace American Insurance Co.  
436 Walnut Street  
Philadelphia, PA 19106

Check Number	Date Cleared	Amount
Wire Transfer Payment	6/30/2009	\$ 58,427.07
Wire Transfer Payment	7/31/2009	57,235.98
Wire Transfer Payment	7/31/2009	56,494.68
Total		\$ 172,157.73

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**FEDERAL HOUSING FINANCE AGENCY  
OFFICE OF INSPECTOR GENERAL**

**FHFA's Supervision of Freddie Mac's Controls over  
Mortgage Servicing Contractors**



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## **EXPLANATION OF REDACTIONS IN THIS REPORT**

This report includes redactions requested by the Federal Housing Finance Agency and/or the Federal Home Loan Mortgage Corporation. According to them, the redactions are intended to protect from disclosure material that they consider to be confidential financial, proprietary business, and/or trade secret information. They claim further that the redacted information would not ordinarily be publicly disclosed, and, if disclosed, could place the Federal Home Loan Mortgage Corporation at a competitive disadvantage.

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## FEDERAL HOUSING FINANCE AGENCY OFFICE OF INSPECTOR GENERAL AT A GLANCE

### FHFA's Supervision of Freddie Mac's Controls over Mortgage Servicing Contractors

#### Why FHFA-OIG Did This Audit

The Federal Housing Finance Agency (FHFA or Agency) was created by the Housing and Economic Recovery Act of 2008 (HERA) to assess the financial safety and soundness and overall risk management practices of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises). The Enterprises routinely purchase mortgages from mortgage originators in order to provide liquidity for continued lending in support of the nation's housing finance system. With respect to the mortgages that they purchase, the Enterprises enter into contracts with mortgage servicers to collect mortgage payments, set aside taxes and insurance premiums in escrow, forward interest and principal payments to the contractually designated party, and respond to payment defaults. As of June 30, 2011, Freddie Mac had a mortgage servicing portfolio containing nearly 12 million mortgages with an unpaid principal balance (UPB) of nearly \$1.8 trillion.

Troubled loans have increased substantially since 2008. Mortgage servicers have had to respond to increased defaults by expending extra effort including loan modifications and foreclosure processing. In late 2010, the federal agencies that regulate and supervise banks conducted an interagency review of foreclosure processing at 14 large mortgage servicers. The agencies found critical weaknesses in the mortgage servicers' foreclosure governance processes, foreclosure document preparation procedures, and oversight and monitoring of third-party vendors, including foreclosure attorneys.

In light of these findings, the FHFA Office of Inspector General (FHFA-OIG) initiated a performance audit to assess whether FHFA has an effective supervisory control structure and sufficient examination coverage and oversight activities to adequately and timely identify and mitigate risks involving mortgage servicing contractors. The audit covered FHFA's supervision of Freddie Mac.

#### What FHFA-OIG Recommends

FHFA-OIG recommends that the Agency: (1) establish and implement regulations or guidance concerning mortgage servicing oversight and risk management; (2) direct Freddie Mac to take the necessary steps to implement servicer performance metrics for a larger cross-section of servicers, to achieve additional credit loss savings; and (3) improve existing procedures for coordination with other federal agencies that oversee mortgage servicers. The Agency provided comments that are addressed in the report.

Although this audit focused on FHFA's supervision of Freddie Mac, the first and third recommendations generally are applicable to both Enterprises.

#### What FHFA-OIG Found

FHFA and Freddie Mac have taken action to improve their oversight of mortgage servicing, but FHFA-OIG noted some areas in which FHFA could further enhance its supervision of the Enterprises' controls over mortgage servicing contractors.

FHFA has not clearly defined its role regarding oversight of servicers, sufficiently coordinated with other federal banking agencies about risks and supervisory concerns with individual servicers, or timely addressed emerging risks presented by mortgage servicing contractors. Moreover, FHFA has not established comprehensive regulations and guidance that provide for servicer management and oversight, and does not adequately monitor servicing performance.

As early as 2008, FHFA had information indicating that mortgage servicing represented a heightened risk to the Enterprises, but FHFA did not begin to devote added attention to servicing issues until August 2010. These emerging risk indicators included the increasing number and dollar value of mortgage payment defaults, the concentration of servicing risk among a limited number of large servicers, the surge in bank failures, and the escalation of enforcement actions against problem banks, many of which were counterparties performing mortgage servicing for Freddie Mac. Further, when FHFA commenced its examination coverage beginning in 2010, it did not adequately assess the operational risks posed by Freddie Mac's servicing contractors, and it did not consider the primary federal regulators' reports of examination and enforcement actions, nor did it consider servicer reviews conducted by other federal agencies.

In light of these control deficiencies, FHFA is not assured that the risk associated with Freddie Mac's servicing operations is being sufficiently managed. In addition, Freddie Mac has implemented a more robust servicer performance management program that it estimates could yield lifetime credit loss savings of up to [REDACTED], if it were applied across its servicer network. However, Freddie Mac currently does not plan to implement its program for all servicers. FHFA-OIG accordingly believes that FHFA may be able to generate additional funds to be put to better use, beyond what Freddie Mac is currently targeting, by directing the Enterprise to implement its servicer performance management program across a larger cross-section of its servicers.

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## **ABBREVIATIONS**

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DER.....	Division of Enterprise Regulation
Fannie Mae.....	Federal National Mortgage Association
FDIC .....	Federal Deposit Insurance Corporation
FHFA or Agency.....	Federal Housing Finance Agency
FHFA-OIG .....	Federal Housing Finance Agency Office of Inspector General
Freddie Mac .....	Federal Home Loan Mortgage Corporation
FRS .....	Federal Reserve System
GSE .....	Government-Sponsored Enterprise
HERA.....	Housing and Economic Recovery Act of 2008
HUD .....	U.S. Department of Housing and Urban Development
MBS .....	Mortgage Backed Securities
MOU .....	Memorandum of Understanding
OCC .....	Office of the Comptroller of the Currency
OCR .....	Office of Credit Risk
OFHEO .....	Office of Federal Housing Enterprise Oversight
OTS .....	Office of Thrift Supervision
PFR .....	Primary Federal Regulator
REO.....	Real Estate Owned
TBW .....	Taylor, Bean & Whitaker Mortgage Corp.
Treasury .....	U.S. Department of the Treasury
UPB.....	Unpaid Principal Balance

**Federal Housing Finance Agency**

**Office of Inspector General**

Washington, DC

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**PREFACE**

FHFA-OIG was established by HERA,<sup>1</sup> which amended the Inspector General Act of 1978.<sup>2</sup> FHFA-OIG is authorized to conduct audits, investigations, and other activities of the programs and operations of FHFA; to recommend policies that promote economy and efficiency in the administration of such programs and operations; and to prevent and detect fraud and abuse in them.

The objective of this performance audit was to assess whether FHFA has an effective supervisory control structure and sufficient examination coverage and oversight activities to adequately and timely identify and mitigate risks related to Freddie Mac's controls over mortgage servicing contractors.

The audit noted opportunities for further improving FHFA's supervision of the Enterprises' controls over mortgage servicing contractors. Specifically, FHFA needs to continue to (a) identify opportunities to enhance its regulations or guidance to the Enterprises regarding counterparty contracting for mortgage servicing, including a contract provision authorizing FHFA's access to servicer information; and (b) consider additional efforts to enhance FHFA's supervision of Freddie Mac's oversight of its mortgage servicing contractors.

FHFA-OIG believes that the recommendations in this report will help the Agency develop and adopt more economical, effective, and efficient operations. FHFA-OIG appreciates the assistance of all those who contributed to the audit.

This audit was led by Heath Wolfe, Audit Director, who was assisted by Menjie Medina, Audit Manager.

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<sup>1</sup> Public Law No. 110-289.

<sup>2</sup> Public Law No. 95-452.

This report has been distributed to Congress, the Office of Management and Budget, and others and will be posted on FHFA-OIG's website, <http://www.fhfaoig.gov>.

A handwritten signature in black ink, appearing to read "Russell Rau", with a long horizontal line extending to the right.

Russell A. Rau  
Deputy Inspector General for Audits

## BACKGROUND

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### About the Enterprises and FHFA

On July 30, 2008, HERA was enacted and it made FHFA the regulator of the housing-related government-sponsored enterprises (GSEs): Fannie Mae, Freddie Mac, and the Federal Home Loan Banks. FHFA's mission is to promote the GSEs' safety and soundness, support housing finance and affordable housing goals, and facilitate a stable and liquid mortgage market. HERA also expanded the authority of the U.S. Department of the Treasury (Treasury) to provide financial support to the Enterprises.

On September 6, 2008, FHFA became conservator of Fannie Mae and Freddie Mac, and at the same time Treasury began providing the Enterprises with substantial financial support.<sup>3</sup> As conservator, FHFA preserves and conserves the assets of the Enterprises, ensures that they focus on their housing mission, and facilitates their financial stability and emergence from conservatorships.

On October 12, 2010, FHFA's first Inspector General, Steve A. Linick, was sworn in and FHFA-OIG commenced operations. This audit followed and covers the time period from January 1, 2010, through May 31, 2011 (the period was expanded as necessary).<sup>4</sup>

### Mortgages Owned or Guaranteed by Freddie Mac

Freddie Mac (along with Fannie Mae) is in the business of supporting the secondary residential mortgage market by purchasing millions of home mortgages originated by banks and other financial institutions. Mortgage sellers may use the sales proceeds received from the Enterprises to fund additional loans to borrowers. The Enterprises pool most of these mortgages into mortgage backed securities (MBS) for sale to investors, and provide credit guarantees on the MBS. They also hold mortgages in their investment portfolios.

As of June 30, 2011, Freddie Mac owned or guaranteed 11,954,353 single-family mortgages, with a combined UPB of nearly \$1.8 trillion. Although 92% of these mortgages are fixed rate

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<sup>3</sup> Treasury provides financial support to the Enterprises by purchasing their preferred stock pursuant to Senior Preferred Stock Purchase Agreements. As of the third quarter of 2011, Treasury had provided approximately \$183 billion to the Enterprises.

