REDACTED

Federal Housing Finance Agency
Office of Inspector General

Administrative Investigation into Anonymous Hotline Complaints Concerning Timeliness and Completeness of Disclosures Regarding a Potential Conflict of Interest by a Senior Executive Officer of an Enterprise

This report was originally identified as OIG-2017-003.
It has subsequently been updated to OIG-2017-004.

This report contains redactions of information that is protected under the Privacy Act of 1974 (Pub.L. 93-579, 88 Stat. 1896, enacted December 31, 1974, 5 U.S.C. § 552a.

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OFFICE OF INSPECTOR GENERAL

Federal Housing Finance Agency

400 7th Street SW, Washington, DC 20219

March 23, 2017

TO: Melvin L. Watt, Director

FROM: Laura S. Wertheimer, Inspector General

SUBJECT: **Administrative Investigation into Anonymous Hotline Complaints Concerning Timeliness and Completeness of Disclosures Regarding a Potential Conflict of Interest by a Senior Executive Officer of an Enterprise (OIG-2017-003)**

The Federal Housing Finance Agency (FHFA) Office of Inspector General (OIG) received anonymous hotline complaints concerning the timeliness and completeness of disclosures made by (b)(6) Fannie Mae (b)(6) regarding (b)(6) (b)(6) (b)(6) During the time period relevant to the complaints, (b)(6) with which Fannie Mae conducts billions of dollars of business. Generally, the complaints alleged that (b)(6) did not follow Fannie Mae's codes of conduct and conflict of interest policies and procedures when (b)(6) did not disclose the potential conflict of interest arising from (b)(6) until many months after the potential conflict arose.

OIG conducted an administrative investigation into these allegations during which we reviewed Fannie Mae Governance Authorities (relevant Fannie Mae Bylaws, corporate governance guidelines, board committee charters, codes of conduct, policies, and procedures pertaining to conflict of interest (COI) matters), and Fannie Mae and (b)(6) documents. We interviewed witnesses, including (b)(6) and (b)(6) the Fannie Mae Board of Directors and the Board's Nominating and Corporate Governance Committee. All of these witnesses were represented by counsel.

We retained Nell Minow, a nationally-recognized expert in the field of corporate governance, to address the relevant governance questions raised in the hotline complaints. At our request, Ms. Minow analyzed the information we collected. She determined that (b)(6) did not satisfy (b)(6) obligations—as either an employee or a director—under the Fannie Mae Governance

Authorities when (b)(6) did not promptly disclose (b)(6) (b)(6) potential conflict of interest. Ms. Minow opined that a reasonably prudent director (b)(6) in like position and under similar circumstances and similar authorities, would have disclosed (b)(6) (b)(6). Ms. Minow's expert opinion is attached to this Management Alert.

We are not releasing this Management Alert publicly because it contains information protected by the Privacy Act. A summary page reporting only that we have investigated a conflict of interest issue, to comply with the restrictions in the Privacy Act, will be posted on our website. We are providing a copy of this Management Alert to you and our Congressional oversight committees.

In an upcoming evaluation, we assess whether the Nominating and Corporate Governance Committee (NGC) of the Fannie Mae Board of Directors (Board) fulfilled its responsibilities under its charter and the Fannie Mae Governance Authorities with respect to resolving conflicts of interest for Fannie Mae (b)(6)

SUMMARY OF FINDINGS

We made the following findings based on information compiled during our administrative investigation and Nell Minow's opinion:

- According to Fannie Mae Governance Authorities, Fannie Mae directors and employees must comport themselves with the highest ethical standards in everything they do.

- The Fannie Mae Code of Conduct and Conflict of Interest Policy for Members of the Board of Directors (Director Code), Fannie Mae's Code of Conduct for Employees (Employee Code) and the Conflict of Interest Policy (COI Policy) each recognize that (b)(6) can give rise to potential, apparent, or actual conflicts of interest. All three require prompt disclosure of circumstances (Director Code), situations (COI Policy), and activities (Employee Code and COI Policy) that may have conflict of interest implications.

- As a director of Fannie Mae (b)(6) (b)(6) (b)(6) of these authorities—the Director and Employee Codes and the COI Policy.

- (b)(6) breached (b)(6) duties under the Director and Employee Codes of Conduct in (b)(6) when (b)(6) determined not to disclose to the NGC and to Fannie Mae's Office of Compliance and Ethics (known within Fannie Mae and in this Management Alert as "FM Ethics") (b)(6)

(b)(6) as a situation giving rise to a potential conflict of interest.

- At that time, (b)(6) Fannie Mae counterparty: for the 12 months prior to (b)(6) serviced between (b)(4) and (b)(4) (b)(4) in single-family mortgage loans on behalf of Fannie Mae and sold to Fannie Mae (b)(4) in single-family mortgages.

- Although the NGC Charter vests sole authority in the NGC to interpret Fannie Mae's COI Policy and COI Procedure in instances where the interpretation relates to (b)(6) unilaterally determined that (b)(6) did not need to disclose (b)(6) at that time after (b)(6) "carefully considered" the conflict of interest implications of it. Nothing in the Fannie Mae Governance Authorities authorized (b)(6) to determine unilaterally that (b)(6) (b)(6) could not give rise to a potential conflict of interest and relieve (b)(6) of (b)(6) responsibility to disclose it.