<sup>4</sup> Because FHFA's policies, procedures, and controls for supervising Fannie Mae's mortgage servicing contractors are the same as those applicable to Freddie Mac, the audit issues identified in this report can generally apply to both of the Enterprises.



mortgage loan products, 32% of them are non-traditional loans.<sup>5</sup> The majority of Freddie Mac's non-traditional loans in its portfolio were originated and purchased during the 2004 – 2007 housing boom. Those loans have a higher risk than traditional fixed rate mortgages and, with the end of the housing boom and continuing fragility in the housing market, have a greater propensity to default. Such defaults have caused billions of dollars of credit losses to date to the Enterprises and will continue to pose a credit risk for them. Whether these loans default is critical to the Enterprises' ongoing operations, and the rate of default is influenced by the quality of loan servicing.

## Overview of Mortgage Servicing

### *What is Mortgage Servicing?*

With respect to the loans that the Enterprises guarantee or hold in their portfolios, they enter into contracts with mortgage servicing companies to manage the day-to-day servicing of the loans.<sup>6</sup> These mortgage servicers perform a variety of duties for the Enterprises, including:

- Collecting mortgage payments and processing late payments;
- Sending periodic statements to borrowers;
- Maintaining escrow accounts to pay property taxes and insurance;
- Forwarding payments to mortgage owners; and
- Handling default proceedings and foreclosures.<sup>7</sup>

The mortgage servicers are typically compensated on the basis of a percentage of the UPB of the mortgage loans that they manage.

Both Enterprises have developed their own mortgage servicer guides, which outline the servicers' duties and responsibilities.<sup>8</sup> These servicer guides are incorporated by reference in the

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<sup>5</sup> Non-traditional mortgage products include interest-only, Alt-A, and option adjustable rate mortgages, and loan categories are not mutually exclusive.

<sup>6</sup> Mortgage servicing companies are also called servicers, mortgage servicers, or mortgage servicing contractors. Further, servicers can be insured depository institutions, such as banks, or non-banking institutions, such as mortgage companies.

<sup>7</sup> Mortgage servicers fall into one of two groups: servicers or seller/servicers. Mortgage servicers that do not originate loans but service loans for the Enterprises often are called servicers. Mortgage servicers that sell and service loans for the Enterprises frequently are called seller/servicers.

<sup>8</sup> The Enterprises' requirements for selling and servicing mortgages are incorporated in the same documents. For purposes of this report, only the servicing requirements are relevant.

Enterprises' servicing contracts. The Enterprises' respective mortgage servicer guides generally contain similar topical areas, but their specific requirements vary. For example, prior to the implementation of FHFA's Servicing Alignment Initiative,<sup>9</sup> Freddie Mac and Fannie Mae required significantly different procedures for servicing delinquent mortgages.<sup>10</sup> Fannie Mae's and Freddie Mac's foreclosure timelines differed both in the terms of unit of measurement (*i.e.*, months vs. days) and actual goals (*e.g.*, Fannie Mae's goal for Kansas was 4 months and Freddie Mac's goal was 180 days). Foreclosure timelines have been unified with the implementation of the Servicing Alignment Initiative.

Due to the sheer volume of approved servicers, the Enterprises largely accept in good faith that the servicers are managing loans in accordance with the Enterprises' servicing guides. However, if the Enterprises suffer a credit related loss and they discover that the servicers did not follow one or more of their requirements, then they may seek a remedy to mitigate their losses. These remedies may include requiring a servicer to purchase a loan at its current UPB or make an Enterprise whole for any credit losses realized with respect to a loan.

#### *Concentration of Mortgage Servicers*

As of June 30, 2011, Freddie Mac had 1,457 mortgage servicers.<sup>11</sup> For the same time period, Fannie Mae had 1,498 mortgage servicers and a loan portfolio of \$2.7 trillion.

In contrast to the large number of servicers it employs, the majority of Freddie Mac's loan portfolio is serviced by a select few servicers. As of June 30, 2011, the market share of Freddie

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<sup>9</sup> On April 28, 2011, FHFA introduced the Servicing Alignment Initiative, which seeks to establish consistent, transparent standards for servicing delinquent mortgage loans that the Enterprises own or guarantee. See FHFA, *Fannie Mae and Freddie Mac to Align Guidelines for Servicing Delinquent Mortgages* (Apr. 28, 2011), available at [www.fhfa.gov/webfiles/21190/SAI42811Final.pdf](http://www.fhfa.gov/webfiles/21190/SAI42811Final.pdf). The new directive includes cash incentives for exemplary performance, as well as monetary penalties for underperformance. It addresses four aspects of delinquent loan servicing: borrower contact, delinquency management practices, loan modifications, and foreclosure timelines. With respect to loan modifications, the servicers are required to conform their performance to guidelines previously published by the Enterprises. See, *e.g.*, Fannie Mae, *Servicing Guide Announcement SVC 2011-03: Updates to Fannie Mae's Mortgage Modification Requirements* (Apr. 4, 2011). Fannie Mae's guidelines provide standards for evaluating borrowers for modifications, permissible lengths for modification trial periods, documentation requirements, and credit bureau reporting. According to FHFA, the Servicing Alignment Initiative is intended to provide superior service to borrowers with clearer and more consistent borrower communications, efficient processing of loan modifications, a fair foreclosure process, increased servicer accountability, and, ultimately, reduced taxpayer losses through improved loan servicing.

<sup>10</sup> An inter-agency effort among the federal regulators – the Office of the Comptroller of the Currency, Federal Reserve System, Federal Deposit Insurance Corporation, FHFA, and the Bureau of Consumer Financial Protection – is under way to create a comprehensive set of national servicing standards for the industry, but the implementation date of this initiative is yet to be determined as of February 2012.

<sup>11</sup> Using Freddie Mac's servicer account numbers, the total number of servicers is 1,457. However, numerous servicers have affiliates or subsidiaries that perform servicing duties, and when these affiliated entities are grouped together the number of distinct servicer "families" totals 1,215.

Mac's four largest mortgage servicers (*i.e.*, Wells Fargo, Bank of America, JPMorgan Chase, and Citigroup) was 60% (*i.e.*, \$1.07 trillion of the nearly \$1.8 trillion in UPB).<sup>12</sup> Moreover, the 10 largest servicers manage 80% of Freddie Mac's and 76% of Fannie Mae's loan portfolio, respectively. Additionally, Freddie Mac and Fannie Mae do business with many of the same servicers. According to the Enterprises' records, approximately 333 servicers work for both of the Enterprises. These servicers manage 84% (*i.e.*, \$1.5 trillion) of Freddie Mac's and 81% (*i.e.*, \$2.2 trillion) of Fannie Mae's loan portfolios, respectively. The significant amount of servicing business concentrated among so few servicers poses a safety and soundness concern to the Enterprises. If one or more of the largest servicers were to cease servicing operations, or if the Enterprises were to transfer servicing rights, they could find it difficult to obtain alternative servicers capable of handling a large amount of business. Moreover, servicers with a heightened degree of supervisory concern (*i.e.*, a CAMELS rating of "3" or above)<sup>13</sup> manage 30% of Freddie Mac's loan portfolio (*i.e.*, \$541 billion of the nearly \$1.8 trillion in UPB).

*Why Is Mortgage Servicer Performance Important?*

From the onset of the Enterprises' conservatorships in September 2008 to the third quarter of 2011, Treasury has invested \$183 billion in them.<sup>14</sup> This financial support is needed to prevent their insolvency and offset their losses, which have been historically high in the past three years. Figure 1 on the next page shows the Enterprises' annual revenues, credit-related losses, and withdrawals of funds from Treasury during the conservatorships.

<sup>12</sup> Fannie Mae's experience was nearly identical in terms of its largest servicers (*i.e.*, Bank of America, Wells Fargo, JPMorgan Chase, and Citigroup) and their market share (*i.e.*, 61%: \$1.643 trillion of the \$2.703 trillion in UPB).

<sup>13</sup> The federal banking regulators conduct examinations of the banking institutions under their purview and assign CAMELS ratings to them based on the results of their examinations. The components of CAMELS ratings are: Capital adequacy, Asset quality, Management, Earnings, Liquidity, and Sensitivity to market risk. CAMELS ratings range from 1 to 5 with 1 being the strongest and 5 being the weakest. A rating of 3 or higher denotes institutions with a heightened degree of supervisory concern.

<sup>14</sup> FHFA projects that Treasury's investment in the Enterprises will increase to between \$220 billion and \$311 billion through the close of calendar year 2014. The Federal Reserve also took steps to support the Enterprises, such as purchasing up to \$1.14 trillion of their securities as of December 31, 2011.

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**Figure 1: Single-Family Credit Guarantee Segment Results and Treasury Withdrawals**  
(in billions)<sup>15</sup>

	Freddie Mac					Fannie Mae					Combined 2008- 3Q11
	2008	2009	2010	YTD 3Q11	Total	2008	2009	2010	YTD 3Q11	Total	
Revenue	\$5	\$4	\$5	\$3	\$18	\$9	\$9	\$2	\$4	\$24	\$42
Credit-related Expenses <sup>16</sup>	(\$17)	(\$29)	(\$19)	(\$10)	(\$76)	(\$28)	(\$51)	(\$26)	(\$22)	(\$127)	(\$203)
Net Income (loss)	<u>(\$20)</u>	<u>(\$27)</u>	<u>(\$16)</u>	<u>(\$8)</u>	<u>(\$71)</u>	<u>(\$27)</u>	<u>(\$64)</u>	<u>(\$27)</u>	<u>(\$19)</u>	<u>(\$137)</u>	<u>(\$209)</u>
Amount of Funds Requested from Treasury <sup>17</sup>	\$45	\$6	\$13	\$7	\$71	\$15	\$60	\$15	\$22	\$112	\$183

From 2008 through the third quarter of 2011, Freddie Mac reported a total of \$76 billion in credit-related expenses, one of the primary elements of its net operating losses. These credit expenses are directly attributable to the collapse of the housing market and the rise in delinquencies and resulting foreclosures.<sup>18</sup>

Starting in 2008, troubled loans increased precipitously. For instance, from the first quarter of 2008 through the fourth quarter of 2010, the number of seriously delinquent loans owned by Freddie Mac increased from 95,000 to 453,000, or 376% as shown in Figure 2 on the next page.

<sup>15</sup> Source: FHFA 3rd Quarter of 2011 Conservator's Report, and Treasury and Federal Reserve data as of January 2, 2012. The totals cited in Figure 1 above may not add together due to rounding.

<sup>16</sup> Credit related expenses are provisions for credit losses plus foreclosed property expenses.

<sup>17</sup> Excludes \$1 billion liquidation preferences obtained by Treasury from each Enterprise upon initiation of the Senior Preferred Stock Purchase Agreements. The initial \$2 billion are not draws on the Treasury's commitment under the agreements, and, thus, are not included in the \$183 billion figure.

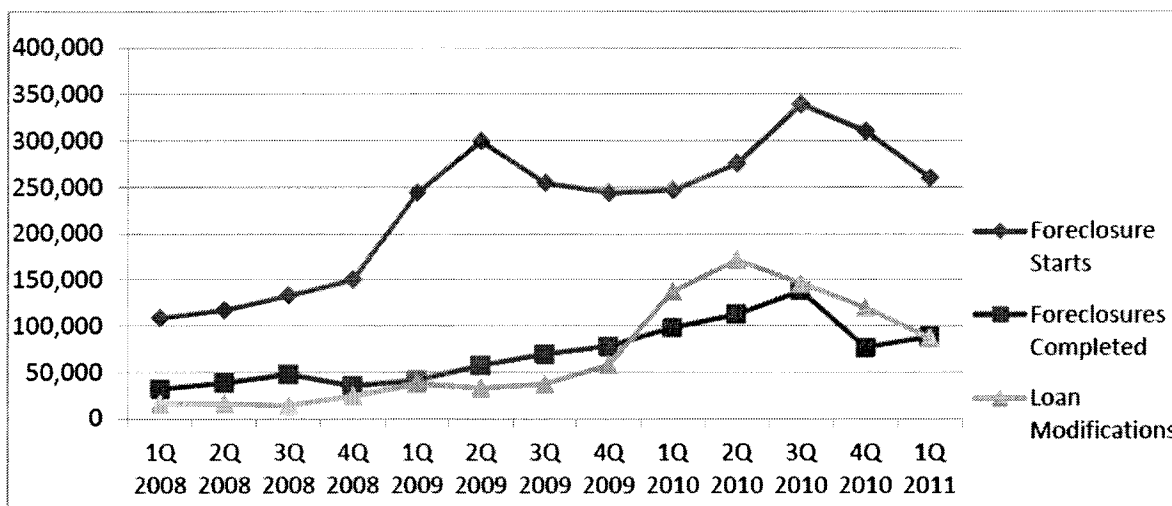
<sup>18</sup> In addition, poor servicer performance may contribute to the Enterprises' credit losses or, put another way, good servicer performance may reduce credit losses.

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**Figure 2: Freddie Mac's Mortgage Performance (in thousands)<sup>19</sup>**

Description	1Q08	2Q08	3Q08	4Q08	1Q09	2Q09	3Q09	4Q09	1Q10	2Q10	3Q10	4Q10
Loans	12,397	12,418	12,458	12,316	12,222	12,191	12,269	12,225	12,220	12,156	11,950	11,784
Serviced												
Seriously	95	115	152	212	295	352	421	487	505	481	454	453
Delinquent												
Loans <sup>20</sup>												
Percent of	0.77%	0.93%	1.22%	1.72%	2.41%	2.89%	3.43%	3.98%	4.13%	3.96%	3.80%	3.84%
Seriously												
Delinquent												
Loans												

As a result of deteriorating market conditions and increasing delinquencies, mortgage servicers began to process more loan modifications and initiate more foreclosure proceedings than had been the norm in the past.<sup>21</sup> As shown in Figure 3 below, loan modifications and foreclosures substantially increased from the first quarter of 2008 to the third quarter of 2010.

**Figure 3: Loan Modifications and Foreclosure Data for the Enterprises<sup>22</sup>**

<sup>19</sup> Source: FHFA's Foreclosure and Prevention and Refinance Report, First Quarter of 2011.

<sup>20</sup> All loans in process of foreclosure and loans that are three or more payments delinquent (includes loans in process of bankruptcy).

<sup>21</sup> Loan modifications are common forms of loss mitigation, and involve a negotiated amendment to an existing mortgage. Typical modifications include extending the mortgage's maturity date, adding past-due payments to the end of the mortgage, and making both permanent and temporary interest rate reductions. In most cases, when appropriately applied, these measures will lower the borrower's re-amortized monthly mortgage payment to a more affordable level.

<sup>22</sup> Source: FHFA's Foreclosure and Prevention and Refinance Report, First Quarter of 2011.

Given these trends, mortgage servicing is critically important to the financial health of the Enterprises. And, as discussed below, Freddie Mac has concluded that modest improvements in servicing, such as increasing the percentage of delinquent loans that are successfully modified and avoiding foreclosure, can reduce credit losses.

### **What Is Freddie Mac Doing to Oversee Servicing?**

#### *Servicer Oversight and Performance Rating*

Prior to 2011, servicing oversight-related functions were dispersed throughout Freddie Mac's various business operations. In the third quarter of 2010, Freddie Mac created the Single Family Portfolio Management Division as well as several new units to manage the performance of its servicing portfolio and to oversee the management of its servicers. This was done to implement a more holistic servicing approach, one that is capable of managing all aspects of the Enterprise's servicing portfolio including performing loans, non-performing loans, and real estate owned (REO).

In July 2011, Freddie Mac also implemented its enhanced Servicer Success Scorecard, which redefines Freddie Mac's expectations of quality and responsible servicing. The Servicer Success Scorecard replaced its Servicer Performance Tier rating in order to better measure servicer performance in the current servicing environment. According to Freddie Mac's Servicing Success Program publication, dated August 2011, all servicers receive monthly scorecards, which measure their performance against the established performance criteria. Additionally, for servicers with large servicing books and high volume, their scorecard includes an additional component of individualized objectives and goals as well as Freddie Mac's Servicer Success Account Plan.<sup>23</sup> A servicer's performance is considered to be unacceptable if the servicer ranks in the bottom 25% of all ranked servicers (after taking into account other factors such as portfolio composition, concentration of high-risk mortgages, trends in performance, adequacy of staffing, audit results, and compliance with the purchase documents).<sup>24</sup> In contrast with the Servicer Performance Tier rating, servicers are not ranked against other servicers; instead, scores in their respective performance rating categories are aggregated to arrive at their tier ratings.

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<sup>23</sup> Through account plans, Freddie Mac currently monitors servicers' performance toward accomplishment of Freddie Mac's loan modification goals set out in its 2011 Business Plan (*see* below). However, to the extent that a servicer has not been placed on an account plan, it is unclear if Freddie Mac is assessing servicers' performance against their target, and if so, according to what standard.

<sup>24</sup> Freddie Mac Bulletin Number 2011-13, dated July 25, 2011.

Freddie Mac has historically rated mortgage servicer performance using a four-tier methodology: Tier 1 (Superior), Tier 2 (Good), Tier 3 (Below Standard), and Tier 4 (Unacceptable). According to its recent servicer performance profile record, Freddie Mac rated the overall performance of its [REDACTED] servicers as below standard or unacceptable between January 2009 and December 2010. FHFA has not taken specific actions to address the performance ratings of Freddie Mac's [REDACTED] servicers, but the Enterprise has addressed the servicers' performance shortcomings through account plans executed in March 2011. Account plans establish the specific actions to be taken by each servicer and the metrics used to assess success in accomplishing those actions.

While the distressed housing market undoubtedly influenced servicers' performance, documentation provided by Freddie Mac strongly suggests that weak servicer oversight and risk management played a significant role in the unsatisfactory performance. An FHFA review corroborates this conclusion. FHFA noted that numerous GSE executives have indicated that servicer performance would be much improved if the Enterprises were to take a more aggressive approach with respect to their servicers.

#### *Servicing Initiative to Minimize Credit Losses*

In January 2011, Freddie Mac implemented procedures to improve servicers' operational performance and compliance with the Enterprise's servicing guidelines. To that end, Freddie Mac developed a servicing Business Plan, and projected that the plan will achieve lifetime credit loss savings of up to [REDACTED] through foreclosure alternatives such as loan modifications and short sales by all of its servicers.

The Business Plan proposes to improve servicer performance and reduce credit losses by enhancing Freddie Mac's engagement with its largest servicers,<sup>25</sup> improving its internal operations, and promoting foreclosure alternatives. The latter objective – namely, encouraging expanded use of loan modifications and short sales – is expected to generate most of the credit loss savings. As of September 30, 2011, Freddie Mac suffered an average credit loss on each foreclosed loan of approximately 50% of the loan's UPB.<sup>26</sup> Thus, avoiding foreclosure through a

<sup>25</sup> Freddie Mac plans to provide its servicers with tactical action plans and tools designed to improve loss mitigation processes.

<sup>26</sup> The 50% average credit loss on a foreclosed loan (i.e., severity rate) represents the "all in" costs, which include the amount by which the UPB of the loans exceeds the amount of sales proceeds from disposition of the properties, as well as interest and capitalized expenses, and other expenses such as property maintenance costs and recoveries from credit enhancements such as mortgage insurance.

loan modification potentially can generate significant credit loss savings and the Business Plan projects [REDACTED] in credit savings through loan modifications alone.<sup>27</sup>

Freddie Mac estimates that credit losses on its nearly \$1.8 trillion portfolio will be [REDACTED] if no strategic changes are implemented. However, under the 2011 Business Plan, it projects that if its servicers can accomplish [REDACTED] loan modifications, then credit losses will decrease to [REDACTED]. Further, if its servicers can generate [REDACTED] additional loan modifications, then its credit losses will decrease to [REDACTED]. In other words, Freddie Mac estimates that [REDACTED] loan modifications undertaken by all of its loan servicers will generate savings of approximately [REDACTED]. Freddie Mac is in an excellent position to achieve that goal given that its servicers accomplished substantially more loan modifications last year.