- (b)(6) breached (b)(6) duties to Fannie Mae for a second time in (b)(6) when (b)(6) made the affirmative decision not to disclose (b)(6) (b)(6) in response to a direct question contained in Fannie Mae's annual Conflict of Interest Questionnaire (COI Questionnaire). (b)(6) acknowledged to us that (b)(6) was aware (b)(6) (b)(6) had conflict of interest implications. However, in response to the question in the COI Questionnaire, "[a]re you aware of any issue or potential conflict of interest involving yourself or a family member that could potentially cause negative publicity to Fannie Mae that has not been previously disclosed to FM Ethics?," (b)(6) (b)(6) answered, "No." (b)(6) knew, or should have known, that (b)(6) (b)(6) qualified as an "issue or potential conflict of interest . . . that could potentially cause negative publicity" and knew (b)(6) had not disclosed it, either to FM Ethics or to the NGC.

- Instead of reporting (b)(6) to the NGC in (b)(6) as (b)(6) was required to do by the Director Code, (b)(6) asked (b)(6) (b)(6) FM Ethics and (b)(6) — (b)(6) (b)(6), whether (b)(6) was permitted to (b)(6) (b)(6) (b)(6) told us (b)(6) was certain (b)(6) understood that (b)(6) was (b)(6) (b)(6) (b)(6) maintained to us that (b)(6) determined, at that time, that (b)(6) disclosure to (b)(6) fulfilled (b)(6) duty to disclose (b)(6) that could give rise to a conflict of interest.

- (b)(6) certainty notwithstanding, the FM Ethics' case management system—the electronic records system in which FM Ethics is expected to document employee disclosures about ethics issues—does not contain contemporaneous documentation of a request for guidance by (b)(6) relating to a conflict of interest matter. FM Ethics' records contain a memorandum created in (b)(6) which recounts that, in (b)(6) FM Ethics determined that (b)(6) (b)(6) did not raise a conflict of interest concern or require formal review by the NGC.

- (b)(6) did not satisfy (b)(6) obligation to disclose to the NGC (b)(6) (b)(6) giving rise to a potential conflict by asking (b)(6) (b)(6) whether (b)(6) could accept (b)(6) (b)(6)

  - According to a (b)(6) internal written memorandum by FM Ethics, it conducted a conflict of interest analysis in (b)(6) after (b)(6) disclosed that (b)(6) (b)(6) (b)(6)" According to this memorandum, FM Ethics concluded, after it considered the issue in (b)(6), that (b)(6) (b)(6) "did not then" present "a conflict of interest under Fannie Mae's [COI] Policy" and did not require formal review by the NGC.

  - The Charter for the NGC vests exclusive authority with the NGC to interpret Fannie Mae's COI Policy and COI Procedure in instances where the interpretation relates to (b)(6). The NGC Charter does not contemplate any decisional role for management (including FM Ethics and (b)(6) in conjunction with such interpretations.

  - (b)(6) knew or should have known that (b)(6) lacked authority to interpret the COI Policy and the Director Code for (b)(6) based on (b)(6) annual certifications of the Director Code and (b)(6) knowledge of the COI Policy.

- (b)(6) shortly after (b)(6) advised (b)(6) that (b)(6) and FM Ethics determined that (b)(6) did not constitute a conflict of interest and that formal review by the NGC was not required. The (b)(6) (b)(6)

- Board approval was required for (b)(6). The Board met on (b)(6) and, with (b)(6) voted to approve (b)(6) (b)(6)

  - We found no evidence that, prior to the vote (b)(6) (b)(6), (b)(6) informed (b)(6) fellow Board members that: (1) (b)(6) previously disclosed to (b)(6) in (b)(6) (b)(6) and considered that disclosure sufficient to satisfy (b)(6) duty to disclose "[a]ny situation that involves, or appears to involve, a conflict of interest"; (2) (b)(6) advised (b)(6) that (b)(6) created no actual or apparent conflict of interest; and (3) (b)(6) did not notify the NGC of (b)(6) (b)(6) and of the conclusion by FM Ethics, relayed to (b)(6) that (b)(6) created no apparent or actual conflict of interest and did not require formal review by the NGC.

  - As Ms. Minow concludes, taken in the light most favorable to (b)(6) (b)(6) without any disclosure of the conflict of interest issue and the purported resolution of that conflict by FM Ethics, amounted to extremely poor judgment. At worst, (b)(6) raises the appearance of an improper quid pro quo (b)(6) for the unauthorized decision that no actual or apparent conflict of interest arose from (b)(6) (b)(6) and that no formal review by the NGC was required.

- According to (b)(6) because the conflict of interest created (b)(6) was irreconcilable and, had it known of (b)(6) it would not have (b)(6) (b)(6) acknowledged to us that (b)(6) first reported (b)(6) to the Fannie Mae Board Chair and NGC, after (b)(6) The letter and spirit of Fannie Mae Governance Authorities require Fannie Mae directors (b)(6) (b)(6) to promptly disclose situations that may give rise to actual or apparent conflicts of interest to the NGC. As Ms. Minow determines, (b)(6) Fannie Mae (b)(6) is one such situation. (b)(6) breached (b)(6) duties because (b)(6) disclosed no information about (b)(6) to the NGC, prior to (b)(6) (b)(6)

- (b)(6) deliberate and unilateral decision not to disclose to the NGC (b)(6) (b)(6) from (b)(6) (b)(6), had deleterious effects on

Fannie Mae's corporate governance that transcended (b)(6) disregard of (b)(6) duties. Specifically, according to Ms. Minow:

- It denied the NGC the ability to exercise its essential oversight responsibilities to address (b)(6) actual or apparent conflict of interest arising from (b)(6) (b)(6) Had (b)(6) timely disclosed (b)(6) to the NGC, then the NGC could have exercised its responsibilities to determine whether a conflict of interest existed and, if so, to grant a waiver of the Director Code, refer it to the entire Board for a waiver, or put into place mitigating controls to minimize the franchise risk to Fannie Mae from the conflict as is its responsibility per the COI Policy and COI Procedure.