To facilitate more loan modifications, Freddie Mac continues to place greater emphasis on all of its servicers increasing their loss mitigation efforts. For example, servicers' performance metrics for loss mitigation accounted for 50% in 2010 and only included one metric. In 2011, loss mitigation accounted for 60% and included multiple metrics.<sup>28</sup>

However, Freddie Mac has not implemented its Business Plan in its entirety, and FHFA-OIG believes that the Enterprise can enhance its results by implementing its loss mitigation goals among all – or at least a greater cross-section – of its servicers.

### **What Are Other Federal Regulators Doing to Oversee Servicing?**

Many mortgage servicers are banks that are overseen by federal banking regulators.<sup>29</sup> During the fourth quarter of 2010, the primary federal regulators (PFRs) of these banks – the Office of the Comptroller of the Currency (OCC), the Federal Reserve System (FRS), the Office of Thrift Supervision (OTS),<sup>30</sup> and the Federal Deposit Insurance Corporation (FDIC) – initiated an interagency review of foreclosure policies and procedures.<sup>31</sup> The PFRs conducted on-site reviews at 14 federally regulated mortgage servicers<sup>32</sup> and found that there were critical

<sup>27</sup> A short sale may involve a credit loss if the sales price is less than the UPB. Freddie Mac's projection of savings of as much as [REDACTED] also includes [REDACTED] of savings based upon expected improvement in its average loss rates on loans (the severity rate) through other foreclosure alternatives such as short sales.

<sup>28</sup> The only metric used in 2010 was "Workout to REO Ratio." In 2011, two metrics were added: "Early Collections Roll Rate" and "Late Collections Roll Rates."

<sup>29</sup> Some mortgage servicers are not subject to review by the primary federal regulators.

<sup>30</sup> On July 21, 2011, OTS was dissolved into the OCC.

<sup>31</sup> *Interagency Review of Foreclosure Policies and Practices* (April 2011), available at <http://www.occ.gov/news-issuances/news-releases/2011/nr-occ-2011-47a.pdf>.

<sup>32</sup> The PFRs conducted foreclosure-processing reviews at Ally Bank/ GMAC, Aurora Bank, Bank of America, Citigroup, EverBank, HSBC, JPMorgan Chase, MetLife, OneWest, PNC, Sovereign Bank, SunTrust, U.S. Bank, and Wells Fargo. Each of these servicers works for Freddie Mac, and 13 of them work for Fannie Mae as well.



weaknesses in the mortgage servicers' foreclosure governance processes, foreclosure document preparation processes, and oversight and monitoring of third-party vendors, including foreclosure attorneys. As a result of these deficiencies, the regulators took formal enforcement actions against each of the mortgage servicers. The enforcement actions required the servicers to improve their foreclosure processes. Further, the mortgage servicers have to conduct a more complete review of certain aspects of foreclosure actions that were pending between January 1, 2009, and December 31, 2010, to identify borrowers that were financially harmed by the deficiencies and to provide remediation to those borrowers where appropriate.

### **What Is FHFA Doing to Oversee Servicing?**

#### *FHFA's Statutory Responsibility for Overseeing the Enterprises*

FHFA is responsible for overseeing the prudential operations of the Enterprises and ensuring that they operate in a safe and sound manner, including maintaining adequate capital and internal controls.<sup>33</sup> FHFA uses a risk-based approach to ensure that the Enterprises operate in a safe and sound manner. Each year, FHFA prepares an annual supervisory plan to document:

- The specific areas that the Agency will focus on during the year; and
- The examination activities that will be conducted to ensure that the Enterprises operate in a safe and sound manner.<sup>34</sup>

FHFA developed a Supervision Handbook, a Supervisory Guide, and Reference and Procedures Manuals to describe its processes for supervising the Enterprises. The Supervision Handbook explains the philosophy and methods used by the Agency in carrying out its mission, and the Supervisory Guide provides a more detailed description of FHFA's examination process. The Reference and Procedures Manuals include general procedures for the examiners to follow to determine whether the Enterprises are providing appropriate oversight over third parties, such as mortgage servicers.

Additionally, the Enterprises are subject to regulations promulgated by FHFA and its predecessor agency, the Office of Federal Housing Enterprise Oversight (OFHEO). No existing regulations expressly govern counterparty contracting or third-party relationship risk

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<sup>33</sup> See 12 U.S.C. § 4513.

<sup>34</sup> For purposes of this report, the term "supervisory plan" includes the supervisory strategies, examination plans, and related documents that define the objectives, scope, and methodology for examination and monitoring activities to be performed by FHFA at an individual GSE.

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management, but in June 2011 FHFA issued a proposed rule outlining requirements for managing credit and counterparty – including servicers – risk.<sup>35</sup>

In September 2008, FHFA placed the Enterprises into conservatorships. As conservator, FHFA has the powers of the Enterprises' management, boards of directors, and shareholders. Although FHFA has very broad authority as conservator, FHFA does not manage every aspect of the Enterprises' operations. Rather, the Enterprises continue to operate as for-profit corporations, continue to make public filings with the Securities and Exchange Commission, and are responsible for their own day-to-day operations. When FHFA placed them into conservatorships, it replaced and reconstituted the Enterprises' boards of directors and charged them with ensuring that normal corporate governance practices and procedures were in place. The new boards are responsible for carrying out board functions, but they are subject to FHFA review and approval of particular matters.

#### *FHFA's Authority over Mortgage Servicers*

FHFA lacks express statutory authority to regulate directly the Enterprises' mortgage servicers. However, if a servicer is an "entity-affiliated party,"<sup>36</sup> the Agency can take enforcement action against it, if needed, to protect the interests of the Enterprises, as follows:<sup>37</sup>

If, in the opinion of the Director, a regulated entity or any entity-affiliated party is engaging or has engaged, or the Director has reasonable cause to believe that the regulated entity or any entity-affiliated party is about to engage in an unsafe or unsound practice in conducting the business of the regulated entity or the Office of Finance, or is violating or has violated, or the Director has reasonable cause to believe is about to violate, a law, rule, regulation, or order, or any condition imposed in writing by the Director in connection with the granting of any application or other request by the regulated entity or the Office of Finance or any written agreement entered into with the

<sup>35</sup> See 76 Fed. Reg. 35791 (June 20, 2011), available at <http://www.gpo.gov/fdsys/pkg/FR-2011-06-20/pdf/2011-15100.pdf>.

<sup>36</sup> The term "entity-affiliated party" is defined to include agents for the Enterprises as well as any person, as determined by the Director (by regulation or on a case-by-case basis) that participates in the conduct of affairs of a regulated entity. See 12 U.S.C. § 4502(11).

<sup>37</sup> Although FHFA does not have direct supervisory authority over the servicers, federal and state regulators have authority over some servicers. For example, the federal banking regulators, such as OCC, FRS, and FDIC, have explicit statutory authority over national banks, state member banks, and federally insured non-member state-chartered banks and savings banks, respectively, and these entities service the majority of loans in the Enterprises' portfolios.

Director, the Director may issue and serve upon the regulated entity or entity-affiliated party a notice of charges.<sup>38</sup>

*History of FHFA's Supervision of Mortgage Servicing*

FHFA is required by statute to establish for each regulated entity standards relating to the management of credit and counterparty risk, including systems to identify concentrations of credit risk and prudential limits to restrict exposure of the regulated entity to a single counterparty or group of related counterparties.<sup>39</sup> OFHEO took steps in that direction by instructing the Enterprises to establish and implement policies and procedures to assess and monitor credit risks.<sup>40</sup> But, as discussed in Finding 1 of this report, neither OFHEO nor FHFA has established sufficiently detailed regulations or guidance governing counterparty risk.

Instead, FHFA has relied on Fannie Mae and Freddie Mac to establish their own minimum servicing requirements, and the Agency has monitored the Enterprises' efforts. Beginning in 2008, FHFA monitored servicing through continuous supervision, which includes passive activities such as offsite reviews of Enterprise-prepared management or board reports and assessments of economic or industry trends and emerging issues. This is in contrast to a targeted examination or special project in which the regulator typically performs onsite examination procedures including verification and testing of data relating to areas of heightened risk. Since August 2010, FHFA has expanded its focus on mortgage servicing through special projects. Between August 2010 and early 2011, FHFA initiated four reviews that touched upon Freddie Mac's oversight and risk management of its servicers.<sup>41</sup> Later, in April 2011, FHFA initiated a continuous supervision activity of Freddie Mac's oversight of its servicers.

**Targeted Examinations**  
*are in-depth focused evaluations of a specific risk or risk management system*

**Continuous Supervision**  
*is a wide range of ongoing activities designed to monitor and analyze an Enterprise's overall business profile, including any trends or associated emerging risks*

**Special Projects**  
*are all other examinations or activities, with the exception of remediation*

<sup>38</sup> See 12 U.S.C. § 4631(a)(1).

<sup>39</sup> See 12 U.S.C. § 4513b(a)(9).

<sup>40</sup> The applicable requirements are set forth at 12 C.F.R. Part 1720 (Appendix A) and OFHEO Policy Guidance No. PG-00-001.

<sup>41</sup> The projects include: (1) a review of Freddie Mac's network of foreclosure attorneys; (2) a review of operational risk in the Home Affordable Modification Program; (3) a review of Freddie Mac's process for ensuring that servicers maintain proper insurance coverage; and (4) a review of whether the Enterprises assess penalties against servicers that fail to comply with foreclosure deadlines.

Furthermore, in response to the substantial increase in delinquent mortgages, FHFA has taken a number of actions. For example, FHFA worked with the Enterprises and Treasury to implement the Making Home Affordable programs, which were initiated to help millions of homeowners avoid foreclosure. Moreover, FHFA is involved in interagency initiatives intended to create a comprehensive set of uniform mortgage servicing standards. FHFA also directed the Enterprises to: (1) implement a four point policy framework for handling foreclosure process deficiencies; (2) align their guidelines for servicing delinquent mortgages; and (3) work on a joint initiative, in coordination with FHFA and the U.S. Department of Housing and Urban Development (HUD), to consider alternatives for future mortgage servicing compensation structures for single-family mortgage loans.

## FINDINGS

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FHFA-OIG finds that:

### **1. FHFA Needs to Strengthen Its Supervision of the Enterprises by Establishing a More Robust Counterparty Oversight and Risk Management Framework**

Although it has undertaken affirmative measures, FHFA has not developed sufficient regulations or guidance governing the Enterprises' oversight and risk management of counterparties, such as servicers. The Safety and Soundness Act generally requires FHFA to issue regulations, guidance, and orders that are necessary to carry out its safety and soundness mission.<sup>42</sup> In addition, the Safety and Soundness Act specifically requires that FHFA establish standards relating to the management of credit and counterparty risks.<sup>43</sup>

However, FHFA, unlike federal banking regulators, generally has not issued sufficient regulations or guidance governing the Enterprises' contracting with servicers. Specifically, FHFA has not established and implemented effective Enterprise regulations or guidance controlling:

- Reporting critical servicer information; and
- Establishing baseline requirements for mortgage servicing.

Instead, FHFA relies on the Enterprises individually to monitor counterparty risk as part of their ongoing risk management activities. And, similar to FHFA's reliance on Fannie Mae and Freddie Mac, the Enterprises routinely rely on mortgage servicers to manage the loans in their portfolios. Although reliance on servicers can assist the Enterprises to attain their strategic objectives, it can also present risks if not properly managed.

#### *Contracting with Servicers*

Federal banking regulators have established comprehensive regulations or guidance that provide a general framework for servicer oversight and risk management.<sup>44</sup> FHFA has not. FHFA

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<sup>42</sup> See 12 U.S.C. § 4526.

<sup>43</sup> See 12 U.S.C. § 4513b.

<sup>44</sup> See, e.g., OCC (OCC Bulletin 2001-47, *Third Party Relationships*) and the FDIC (Financial Institutions Letter-44-2008, *Guidance for Managing Third-Party Risk*).

should consider developing a comparable risk management framework to ensure that the Enterprises implement effective risk management strategies.

Additionally, FHFA's ability to supervise the Enterprises' servicer risk may be impaired by its lack of direct access to servicer books and records relating to the Enterprises' approximately \$4.5 trillion servicing portfolio.<sup>45</sup> Although FHFA does not have express statutory authority to regulate or supervise the servicers, there is no prohibition against the Agency securing such access through contract.<sup>46</sup> As of September 2011, the Enterprises' contract terms and conditions – which FHFA has effectively had the ability to control since it became conservator in September 2008 – did not provide FHFA with access to servicer information or with the ability to ensure that servicers are complying with their servicing contracts.

FHFA should have access to the books and records of the servicers who contract with the Enterprises for the following reasons:

- To Fulfill FHFA's Responsibility of Overseeing the Prudential Operations of the Enterprises. FHFA recognizes its responsibility to supervise the operations of the Enterprises, which rely on servicers to perform a variety of loan management functions. When the Enterprises turn to servicers to perform their responsibilities, the vendors' activities should be subject to the same risk management monitoring that FHFA would perform if the Enterprises were conducting the contracted activities themselves. In other words, the Enterprises' use of servicers to perform servicing functions on their behalf should not diminish the responsibility of FHFA to ensure that those servicing functions are conducted in a safe and sound manner and in compliance with applicable laws.
- To Support Enforcement Actions. FHFA has the authority to take enforcement actions against the Enterprises' mortgage servicers if it has reasonable cause to believe that a servicer is engaging/has engaged/is about to engage in an unsafe or unsound practice in conducting the business of the Enterprises or if a servicer is violating/has violated/is about to violate a law, rule, or regulation. However, FHFA's

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<sup>45</sup> As conservator of the Enterprises, FHFA – through the Enterprises – has access to the servicers' books and records since the Agency has the powers of Enterprise management. However, once the conservatorships are terminated such access through the Enterprises is not assured, and, yet, it is equally important for FHFA to have this access to servicer records in its supervisory/regulator capacity. Accordingly, FHFA needs to secure direct access through contract or other means during the pendency of the conservatorships.

<sup>46</sup> There is precedent for voluntary inclusion of access provisions for FHFA in the Enterprises' contracts with their vendors. The Enterprises have started incorporating an FHFA access provision in several of their REO contracts. Freddie Mac has not included such provision in any of its servicing contracts.

ability to implement this authority may be impaired without direct access to evidence of unsound practices or non-compliance with applicable standards.<sup>47</sup>

- To Fill Oversight Gaps Associated with Servicers' Activities. Not all servicers are financial institutions necessarily supervised by PFRs. Therefore, without oversight by FHFA, such servicers may be unsupervised.
- To Ensure Safety and Soundness of the Enterprises. Although the PFRs, such as the OCC, FRS, and FDIC, conduct examinations of institutions that service loans for the Enterprises, the objectives of the federal bank regulators' and FHFA's examinations will not always align. The PFRs primarily focus on the safety and soundness of financial institutions (*i.e.*, the servicers), whereas FHFA focuses on the safety and soundness of the Enterprises (and, in its conservator capacity, the preservation and conservation of their assets). For example, FHFA may be interested in acquiring information about servicer controls designed to ensure compliance with Enterprise servicing agreements, but other regulators may consider this area of inquiry to be irrelevant to the subject servicer's safety and soundness. Thus, inclusion of an FHFA access provision in the servicing contracts will strengthen FHFA's supervisory control over the Enterprises and lessen FHFA's reliance on the regulatory efforts of other agencies.

#### *Reporting Critical Servicer Information*

FHFA also has not issued regulations or guidance requiring the Enterprises to report critical servicer information to FHFA, but the issue is currently under consideration.

Given the Enterprises' significant concentration of risk among a few servicers, FHFA needs to receive timely and relevant information relating to the operation of these servicers. For example, if a servicer is suspended or terminated due to poor performance or noncompliance with guidelines by either Fannie Mae or Freddie Mac, the information should be promptly reported to FHFA. In turn, FHFA should evaluate the report and assess whether the servicer poses a safety and soundness concern and, if so, direct the other Enterprise to take appropriate action.

Reporting this critical information is crucial to FHFA's overall assessment of the Enterprises' risk profiles. As of September 2011, the Enterprises do not share with each other information about servicers even though Fannie Mae and Freddie Mac use more than 300 of the same servicers. Until FHFA requires the Enterprises to share performance and compliance data about

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<sup>47</sup> Although FHFA has authority to subpoena documents, it cannot subpoena servicers directly except in relation to an ongoing proceeding or investigation. *See* 12 U.S.C. § 4641.

their servicers, FHFA is at risk of not being timely informed of critical information that could impact the Enterprises' safety and soundness.

*Establishing Mortgage Servicing Baseline Requirements*

Unlike OCC and FDIC, FHFA has not implemented comprehensive regulations or guidance that ensure the Enterprises clearly understand the potential risks that can arise from relationships with their servicers and that they develop effective risk management strategies. Although FHFA's proposed rule outlining specific requirements for managing credit and counterparty risk is more specific than procedures previously issued by OFHEO and FHFA, it does not provide to the Enterprises comprehensive guidance concerning the monitoring of third parties. For example, even though there is a requirement in the proposed rule for the Enterprises to have appropriately trained and competent personnel to manage credit and counterparty risks, this requirement alone is not sufficient without a robust framework for managing third-party relationship risks. This framework should include a risk assessment to identify and prioritize counterparty risk; proper due diligence to identify and select third-party providers; written contracts that outline duties, obligations, and responsibilities of the parties involved; and ongoing oversight of the third parties and third-party activities. This type of guidance is provided by other federal regulators, such as the OCC and FDIC.<sup>48</sup>

FHFA has not developed comprehensive guidelines because it believes that the Enterprises have the knowledge and expertise to develop sufficient servicing guides. Thus, FHFA relies on them to establish their own minimum mortgage servicing requirements. In 2011, however, FHFA directed the Enterprises to establish requirements for servicing non-performing loans (also known as the Servicing Alignment Initiative). But, FHFA has not required the Enterprises to establish requirements for other aspects of servicing, such as servicing the larger subset of performing loans.<sup>49</sup>

Because the Enterprises have separately developed their own servicing guides, the Enterprises' servicing requirements significantly differ in a number of respects, such as servicing delinquent mortgages. FHFA's Servicing Alignment Initiative, which aspires to align the servicing of delinquent mortgages, is a step in the right direction, but FHFA should assume a more affirmative role in determining the substance of mortgage servicing standards across the board.

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<sup>48</sup> See, e.g., OCC (OCC Bulletin 2001-47, *Third Party Relationships*) and the FDIC (Financial Institutions Letter-44-2008, *Guidance for Managing Third-Party Risk*).

<sup>49</sup> Activities relating to servicing performing loans include collecting mortgage payments and processing late payments; sending periodic statements to borrowers; maintaining escrow accounts to pay property taxes and insurance; and forwarding payments to mortgage owners.



Relying so heavily upon the Enterprises undermines FHFA's responsibility to ensure their safety and soundness. Additionally, the problems associated with managing the Enterprises' huge loan portfolios are not limited to the servicing of delinquent mortgages.

The Servicing Alignment Initiative pertains solely to the servicing of delinquent mortgages, but FHFA's supervisory efforts would be simplified – and thus its results would likely improve – if the Enterprises' servicing standards were unified generally. According to the Acting Comptroller of the Currency's testimony before Congress, recent mortgage servicing experience highlights the need for uniform standards for mortgage servicing that applies to all facets of servicing loans from closing to payoff.<sup>50</sup> To further this effort, the OCC developed a framework for comprehensive mortgage servicing standards that was shared with the FDIC, FRS, the Bureau of Consumer Financial Protection, and FHFA. Given the Enterprises' expansive footprint in the housing finance system, FHFA should take a more proactive role alongside OCC in pursuing development of comprehensive uniform mortgage servicing standards.