- As (b)(6) Fannie Mae, (b)(6) was in a position to control or influence (b)(6) at Fannie Mae responsible for Fannie Mae's business with (b)(6) (b)(6) reported to us that (b)(6) were (b)(6) (b)(6) lack of disclosure, combined with the possibility that (b)(6) were aware of (b)(6) and (b)(6) ability, (b)(6) to control or influence (b)(6) responsible for Fannie Mae's relationship with (b)(6) created the risk that those (b)(6) would feel constrained in their ability to manage the relationship.

- The "tone at the top" shapes an organization's guiding values and provides a foundation upon which its culture is built. The leaders of an organization—starting with its directors (b)(6) —communicate its values by their deeds as well as their words. (b)(6) all employees, (b)(6) Employee Code, that (b)(6) (b)(6) and then acted in disregard of the Director and Employee Codes and COI Policy. (b)(6) actions were inconsistent with the values of responsibility, accountability, and integrity (b)(6) and, as a consequence (b)(6) set an inappropriate tone at the top.

- FHFA views operational risk management as an important financial safety and soundness challenge facing Fannie Mae, and effective corporate governance is one element of an acceptable operational risk management program. Our investigation identified repeated failures by (b)(6) to timely disclose (b)(6) (b)(6) to the NGC so that it could determine whether that (b)(6) gave rise to a conflict of interest. Those failures were consequential, both because they demonstrated repeated breaches of duty by Fannie Mae (b)(6) and because of the adverse effects on Fannie Mae. FHFA has delegated numerous responsibilities to Fannie Mae, including corporate governance. (b)(6) governance failures raise

questions about the rigor with which (b)(6) has executed other delegated governance responsibilities.

BACKGROUND

FHFA was created by the Housing and Economic Recovery Act of 2008 as the supervisor for Fannie Mae and Freddie Mac (the Enterprises) and the Federal Home Loan Banks. In September 2008, FHFA placed the Enterprises' into conservatorship as their financial condition threatened their ability to operate in a safe and sound manner. To date, the Enterprises have received $187.5 billion in financial support from U.S. taxpayers to enable them to fulfill their public mission and integral role in the secondary mortgage market.[1]

The Enterprises have long been subject to regulations that require them to establish and administer a code of conduct and ethics.[2] The current FHFA regulation—which addresses boards of directors, corporate practices, and corporate governance matters—requires the Enterprises to:

> [E]stablish *and administer* a written code of conduct and ethics that is reasonably designed to assure that its directors, officers, and employees *discharge their duties and responsibilities* in an objective and impartial manner that promotes honest and ethical conduct, compliance with applicable laws, rules, and regulations, accountability for adherence to the code, and prompt internal reporting of violations of the code to appropriate persons identified in the code.[3]

Pursuant to FHFA regulation, Fannie Mae adopted its Governance Authorities. In them Fannie Mae recognizes that its directors and employees (b)(6) —financial and otherwise—that may conflict, or appear to conflict, with the best interests of the organization.

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[1] FHFA's mission, as defined by its 2015 Annual Report to Congress is, "to ensure that Fannie Mae, Freddie Mac, and the [Federal Home Loan Banks] operate in a safe and sound manner so that they serve as a reliable source of liquidity and funding for housing finance and community investment."

[2] FHFA's predecessor agency, the Office of Federal Housing Enterprise Oversight (OFHEO), adopted regulations in 2005 that required the Enterprises to "establish and administer a written code of conduct and ethics that is reasonably designed to assure the ability of board members, executive officers, and employees of the Enterprise to discharge their duties and responsibilities, on behalf of the Enterprise, in an objective and impartial manner. . ." 12 C.F.R. § 1710.14 (2006). In November 2015, FHFA issued a final rule that replaced the OFHEO regulation, but retained the same fundamental requirements. *See* 12 C.F.R. § 1239.10 (2015).

[3] 12 C.F.R. § 1239.10 (2015) (emphasis added).

The NGC Charter—the overarching, controlling document for the Governance Authorities—places broad responsibility over conflict of interest issues solely with the NGC.[4] Two of these responsibilities are directly pertinent here:

- "Administering and overseeing compliance with the [Director Code]"; and
- (b)(6) Fannie Mae's [COI Policy and COI Procedure] (b)(6)

(b)(6)

The NGC Charter contains no delegation of these responsibilities; neither does it authorize the NGC to task any Fannie Mae employee, including (b)(6) or the employees in FM Ethics, with executing these responsibilities.

Fannie Mae's Codes of Conduct and COI Policy and COI Procedure

Fannie Mae's Director and Employee Codes, COI Policy, and COI Procedure—as referenced in, and governed by, the NGC Charter—provide definitions and additional structure to Fannie Mae's conflict of interest process. Under the Director Code, a conflict of interest:

> *[A]rises when a person's private interest interferes in any way—or even appears to interfere—with the interests of the Corporation as a whole.* A conflict can arise when a director takes actions or has interests that make it difficult to perform his or her work objectively and effectively for [Fannie Mae].[5]

The Director Code admonishes directors to "avoid any conflicts of interest between themselves and [Fannie Mae]."[6]

Similarly, the Employee Code explains that conflicts of interest are not limited to financial relationships: employees must "avoid any conflict or the appearance of a conflict between Fannie Mae's business interests and [their] personal interests." Its COI Policy broadly defines conflicts of interest to include those situations that:

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[4] Although the NGC is directly responsible, the full board retains overall authority. According to Section J.3 of the Board Code, waivers of the code may be granted "in favor of a director by the [NGC] or the Board after disclosure of all material facts by the director to the [NGC] or the Board...." In addition, Section 4.ix of the NGC Charter requires the NGC to recommend to the Board whether a waiver of the Employee Code should be granted.