## **2. Improvements Started in 2011 by Freddie Mac to Address Servicer Performance Should Be Followed Through**

To its credit, Freddie Mac developed a 2011 Business Plan to better manage higher-risk loans within its portfolio. The plan aspires to achieve lifetime credit loss savings of up to [REDACTED] (out of a combined goal of [REDACTED]) by having *all* servicers modify [REDACTED] mortgages in an effort to stem foreclosures.<sup>51</sup>

However, only the largest servicers responsible for the substantial majority – [REDACTED] – of Freddie Mac's loans (based upon UPB) have been targeted for full plan implementation, so far. The estimated net credit savings for the targeted largest servicers is about [REDACTED]; this is significantly lower than Freddie Mac's estimate of total credit loss savings. FHFA-OIG estimates that by implementing the plan among a larger group of servicers – those responsible for the remaining [REDACTED] of Freddie Mac's portfolio – the Enterprise may achieve additional lifetime credit loss savings. Because any additional credit loss savings may reduce the need for

<sup>50</sup> Testimony of John Walsh, OCC's Acting Comptroller, before the Committee on Banking, Housing, and Urban Affairs, U.S. Senate, dated February 17, 2011.

<sup>51</sup> Freddie Mac's [REDACTED] estimate is an "unaudited" figure and has not been verified by Freddie Mac auditors, FHFA, or FHFA-OIG. The figure represents estimated net credit loss savings as determined by Freddie Mac involving *all* of its servicers. The actual credit loss savings may vary from the projected savings since they are dependent on a number of variables/assumptions, which if not realized could impact the achievement of the anticipated benefits projected in its 2011 Business Plan.

Freddie Mac is well positioned to meet or exceed its loan modification targets for its largest servicers. As of September 30, 2011, the actual number of loan modifications completed by Freddie Mac's servicers was [REDACTED]. However, FHFA-OIG herein accepts Freddie Mac's goals without exhaustively analyzing their development and validity. FHFA-OIG reserves the right to review the development and validity of the goals in a subsequent review.

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as much financial support from Treasury, reductions in that support through additional credit loss savings is considered a potential monetary benefit to the United States government.

Each servicer who does business with Freddie Mac agrees to the terms of the Single-Family Seller/Servicer Guide, which contains Freddie Mac's selling and servicing requirements.<sup>52</sup> For the [REDACTED] largest servicers who currently service [REDACTED] of its portfolio, Freddie Mac now uses account plans. A goal of the Freddie Mac Business Plan is to have account plans in place for an additional [REDACTED] servicers, the next largest servicers, who manage an additional [REDACTED] of the loan portfolio. However, without account plans, credit loss minimization activities for these [REDACTED] servicers are largely unstructured and informal and may not achieve optimum results. Further, Freddie Mac has more than [REDACTED] smaller servicers that manage the remaining [REDACTED] of its loan portfolio, and the Enterprise does not currently anticipate assigning account plans to these servicers. Although specific account plans for these smaller servicers may not be practical, establishment and communication of performance goals or metrics to increase foreclosure alternative activities together with related performance reporting could augment savings from reduced credit losses.

To maximize the credit loss savings, FHFA should require Freddie Mac to implement its Business Plan for all of its servicers by:

- Requiring Freddie Mac to establish servicer account plans for the [REDACTED] next-largest servicers that do not have active account plans; and
- Taking steps, to the extent practicable, to maximize the credit loss savings for the more than [REDACTED] smaller servicers not under consideration for account plans.

### **3. FHFA's Examination Coverage of Freddie Mac's Oversight and Risk Management of Counterparties Needs Improvement**

FHFA needs to improve its supervision of Freddie Mac's oversight and risk management of its servicers. As early as 2008, FHFA had information indicating that mortgage servicing represented a heightened risk to the Enterprises, but it did not take timely or appropriate action to address these indicators. Further, when FHFA commenced its examination coverage beginning in 2010, it did not adequately assess the operational risks posed by Freddie Mac's mortgage servicing contractors, and it did not consider reports of examination, enforcement actions, and servicer reviews conducted by other Federal agencies.

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<sup>52</sup> Available at <http://www.freddiemac.com/sell/guide>.

*FHFA's Delayed Examination Activities*

Although FHFA monitored performance of servicers in 2008 and 2009 through continuous supervision activities, FHFA did not devote added attention to the issue, by initiating special projects, until August 2010.

FHFA officials explained that it did not focus examination attention on mortgage servicing prior to 2010 because the Agency faced a number of challenges that led it to focus on other priorities. FHFA focused on the Making Home Affordable programs throughout 2009, and its Division of Enterprise Regulation (DER) staff devoted complementary examination resources to other, high-risk credit issues related to bond guarantees and mortgage insurance. But from 2008 onwards, FHFA was aware of indicators suggesting that mortgage servicing represented an escalating risk to the Enterprises.<sup>53</sup> These indicators included:

- Substantial Increase in Delinquency Rates. Through its off-site monitoring activities, FHFA noted a substantial increase in the number of the Enterprises' delinquent loans starting in 2008.
- Mortgage Servicers' Performance. Through the Office of Credit Risk's (OCR) continuous supervision of Freddie Mac's single-family business line, FHFA became aware of servicers' poor performance as early as the first quarter of 2009. Later, in the fourth quarter of 2009, OCR drafted an analysis memorandum – reflecting the results of its continuous supervision – stating that the majority of Freddie Mac's servicers (including its [REDACTED] servicers) were performing below expectations.
- Weak Counterparty Risk Management. During OCR's continuous supervision of Freddie Mac's single-family business line, FHFA also determined that counterparty risk management at the Enterprise was weak. Examples of weaknesses noted include: (a) staff with weak analytical skills; (b) counterparty analysis without benchmarking; (c) inaccurate exposure calculations used to determine compliance with counterparty limits; and (d) lack of many basic analyses to support critical decisions. FHFA noted the need to strengthen Freddie Mac's organization structure of counterparty credit risk and overall counterparty credit risk management function to ensure early identification of troubled counterparties and articulation of robust action plans. In Freddie Mac's 2009 Report of Examination, FHFA reported that:

Enterprise management continues to struggle with assigning accountability and developing an organizational structure that

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<sup>53</sup> FHFA-OIG recognizes that FHFA has a finite staff and has to make judgments about priorities. Nonetheless, FHFA-OIG could not assess the basis for FHFA's decision to defer more focused examinations/special projects of mortgage servicing because the Agency did not document its decision-making process.

facilitates the effective execution of defined roles and responsibilities of the chief enterprise risk officer.... During 2009, the Board acted on a FHFA recommendation and authorized the creation of a new chief credit officer....<sup>54</sup>

Audit reports issued by Freddie Mac's Internal Audit Department and submitted to FHFA corroborated that there were weaknesses in Freddie Mac's oversight of its counterparties. For example, the Internal Audit Department completed a review of the management of troubled counterparties in response to the Taylor, Bean & Whitaker Mortgage Corp. (TBW) fraud case.<sup>55</sup> In its report, dated May 2010, the Internal Audit Department stated that Freddie Mac needs to:

- Develop and document a more robust comprehensive framework to identify troubled servicers;
- Establish a separate governance and oversight process for troubled counterparties;
- Improve procedures to terminate troubled servicers; and
- Strengthen controls and management over all counterparties.

In sum, FHFA could have done more in response to the foregoing indicators of heightened risk.

#### *FHFA's Assessment of Freddie Mac's Third-Party Risk*

##### **Internal Reviews**

When FHFA began to devote more resources to servicing in 2010, it did not adequately assess the risk that servicers pose to Freddie Mac. From January 2010 to May 2011, FHFA initiated five reviews (four special projects and one continuous supervision project) that are directly related to the operational aspects of servicing, as follows:

- In August 2010, FHFA initiated a special project to determine if the Enterprises were assessing penalties against servicers that did not comply with foreclosure timelines;
- In April 2011, FHFA started a continuous supervision activity to review Freddie Mac's oversight of its servicers; and

<sup>54</sup> This issue was also discussed in FHFA's 2009 Report to Congress.

<sup>55</sup> The TBW case is among the largest mortgage fraud cases in American history. Freddie Mac reported losses and filed a proof of claim of nearly \$1.8 billion in TBW's bankruptcy proceeding.

- In late 2010/early 2011, FHFA initiated three other activities to review Freddie Mac's oversight of its servicers.<sup>56</sup>

Based upon FHFA-OIG's analysis of these five reviews, we concluded that the reviews did not provide a comprehensive and meaningful assessment of the potential risks that could arise from the use of servicers. Further, FHFA-OIG determined that FHFA's procedures were not designed to address Freddie Mac's processes and controls for overseeing, managing, and controlling third-party relationships. Additionally, Agency examiners did not implement the examination procedures outlined in FHFA's Third Party Relationship Management and Reference Procedures Manual.

### External Reviews

FHFA also did not consider and use critical financial and non-financial information received from other PFRs when assessing the overall risk profiles of the Enterprises. For example, FHFA did not consider reports of examination and enforcement actions taken against servicers (many of whom service loans for Freddie Mac) by the PFRs, or servicing reviews completed by other federal agencies, as follows:

- Reports of Examination and Enforcement Actions. FHFA has not been proactive in reviewing reports of examination completed by the PFRs or enforcement actions taken by them. Although FHFA has established Memoranda of Understanding (MOUs) with OCC, FDIC, FRS, and OTS that allow them to share reports of examinations and enforcement actions with FHFA, the Agency has not utilized the MOUs in furtherance of its supervisory responsibilities. Indeed, FHFA's senior DER officials advised that they were unaware of the Agency's MOUs with the various federal agencies, except for the MOU with OCC. Thus, they were not aware that external examination reports were available to them. By reviewing these reports, FHFA can identify which financial institutions are performing poorly and pose a risk to the Enterprises.