[5] Director Code, Section A.1 (emphasis added).

[6] *Id.*

- Impair our objectivity in performing our duties and responsibilities at Fannie Mae (for example, cause us to fail to advance Fannie Mae's best interests and/or favorably treat certain outside organizations or individuals with whom Fannie Mae does business);

- Otherwise interfere with our ability to perform our duties and responsibilities at Fannie Mae (for example, encroach on the time we should devote to our work for Fannie Mae); or

- Embarrass Fannie Mae.[7]

Section 6.3 of the COI Policy, titled "***Potential*** Conflicts of Interest **that Require Review and Approval**," directs, in the subsection captioned "Outside Activities":

> If an employee is engaged in any outside activities *that could be construed to have an intersection with Fannie Mae* and/or its business area that are not otherwise covered under this policy, a Conflict of Interest may exist. *Outside activities that should be disclosed to FM Ethics include, but are not limited to . . . personal relationships.*[8]

Fannie Mae has implemented numerous controls to promote ethical behavior. It recognizes that potential and actual, or apparent, conflicts of interest, when not disclosed or addressed properly, pose significant risk to its reputation and undermine its goal of operating in accordance with "the highest ethical standards." These controls include periodic reviews of the Employee and Director Codes of Conduct, the COI Policy, and the COI Procedure for adequacy; director certification of compliance with the Director Code; annual COI Questionnaires; and a structured decision-making hierarchy for resolution of conflict of interest questions. These controls, if followed, ensure that potential conflicts of interest are disclosed to, and resolved by, the appropriate company officer or Board committee.

Fannie Mae's Process for Disclosing and Resolving Conflicts of Interest Involving Fannie Mae Directors (b)(6)

Disclosure of Conflicts by Fannie Mae Directors (b)(6)

Fannie Mae's Director Code requires a Fannie Mae director to report "[a]ny situation that involves, or appears to involve, a conflict of interest" to the NGC Chair or another member of the NGC. According to Fannie Mae's COI Procedure, which controls the implementation of the COI Policy, each "Senior Executive Officer," (b)(6) Fannie Mae (b)(6) must disclose

[7] COI Policy, Section 6.1.

[8] COI Policy, Section 6.3.6 (emphasis added).

potential conflicts of interest to FM Ethics, for resolution by the NGC. According to Fannie Mae, senior executive officers typically raise conflicts issues with FM Ethics verbally and FM Ethics documents the conflicts disclosure in the FM Ethics case management system.

The Director Code mandates that "(b)(6) (b)(6)".[9] The (b)(6) (b)(6) Fannie Mae (b)(6), (b)(6) the Director and Employee Codes, COI Policy, and COI Procedure. Accordingly, (b)(is required to disclose potential conflicts of interest to the NGC and to FM Ethics.

Only the NGC Is Authorized to Determine the Existence of and Resolve Conflicts of Interest Involving Fannie Mae Directors (b)(6)

The NGC's Charter vests the NGC with sole responsibility to resolve conflict of interest issues involving Fannie Mae's directors (b)(6).[10]

Fannie Mae Directors and Employees Are Not Authorized to Resolve Their Own Conflicts Issues

Pursuant to the Fannie Mae Governance Authorities, Fannie Mae directors and employees are not permitted to determine unilaterally whether a conflict of interest exists. Fannie Mae's Employee Code makes clear that the disclosure trigger is an objective one:

- How would it look in the media, to shareholders, or to our regulators?
- Are we being reasonable and honest?[11]

To ensure that all Fannie Mae directors are familiar with and in compliance with the Director Code, each director is required to annually certify his or her compliance with the Code.[12]

"Tone at the Top" of an Organization Is Critical to Shape its Compliance Culture

For the core values and standards announced in a code of conduct to be effective, they must become part of an organization's DNA. As the Chair and CEO of the Financial Industry Regulatory Authority recently observed, "(b)(6) behavior tells employees what matters, and

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[9] Director Code, Preamble.

[10] *See supra* note 4.

[11] Employee Code, at 14.

[12] Although the Employee Code does not have an analogous certification requirement, it does state that "People Managers" should: "See that all employees under our supervision are aware of their obligations under our Code. This includes participation in appropriate training programs." Employee Code, at 11.

what behaviors are rewarded and punished."[13] When, by their conduct, the directors and managers of an organization do not demonstrate ownership of the organization's core values and standards, then employees will not believe that their path to success in the organization requires adherence to those core values and standards.

FACTS AND ANALYSIS

In (b)(6), the Fannie Mae Board recommended, and FHFA, as conservator, (b)(6) (b)(6) Fannie Mae (b)(6) and (b)(6) (b)(6) (b)(6) Fannie Mae (b)(6) Fannie Mae's (b)(6) (b)(6) Pursuant to Fannie Mae's Bylaws, Fannie Mae (b)(6) (b)(6) (b)(6) (b)(6) Contemporaneous with (b)(6) (b)(6) (b)(6) Fannie Mae Board; (b)(6)

(b)(6) Fannie Mae, (b)(6) (b)(6) (b)(6) reported to us that (b)(6) (b)(6) and that (b)(6) (b)(6) (b)(6) (b)(6) acknowledged to us in (b)(6) that (b)(6) was involved (b)(6) (b)(6) (b)(6) and that (b)(6) at that time.