FHFA also does not coordinate with the PFRs to ensure that financial institutions address the servicing deficiencies cited in external enforcement actions. For example, OCC, FRS, OTS, and FDIC recently issued enforcement actions against 14 federally regulated servicers as a result of their interagency review of foreclosure policies and practices. Although all of the servicers work for Freddie Mac (13 of the 14 also work

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<sup>56</sup> These three activities include: (1) a special project reviewing Freddie Mac's retained attorney network (initiated in October 2010); (2) a special project identifying and evaluating operational risk in the Home Affordable Modification Program (initiated in November 2010); and (3) a special project reviewing Freddie Mac's process for ensuring that servicers maintain proper insurance coverage (initiated April 2011).

for Fannie Mae), FHFA had no plans to play a role in ensuring that the servicers comply with the enforcement actions. According to an FHFA official, because FHFA does not regulate the servicers, the Agency is not responsible for ensuring that the servicers develop sufficient corrective action plans to address the servicing deficiencies cited in the enforcement actions. Given the concentration of risk exposure with these servicers, FHFA should be more involved in ensuring that the servicers correct the deficiencies cited in the enforcement actions.

- Servicing Reviews Performed by Other Federal Agencies. FHFA has not researched or monitored relevant servicing reviews completed by other federal agencies. Although FHFA established MOUs with the Farm Credit Administration, Securities and Exchange Commission, and HUD to facilitate the sharing of information, FHFA has not utilized the MOUs to obtain these agencies' servicing reviews of servicers working for the Enterprises.

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## CONCLUSION

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Mortgage servicing is a critical element of the Enterprises' business operations. Recently, various factors, including the surge in delinquencies and foreclosures in the Enterprises' loan portfolios and the concentration of servicing responsibilities among a few large financial institutions, have converged to raise significant supervisory concerns. To address these concerns, FHFA needs to enhance regulations or guidance regarding counterparty oversight and risk management and to implement more effective monitoring of Freddie Mac's oversight of its mortgage servicers. Although FHFA and Freddie Mac have taken several positive steps to strengthen mortgage servicing, FHFA needs to improve its supervision of Freddie Mac's servicing operations so that risks associated with the servicers' operational activities are sufficiently mitigated and addressed.

Further, Freddie Mac developed a 2011 Business Plan to, among other things, improve mortgage servicing. The plan estimated approximately [REDACTED] in lifetime credit loss savings by reducing potential credit-related losses through more active servicing. However, Freddie Mac did not fully implement its plan. FHFA is in a position to cause Freddie Mac to achieve additional credit loss savings by implementing its plan among a larger cross-section of its servicer network.

## RECOMMENDATIONS

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FHFA-OIG recommends that DER:

1. Establish and implement more robust regulations or guidance governing counterparty oversight and risk management for mortgage servicing. The regulations or guidance should include requirements for: (a) contracting with servicers, including a contractual provision authorizing FHFA's access to relevant servicer information; (b) promptly reporting on material poor performance and non-compliance by servicers; and (c) minimum, uniform standards for servicing mortgages owned or guaranteed by the Enterprises.
2. Direct Freddie Mac to take the necessary steps to monitor and track the performance of its servicers to reasonably assure achievement of credit loss savings by:  
(a) implementing servicer account plans for the servicers without account plans that are under consideration to receive a plan; and (b) taking action to maximize credit loss savings among the remaining servicers that are not under consideration for account plans.
3. Improve its existing procedures and controls governing coordination with other federal agencies that have oversight jurisdiction with respect to the Enterprises' mortgage servicers.



## SCOPE AND METHODOLOGY

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The objective of this performance audit was to assess whether FHFA has an effective supervisory control structure and sufficient examination coverage and oversight activities to adequately and timely identify and mitigate risks related to Freddie Mac's mortgage servicing contractors. The audit scope was from January 1, 2010, through May 31, 2011, and was expanded as necessary. FHFA-OIG also reviewed relevant data for the period July 2008 to December 2009 to obtain a historical perspective. While FHFA-OIG focused on FHFA's supervision of Freddie Mac, FHFA-OIG also performed a limited review of Fannie Mae's servicing oversight.

Audit field work was performed from June 2011 through July 2011. The audit was conducted at FHFA's three offices located in Washington, DC. Computer processed data were used for background purposes only and not to support audit conclusions. To achieve its objective, FHFA-OIG conducted the following:

- Reviewed the supervisory controls established by FHFA including guidance and direction to the Enterprises and examination policies and procedures related to mortgage servicing;
- Evaluated Freddie Mac's policies and procedures related to oversight of mortgage servicers;
- Assessed the quality of FHFA's annual and quarterly risk assessment processes;
- Reviewed steps taken by FHFA to mitigate concentration risks among the top four servicers and other risks associated with servicers that had heightened supervisory concerns; and
- Interviewed FHFA and Freddie Mac officials on their views and the extent and level of oversight provided over mortgage servicing contractors.

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

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

Internal controls relate to management's plans, methods, and procedures used to meet its mission, goals, and objectives, and include the processes and procedures for planning, organizing, directing, and controlling program operations as well as the systems for measuring, reporting, and monitoring program performance. Based on the work completed on this performance audit, FHFA-OIG considers weaknesses in FHFA's supervision of Freddie Mac's risk management and oversight of mortgage servicing contractors to be a significant deficiency within the context of the audit objective. Additionally, FHFA-OIG identified other less significant matters that came to its attention during the audit. These matters were communicated separately in writing to FHFA in an audit memorandum.

FHFA-OIG conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that audits be planned and performed to obtain sufficient, appropriate evidence to provide a reasonable basis for FHFA-OIG's findings and conclusion based on the audit objective. FHFA-OIG believes that the evidence obtained provides a reasonable basis for the findings and conclusion included herein, based on the audit objective.

## APPENDIX A


### *FHFA's Comments on Findings and Recommendations*



## Federal Housing Finance Agency

### MEMORANDUM

TO: Russell Rau  
Deputy Inspector General for Audits

FROM: Jon Greenlee   
Deputy Director  
Division of Enterprise Regulation

SUBJECT: Inspector General Report on FHFA's Supervision of Freddie Mac's Controls over Mortgage Servicing Contractors, AUD-2011-006

DATE: February 29, 2012

The purpose of this memorandum is to provide you with FHFA's response to your recommendations outlined in the Inspector General Report on FHFA's Supervision of Freddie Mac's Controls over Mortgage Servicing Contractors. FHFA appreciates the opportunity to provide its response and values the feedback the Agency receives from the Inspector General and opportunities to enhance our operations. FHFA agrees that mortgage servicing is a critical area and we have made mortgage servicing a top priority of the agency. FHFA has taken a number of steps both through supervision of the Enterprises and by establishing policies to improve industry practices. Most importantly, FHFA's Servicing Alignment Initiative (SAI) has established an unprecedented level of consistency in mortgage servicing processes at both Enterprises and requires more aggressive foreclosure prevention activities on the part of servicers, a set of policy changes that positively affects homeowners and serves as a model for the broader financial services industry.

FHFA's supervision of Freddie Mac has been proactive and continues to evolve as issues in the housing market continue to develop. For example, the Agency conducted special reviews and targeted exams in this area, and engaged in broad servicing policy work and Interagency discussions related to servicer issues and oversight. In addition, the Agency is expanding the dedicated team of examiners that are onsite at the Enterprises. The team will have experienced staff that will, among other activities, monitor counterparty risk management at both Enterprises and provide for a focused, ongoing understanding of current and emerging risks and the effectiveness of risk management practices. Although FHFA has historically had a clear understanding of the counterparty risk at both Enterprises, FHFA recognized that a dedicated examination staff to monitor and coordinate oversight activities would enhance the Agency's overall efficiency and effectiveness. This enhancement in supervisory approach will also provide third party reviewers such as the OIG with a clearer understanding of how FHFA coordinates supervisory activities in this and other important areas of the Enterprises.

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FHFA's response to the OIG recommendations follows:

Recommendation 1: Establish and implement more robust regulations or guidance governing counterparty oversight and risk management for mortgage servicing. The regulations or guidance should include requirements for: (a) contracting with servicers, including a contractual provision authorizing FHFA's access to relevant servicer information; (b) promptly reporting on material poor performance and non-compliance by servicers; (c) minimum, uniform standards for servicing mortgages owned or guaranteed by the Enterprises.

Management Response:

The report outlines three areas that FHFA needs to address to strengthen its supervision of the Enterprises' counterparty risk management. The three areas – contracting with counterparties, reporting critical servicer information, and establish mortgage servicing baseline requirements – are addressed separately below.

1(a) Regulations or guidance on contracting with servicers, including a contractual provision authorizing FHFA's access to relevant servicer information.

FHFA partially agrees with this recommendation. FHFA will evaluate the merits of seeking a legislative change to provide the Agency with the same legal examination authority and rights as the federal banking agencies have with respect to entity affiliated parties. In the meantime, FHFA will take additional steps, when the Enterprises contracts allow for FHFA reviews of third parties, focusing on those key servicers that have not been subject to supervision by a primary federal regulator (PFR). In addition, FHFA will continue to conduct reviews of third parties when appropriate. For example, FHFA is in the process of conducting a review of a key third party provider for one of the Enterprises. FHFA will address the components of this recommendation over the next year and will have a final status update by January 31, 2013.

1(b) Regulations or guidance on promptly reporting on material poor performance and non-compliance by servicers.

FHFA agrees with this recommendation and will establish a framework for sharing critical information reported by one Enterprise with the other to ensure appropriate action is taken. The framework must consider various requirements such as compliance with laws and regulations, consistency with risk based supervision, effectiveness of the Enterprises risk management processes, and operational considerations. The analysis and the establishment of a new policy will be completed by September 30, 2012.

1(c) Regulations or guidance on minimum uniform standards for servicing mortgages owned or guaranteed by the Enterprises.