(b)(6) is a mortgage originator and servicer. It sells mortgage loans to Fannie Mae and services loans in accordance with the standards and guidelines set by Fannie Mae.[14] From 2010 to 2013, (b)(6) was among Fannie Mae's top 30 sellers. It was (b)(6) and (b)(6) in loan sales to Fannie Mae for those years, respectively. The dollar amount of loans sold (b)(6) Fannie Mae has declined from its peak of (b)(4) in 2012. However, in the 12 months (b)(6) it sold to Fannie Mae (b)(4) in mortgage loans and, in the 12 month period during which (b)(6) did not disclose (b)(6) (b)(6) giving rise to a potential conflict— (b)(6)

[13] Richard G. Ketchum, Chairman and CEO, Financial Industry Regulatory Authority, Remarks from the 2016 FINRA Annual Conference (May 23, 2016).

[14] (b)(6) Fannie Mae requires the two entities to engage in negotiations over the various aspects of their relationship, including prices, fees, conditions, and periodic amendments to master agreements.

(b)(6) —it sold (b)(4) in loans. (b)(6) was approved to sell up to (b)(4) in loans to Fannie Mae.[15]

(b)(6) was among Fannie Mae's top 30 loan servicers from 2010 to 2015 (the last year for which we have such rankings).[16] For the 12 months (b)(6) serviced between (b)(4) in single-family mortgage loans for Fannie Mae. For the 12 months (b)(6) it serviced between (b)(4) and (b)(4) in single-family mortgage loans.[17]

(b)(6) Breached (b)(6) Duty to Fannie Mae When (b)(6) Decided Not to Disclose (b)(6)

(b)(6) and (b)(6) counsel acknowledged to us that (b)(6) first disclosed (b)(6) (b)(6) to the Board and NGC Chairs in late (b)(6) (b)(6) and (b)(6) (b)(6) The Board and NGC Chairs separately reported to us in (b)(6) that (b)(6) disclosed to them, in conversations in late (b)(6) that (b)(6) had previously disclosed (b)(6) (b)(6) to FM Ethics in (b)(6). Each had been unaware that (b)(6) (b)(6) dated back to at least (b)(6).

According to (b)(6) counsel, (b)(6) "carefully considered the conflict of interest implications" of (b)(6) around the time that (b)(6) (b)(6) and, based upon (b)(6) familiarity with the company's policies, determined that (b)(6) was not required to report it to FM Ethics or to a member of the NGC.

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[15] We were not able to exactly align the size of its business relationship with (b)(6) to the 12 months prior to (b)(6) (b)(6) because Fannie Mae reports to OIG its relationships with counterparties on a quarterly basis. These numbers reflect the relationship between Fannie Mae (b)(6) as reported by Fannie Mae, from (b)(6) and reflect total unpaid principal balance. By their nature, servicing relationships are not static–loans move into and out of the servicing portfolio. We provide the range (lowest to highest) reported by Fannie Mae of the total unpaid balance serviced by (b)(6) for Fannie Mae during the relevant period. This same format is used throughout this Management Alert.

[16] Loan servicers are responsible for collecting payments from borrowers and remitting those payments to the appropriate recipients for which they are paid a servicing fee. Fannie Mae relies extensively on loan servicers to maintain the trillions of dollars in mortgages that they guarantee and securitize.

[17] These numbers are based on the data reported by Fannie Mae to OIG. We were unable to align exactly the size of Fannie Mae (b)(6) (b)(6) the period of time between (b)(6) to the NGC, because Fannie Mae reports to OIG its relationships with counterparties on a quarterly basis.

(b)(6) *Was Not Authorized to Withhold Disclosure of* (b)(6) *from the NGC*

In the view of Ms. Minow, the corporate governance expert we retained, "[i]t is almost tautological that a conflict of interest cannot be objectively evaluated by someone who is (b)(6) subject to that very conflict." It is "impossible" for an individual burdened by a potential or actual conflict "to self-assess the extent or implications of the conflict." For those reasons, Fannie Mae's Director Code requires directors to disclose: "*Any* situation that involves, or appears to involve, a conflict of interest" to the NGC Chair or member of the NGC.[18] Similarly, Fannie Mae's COI Policy, in Section 6.3, titled "Potential Conflicts of Interest that Require Review and Approval," mandates (at Section 6.3.6) that employees must disclose all "outside activities that could be construed to have an intersection with Fannie Mae" to FM Ethics as a potential conflict of interest. The NGC Charter vests authority solely with the NGC to determine whether a conflict of interest exists for the affected director (b)(6).[19]

(b)(6) *Rationale for Not Disclosing* (b)(6) *is Fatally Flawed*

(b)(6) informed us that, based on (b)(6) reading of the COI Policy, (b)(6) determined that (b)(6) was not required to disclose (b)(6), provided that (b)(6) consulted with (b)(6) if a matter or decision involving (b)(6) came before (b)(6). In (b)(6) (b)(6) view, (b)(6) did not give rise to an actual or apparent conflict of interest as defined in the COI Policy, for a number of reasons, including:

- It did not in any way interfere with (b)(6) performance of (b)(6) duties;
- A reasonable person would not question (b)(6) impartiality as to any matter because (b)(6) did not and would not involve (b)(6) in any matter related to (b)(6) and "[i]t was exceedingly unlikely that any such matters would come before (b)(6) given the miniscule amount of business (b)(6) represented to Fannie Mae";
- There was no foreseeable way (b)(6) would cause reputational damage or embarrassment to Fannie Mae.

(b)(6) advised us that (b)(6) was unaware of the volume of single-family loans (b)(6) (b)(6) sold to Fannie Mae, or the size of the portfolio serviced by (b)(6) on behalf of Fannie Mae.

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[18] Director Code, Section A.1 (emphasis added).

[19] *See supra* note 4.

Ms. Minow rejects each of the three rationales offered by (b)(6) and (b)(6) counsel to support (b)(6) decision not to disclose (b)(6) in (b)(6) (b)(6)

- *It did not in any way interfere with* (b)(6) *performance of* (b)(6) *duties.* Ms. Minow explains the defects with (b)(6) position:

  > (b)(6) such as the (b)(6) (b)(6) are not business contracts: (b)(6) that can interfere with purely business concerns in ways that are not easily self-assessed. (b)(6) (b)(6) (b)(6) and the (b)(6) (b)(6) creates greater risk of disclosing information that could provide an unfair advantage or create a perception of favoritism. Even if it were possible for one individual (b)(6) to be purely objective, those (b)(6) can create a perception of favoritism.

- *A reasonable person would not question* (b)(6) *impartiality because* (b)(6) *did not and would not involve* (b)(6) *in any matter related to* (b)(6) Ms. Minow rejects the limited scope of (b)(6) analysis. As Fannie Mae (b)(6) (b)(6) is charged, under Fannie Mae's Bylaws, with exercising (b)(6) (b)(6) (b)(6) As such, (b)(6) position enables (b)(6) to control or influence (b)(6) subordinates who manage the (b)(6) relationship. Ms. Minow counsels that (b)(6) narrow focus fails to consider the indirect effects that (b)(6) could have on (b)(6) subordinates. In light of (b)(6) claim that (b)(6) (b)(6) she observes that there was a "real risk that Fannie Mae employees who were dealing with (b)(6) were aware of (b)(6) and would feel under pressure to treat (b)(6) more favorably than other Fannie Mae counterparties in order to curry favor with (b)(6)" (b)(6) acknowledged that very risk: (b)(6) reported to us that one reason (b)(6) disclosed (b)(6) (b)(6) Fannie Mae (b)(6) (b)(6) did not, one of (b)(6) subordinates might think it could be in Fannie Mae's interest to retaliate against (b)(6) after it had (b)(6)

(b)(6) failure to disclose to the NGC (b)(6) (b)(6) as a potential conflict of interest in (b)(6)—to enable it to determine whether (b)(6) gave rise to an actual or apparent conflict of interest and, if so, the measures to mitigate such a conflict—created the risk that (b)(6) subordinates who managed the (b)(6) relationship would feel constrained in their ability to

manage the relationship. This risk persisted during a period of time—(b)(6) (b)(6) —when (b)(4) in loans were sold by (b)(6) to Fannie Mae and (b)(6) serviced (b)(4) to (b)(4) of Fannie Mae loans.

Ms. Minow casts off the assertion by (b)(6) that "[i]t was exceedingly unlikely that any (b)(6) matter would come before (b)(6) given the miniscule amount of business (b)(6) represented to Fannie Mae." In her opinion, "[t]here is no de minimus exception in Fannie Mae's Governance Authorities limiting conflicts of interest only to those instances involving the most significant business relationships with Fannie Mae." Indeed, she notes that (b)(6) acknowledged that (b)(6) "lacked information about the size of the relationship between Fannie Mae (b)(6) which, as we found, was not miniscule.

- *No foreseeable reputational damage or embarrassment to Fannie Mae.* Ms. Minow rejects (b)(6) assertion that it was unforeseeable that (b)(6) (b)(6) would cause reputational damage to Fannie Mae despite the fact that (b)(6) (b)(6) According to (b)(6) counsel, "it is impossible to conceive how (b)(6) (b)(6) could have reasonably foreseen [the] risk" that (b)(6) (b)(6) would become public and embarrass Fannie Mae.

  In Ms. Minow's opinion, the justifications offered by (b)(6) and (b)(6) counsel "demonstrate why the individual burdened by a conflict of interest cannot assess the extent or implications of the conflict." Contrary to the position advanced by (b)(6) (b)(6) counsel, Ms. Minow notes, '(b)(6) (b)(6) large financial institutions, involved in ongoing business transactions, (b)(6) (b)(6) (b)(6) (b)(6) (b)(6) (b)(6) ."[20] In Ms. Minow's opinion, "[i]t

(b)(6)

was not just [possible] that (b)(6) could become public and embarrass Fannie Mae: it was likely."

(b)(6) counsel maintained to us that (b)(6) "has always been scrupulous about observing all ethical rules and requirements" and (b)(6) "regularly has sought ethics advice on a wide range of matters." According to (b)(6) counsel, (b)(6) has "always [sought] and [obtained] approval" of matters raising potential conflicts of interest, "when required by Fannie Mae's policies." (b)(6) counsel asserted that (b)(6) knowledge of Fannie Mae's Governance Authorities, combined with (b)(6) past record of disclosures, enabled (b)(6) to "carefully consider the conflict of interest implications of (b)(6) " and conclude that no disclosure was required. In Ms. Minow's view, (b)(6) past practice leads to the opposite conclusion: that (b)(6) "understood the breadth of the conflict of interest prohibition in Fannie Mae's Governance Authorities and affirmatively elected not to disclose the potential conflict of interest arising from (b)(6) "

In sum, Ms. Minow offers the opinion that: " (b)(6) ' affirmative decision not to disclose (b)(6) (b)(6) constitutes a breach of (b)(6) duties under Fannie Mae's Governance Authorities." Based on her experience, "a reasonably prudent Director (b)(6) in like position and under similar circumstances and similar authorities would have disclosed (b)(6) (b)(6) to the NGC."

(b)(6) Breached (b)(6) Duty to Fannie Mae (b)(6) When (b)(6) Affirmatively Decided Not to Disclose (b)(6) (b)(6) COI Questionnaire

Fannie Mae's COI Procedure requires directors and officers to complete an annual COI Questionnaire. Annually, FM Ethics presents (b)(6) of each senior executive officer disclosed in the COI Questionnaires to the NGC. As a director (b)(6) (b)(6) was required to complete the Questionnaire and disclose (b)(6) (b)(6) in it.