FHFA agrees with the recommendation that the Agency continues to be proactive and maintains its leadership role in pursuing more uniform mortgage servicing standards, and will develop a status report on on-going initiatives by September 30, 2012, with a final

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status update by January 31, 2013. As the report notes, FHFA issued a supervisory directive in February 2011 requiring the Enterprises to align their guidelines for servicing delinquent mortgages. FHFA's Servicing Alignment Initiative (SAI) established an unprecedented level of consistency in mortgage servicing processes that requires enhanced foreclosure prevention that would not have been achieved through the issuance of a supervisory policy. In addition, the Agency has been actively providing guidance to the Enterprises through not only the SAI, but through examinations, conservatorship operations, and policy initiatives such as penalty assessment, HAMP, HARP, and servicer compensation.

Recommendation 2: Direct Freddie Mac to take the necessary steps to monitor and track the performance of its servicers to reasonably assure achievement of credit loss savings by: (a) implementing servicer account plans for the servicers without account plans that are under consideration to receive a plan; and (b) taking action to maximize the credit loss savings among the remaining servicers that are not under consideration for account plans.

Management Response:

FHFA agrees with this recommendation. FHFA, through its supervisory and policy making processes, has clearly outlined the Agency's expectations that Freddie Mac take appropriate steps to maximize credit loss savings in a cost effective and prudent manner. Since 2009, FHFA has been engaged with both Enterprises focusing on improving servicing performance, both through the supervision process and by proactively providing servicing standards and related servicing performance guidance to the Enterprise. These efforts have already resulted in a more effective process for overseeing servicer performance, which includes the establishment of scorecards, standards, and key performance indicators that support reasonable achievement of estimated credit loss savings.

As noted above, FHFA has made clear its expectations that Freddie Mac maximize its credit loss savings in a cost effective and prudent manner.

2(a) The establishment of detailed account servicer plans for the servicers without account plans that are under consideration to receive a plan.

Through its ongoing supervisory process, FHFA will continue to make Freddie Mac's oversight of servicers a key priority to determine if risks are being properly managed and that credit loss savings are reasonable achieved, including whether account servicer plans for these servicers is appropriate and cost effective. This will be an ongoing effort of FHFA that will be completed by January 31, 2013.

2(b) Taking action to maximize the credit loss savings among the remaining servicers that are not under consideration for account plans.

As noted above, FHFA has and will continue to make this a top priority throughout 2012. Our supervisory process during 2012 will monitor and assess the Enterprise's processes

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and effectiveness to assure that credit loss savings are reasonably achieved that will be completed by January 31, 2013.

Recommendation 3: Improve its existing procedures and controls governing coordination with other federal agencies that have oversight jurisdiction with respect to the Enterprises' mortgage servicers.

Management Response:

FHFA agrees to this recommendation and will take additional steps to improve the flow of information as appropriate to support FHFA's supervision of the Enterprises. Going forward, FHFA will evaluate in its supervision of the Enterprises, findings outlined in reports of examination and enforcement actions taken against servicers by the PFRs, or servicing reviews completed by other federal agencies. Furthermore, the report outlines the need for increased awareness among senior staff of the Agency of the existing Memoranda of Understanding (MOUs) with the OCC, FDIC, Federal Reserve, and OTS that allow for examination and enforcement action information to be shared with FHFA. FHFA is an active participant in Interagency discussions and has a sound understanding of the issues at the servicers supervised by the PFRs, but will evaluate how to best establish a framework for obtaining reports of examination and enforcement actions under the existing MOUs with the PFRs, FCA, SEC, and HUD. To improve the flow of information, FHFA will develop and internally distribute a consolidated framework of coordination mechanisms and capabilities available to the agency by September 30, 2012.

## APPENDIX B

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### *FHFA-OIG's Response to FHFA's Comments*

On December 20, 2011, FHFA-OIG provided a draft of this report to FHFA for comment. FHFA-OIG received a written response, dated February 29, 2012. FHFA-OIG has attached FHFA's full response (*see* Appendix A of this report), which was considered where appropriate in finalizing this report. Appendix C provides a summary of the Agency's response to FHFA-OIG's recommendations and the status of agreed-to corrective actions.

FHFA fully agreed with the recommendations, except for Part (a) of Recommendation 1. Additionally, although the Agency agreed with Part (c) of Recommendation 1, FHFA-OIG considers FHFA's planned corrective actions nonresponsive and, accordingly, Parts (a) and (c) of Recommendation 1 are considered unresolved.

Below, FHFA-OIG summarizes its evaluation of FHFA's comments on Parts (a) and (c) of Recommendation 1.

#### **Recommendation 1(a)**

FHFA partially agreed with Part (a) of Recommendation 1. FHFA stated that it will evaluate the merits of seeking a legislative change to give it the same legal examination authority and rights as PFRs with respect to servicers. In the interim, FHFA indicated it will focus on servicers that are not supervised by a PFR if the Enterprises' contracts allow FHFA to review third-parties.

Oversight of servicers that are not otherwise regulated at the federal level is an important step. While seeking a legislative change can give FHFA specific statutory access authority to servicers, FHFA-OIG has found no prohibition against securing FHFA access to servicers for purposes of fulfilling its Enterprise regulatory and supervisory responsibilities through servicing contracts. In particular, as conservator, FHFA can direct the Enterprises to obtain such access. Accordingly, pending legislative changes, FHFA should require that an access provision be included in the Enterprises' servicing contracts.

During the exit conference, FHFA also expressed concern that having access to servicers may intrude on other PFRs' authority. However, the intent of FHFA-OIG's recommendation was that FHFA, like the Enterprises, requires access rights to servicers' books and records in order to fulfill its mission of ensuring the safety and soundness of the Enterprises. This differs in important respects (such as potentially competing financial interests) from the role of the PFRs related to financial institutions that happen also to be servicers for the Enterprises.

FHFA-OIG also noted that FHFA's comments did not address Part (a) of Recommendation 1 related to establishing guidance or regulations for contracting with servicers.

**Recommendation 1(c)**

Also, although FHFA agreed with Part (c) of Recommendation 1, the Agency's description of the planned actions does not clearly address the recommendation's intent. FHFA indicated that it will be proactive and maintain a leadership role in pursuing more uniform mortgage servicing standards. In addition, FHFA stated that it will develop a status report for ongoing initiatives by September 30, 2012, with a final status update by January 31, 2013. FHFA also noted actions to implement the Servicing Alignment Initiative, which provides consistent requirements for servicing non-performing loans. While commendable, FHFA's response did not provide specific action plans for implementing uniform standards for the Enterprises' servicers on other aspects of servicing as FHFA-OIG recommended.

Consequently, FHFA-OIG considers FHFA's comments to Parts (a) and (c) of Recommendation 1 to be nonresponsive and the recommendations unresolved, and requests the Agency reconsider its position and provide revised comments within 30 calendar days.

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## APPENDIX C

### *Summary of Management's Comments on the Recommendations*

This table presents management's response to the recommendations in FHFA-OIG's report and the status of the recommendations as of the date of report issuance.

<i>Rec. No.</i>	<i>Corrective Action: Taken or Planned</i>	<i>Expected Completion Date</i>	<i>Monetary Benefits (\$ Millions)</i>	<i>Resolved: " Yes or No</i>	<i>Open or Closed<sup>b</sup></i>
1.	a. FHFA will evaluate the merits of seeking a legislative change to provide it with the same legal examination authority and rights as the PFRs. While evaluating the merits, FHFA will take steps to focus on the servicers that are not under the supervision of a PFR provided that the Enterprises' contracts allow FHFA to review third-parties.	a. 1/31/13	\$0	No	Open
	b. FHFA will establish a framework for sharing critical information reported by one Enterprise with the other Enterprise and ensure appropriate action is taken.	b. 9/30/12		Yes	Open
	c. FHFA will maintain a leadership role in pursuing more uniform servicing standards and develop a status report of on-going initiatives by 9/30/12, with a final status update by 1/31/13.	c. 1/31/13		No	Open
2.	FHFA will make Freddie Mac's oversight of servicers a key priority to determine if risks are being managed properly and ensure that credit loss savings are	1/31/13	To be determined through further monitoring. <sup>57</sup>	Yes	Open

<sup>57</sup> Recommendations that funds be put to better use are estimates of amounts that could be used more efficiently if an FHFA-OIG recommendation is implemented. These amounts include reductions in outlays, deobligation of funds, withdrawal of interest, costs not incurred by implementing recommended improvements, avoidance of unnecessary expenditures noted in preaward reviews, and any other savings that are specifically identified. In these

	reasonably achieved, to include determining whether it is appropriate and cost effective for the Enterprise to develop account plans for the servicers that currently do not have account plans.				
<b>3.</b>	<b>FHFA will establish a framework for obtaining reports of examination and enforcement actions from the PFRs and other federal agencies and evaluate the findings outlined in their reports and enforcement actions as part of its supervision of the Enterprises.</b>	<b>9/30/12</b>	<b>\$0</b>	<b>Yes</b>	<b>Open</b>
<b>Total</b>			<b>To be determined through further monitoring.</b>		

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

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

instances, if FHFA implements an FHFA-OIG recommendation, Freddie Mac will reduce its credit losses associated with mortgage servicing by its servicers. FHFA-OIG will monitor achievement of credit loss savings through its audit follow-up process.

## **ADDITIONAL INFORMATION AND COPIES**

For additional copies of this report:

- Call the Office of Inspector General (OIG) at: 202-730-0880
- Fax your request to: 202-318-0239
- Visit the OIG website at: [www.fhfaoig.gov](http://www.fhfaoig.gov)

To report alleged fraud, waste, abuse, mismanagement, or any other kind of criminal or noncriminal misconduct relative to FHFA's programs or operations:

- Call our Hotline at: 1-800-793-7724
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- E-mail us at: [oighotline@fhfaoig.gov](mailto:oighotline@fhfaoig.gov)
- Write to us at: FHFA Office of Inspector General  
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400 7<sup>th</sup> Street, SW  
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