Ms. Minow explains the purpose of these annual Questionnaires:

> Because real and apparent conflicts of interest severely threaten the reputation and credibility of organizations, organizations impose structures and mechanisms to identify, disclose, resolve, and mitigate or minimize conflicts of interest. Annual [COI Questionnaires] are one of the mechanisms used by Fannie Mae and many

other publicly traded companies to elicit information about conflicts of interest that had not been previously disclosed.

(b)(6) acknowledged to us that (b)(6) was aware in (b)(6) that (b)(6) (b)(6) had conflict of interest implications. In (b)(6) (b)(6), (b)(6) submitted (b)(6) response to the COI Questionnaire to FM Ethics. In response to the question, "[a]re you aware of *any issue* or potential conflict of interest involving yourself or a family member that could potentially cause negative publicity to Fannie Mae that has not been previously disclosed to FM Ethics?," (b)(6) (b)(6) answered, "No."

According to Ms. Minow, the (b)(6) COI Questionnaires sought to provide "belt and suspenders" confirmation to the disclosures required of directors under the Director Code (Section A, paragraph 2) when it asked: "[a]re you aware of any issue or potential conflict of interest involving yourself or a family member that could potentially cause negative publicity to Fannie Mae that has not previously been disclosed?"

In the opinion of Ms. Minow, (b)(6) affirmative decision not to report (b)(6) (b)(6) in response to the (b)(6) COI Questionnaire constitutes a breach of (b)(6) duties under the Director Code and COI Policy. She concludes, based on her experience, that "a reasonably prudent Director (b)(6) in like position and under similar circumstances and similar governance authorities would have disclosed (b)(6)" in response to the Questionnaire.

(b)(6) Disclosure to (b)(6) of (b)(6) (b)(6) Failed to Satisfy (b)(6) Obligations under Fannie Mae's Governance Authorities

On (b)(6), Fannie Mae records reflect that (b)(6) asked for advice on whether (b)(6) would be prohibited under Fannie Mae policy. (b)(6) confirmed to us that (b)(6) made that request. Although (b)(6) could not recall the details of what (b)(6) told (b)(6) reported that (b)(6) was certain that (b)(6) understood that (b)(6) was in (b)(6) (b)(6) (b)(6) explained that (b)(6) certainty was based on the fact that (b)(6) instructed (b)(6) to report back to FM Ethics in the event that any matter or decision relating to (b)(6) came before (b)(6).[21] According to (b)(6), (b)(6) considered (b)(6) duty

[21] There is no contemporaneous documentation to show that in (b)(6) disclosed to FM Ethics that (b)(6) and that (b)(6) (b)(6) In response to our request for contemporaneous documents involving this disclosure, Fannie Mae produced: (1) (b)(6) FM Ethics log entry in its case management system which reports that (b)(6) asked FM Ethics whether (b)(6) could (b)(6)

to disclose actual or apparent conflicts of interest to be met by (b)(6), disclosure to (b)(6)

(b)(6) Disclosure to (b)(6) Did Not Satisfy (b)(6) Duty Under the Director Code

In the opinion of Ms. Minow, (b)(6) disclosure of (b)(6) (b)(6) "fell far short of what was required of Fannie Mae's senior officers and directors by Fannie Mae's Governance Authorities." In her view, the "'letter and spirit' of the Director Code mandates that directors 'exercise good faith by disclosing information relating to conflicts or potential conflicts of interest'" to the NGC. Based on her experience, she concludes:

> A reasonably prudent Director (b)(6) in like position and under similar circumstances and similar governance authorities would not have considered (b)(6) request for guidance to (b)(6) —about whether (b)(6) could (b)(6) (b)(6) —to satisfy (b)(6) obligations to disclose "any situation that involves, or appears to involve, a conflict of interest' to the NGC."

FM Ethics Lacked Authority to Determine that No Conflict of Interest Arose From (b)(6) (b)(6) and No Formal Review by the NGC Was Required

FM Ethics reported, in a (b)(6) internal written memorandum (b)(6) Memorandum), that it conducted a conflict of interest analysis in (b)(6) after (b)(6) disclosed that "a (b)(6) (b)(6) "[22] According to the (b)(6) Memorandum, FM Ethics determined in (b)(6) that (b)(6) was "not directly responsible for managing the business and/or legal interactions between Fannie Mae (b)(6)

(b)(6) an Interested Party" but does not identify the (b)(6) the (b)(6), or provide any other description; (2) an FM Ethics email dated (b)(6) (b)(6) analyzing whether "a Fannie Mae employee could (b)(6) (b)(6) Interested Party if there is a (b)(6) " under Fannie Mae's Business Courtesies Policy; and (3) a cover email forwarding the (b)(6), FM Ethics email to (b)(6)

[22] The (b)(6) Memorandum, the first written conflict of interest analysis produced to us by Fannie Mae, assesses whether (b)(6) gives rise to a conflict of interest concern under the COI Policy. The "preliminary and tentative timeline," which Fannie Mae prepared for OIG once we commenced our investigation in late (b)(6) states that (b)(6) disclosed to FM Ethics on (b)(6) (b)(that (b)(6) "

(b)(6) [23] and did not have "any shared, economic interest or formal legal relationship" (b)(6) (b)(6) [24] It stated that FM Ethics concluded, after it considered the issue in (b)(6) that (b)(6) "did not then" present "a conflict of interest under Fannie Mae's [COI] Policy" and did not require formal review by the NGC of Fannie Mae's Board of Directors.[25]

The NGC Charter vests sole authority in the NGC to resolve conflict of interest issues involving Fannie Mae directors (b)(6) .[26] We found no Fannie Mae code of conduct, policy, procedure or other document authorizing (b)(6) or FM Ethics (1) to make conflict of interest determinations for (b)(6) on the NGC's behalf; or (2) filter which conflict of interest requests made by (b)(6) to present to the NGC. In (b)(6) and FM Ethics all failed to present to the NGC the potential conflict of interest arising from (b)(6) (b)(6) , as required by the Director Code and COI Policy.

In any event, the narrow scope of FM Ethics' conflict of interest analysis is virtually identical to the analysis that (b)(6) explained that (b)(6) used in (b)(6) As discussed previously, Ms. Minow rejects that analysis in light of (b)(6) Fannie Mae, charged with exercising (b)(6) (b)(6) Because (b)(6) enabled (b)(6) to control or influence (b)(6) subordinates who manage Fannie Mae's relationship with (b)(6)

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[23] Neither the (b)(6) Memorandum, nor any other document we reviewed, explains the actions taken by FM Ethics to determine that (b)(6) was not directly responsible for managing the business and/or legal interactions between Fannie Mae (b)(6) from (b)(6) The (b)(6) Memorandum reports that FM Ethics verified, "[b]etween (b)(6) and the date of this memo, no [business decision] or other interaction related to (b)(6) has been presented to (b)(6) " through the following: (b)(6) "engagement with the Management Committee, (b)(6) representations to (b)(6) , as well as representations provided to (b)(6) by the (b)(6) Fannie Mae (b)(6) (b)(6) for the Single Family business]."

[24] (b)(6) Memorandum, at 3.

[25] Fannie Mae provided a somewhat similar explanation in a statement (b)(6) In that statement, it asserted that (b)(6) (b)(6) (b)(6) According to the statement, (b)(6) (b)(6) (b)(6) The following day, (b)(6) (b)(6) (b)(6) to Fannie Mae employees in which (b)(6) and stated (b)(6) (b)(6) (b)(6) provided no additional disclosures on (b)(6) compliance or non-compliance with Fannie Mae Governance Authorities, stating that (b)(6) "

[26] *See supra* note 4.

(b)(6), Ms. Minow maintains that a proper conflict of interest analysis should have considered the indirect effects that (b)(6) could have on (b)(6) subordinates.

(b)(6)

Creates the Appearance of an Improper Quid Pro Quo

(b)(6) reported to us that (b)(6) has made recommendations to the Audit Committee of the Fannie Mae Board (b)(6) FM Ethics and (b)(6) (b)(6)[27]

(b)(6)

Minutes of a Fannie Mae (b)(6) Committee meeting on (b)(6), state that (b)(6) (b)(6) a discussion of the (b)(6) including (b)(6) as part of the Committee's consideration (b)(6) corporate officers. According to the meeting minutes, (b)(6) (b)(6) (b)(6) of (b)(6) direct reports, noting distinguishing characteristics (b)(6) " (b)(6) also provided a written assessment in support of (b)(6) (b)(6) to the Committee. With respect to (b)(6) written assessment stated:

- (b)(6)

In (b)(6) the Board approved (b)(6)

(b)(6) in (b)(6) (b)(6) *After FM Ethics Purportedly Determined that* (b)(6) *Did Not Give Rise to a Conflict of Interest and Did Not Notify the NGC*

Several months later, (b)(6) (b)(6) (b)(6) This (b)(6) (b)(6) pending FHFA guidelines for (b)(6) to executives with respect to

[27] According to the Audit Committee Charter, (b)(6) independently to the Committee and the Audit Committee is responsible for (b)(6) (b)(6) The COI Policy states that ' (b)(6) (b)(6)

(b)(6). First, (b)(6) and FHFA guidelines suggested (b)(6) Second, the (b)(6) because (b)(6) would place (b)(6) (b)(6) above FHFA guidelines (b)(6) (b)(6)

On (b)(6) this (b)(6) was presented to, and approved by, the Audit Committee, the Board committee to which (b)(6). Although (b)(6) of the Audit Committee, minutes from (b)(6) show that (b)(6) the executive session of the Audit Committee meeting where the (b)(6) was discussed. According to Audit Committee meeting minutes from this meeting, management offered the following rationale for (b)(6) (b)(6) which was significantly different than its assessment in support (b)(6) (b)(6):

- (b)(6) without specifying when those (b)(6);[28] and
- Management sought to (b)(6),

No other rationale for this (b)(6) is reported in these minutes. The minutes report that the Audit Committee approved (b)(6)

Later that day, (b)(6) as approved by the Audit Committee, was presented to the (b)(6) Committee. Minutes for the (b)(6) Committee meeting reflect that (b)(6) Committee, (b)(6) (b)(6) Committee meeting where the Committee discussed and approved the (b)(6)

The (b)(6) required approval by the Fannie Mae Board. Minutes for the Board meeting of (b)(6) report that the recommendation of the (b)(6) Audit

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[28] Section 6.3.5 of the COI Policy requires employees to disclose negotiations with prospective employers to FM Ethics if a conflict may exist. Minutes from a (b)(6) Committee meeting and a (b)(6) case log entry by FM Ethics in its case management system reflect two instances in which (b)(6) (b)(6) Minutes of a (b)(6) Committee meeting report that management was sponsoring (b)(6) in part, because (b)(6) (b)(6) A (b)(6) entry in the FM Ethics' case log states that (b)(6) but do not reflect that (b)(6) Because we found no evidence in FM Ethics' case log entries, or in materials provided to the Board or any of its committees, that (b)(6) (b)(6), we could not determine the factual basis for management's assertion that (b)(6) during this period.

Committees to (b)(6) was presented to the Board and the Board adopted that recommendation.[29] Those minutes report that (b)(6) meeting and do not reflect that (b)(6) from the Board's deliberation of (b)(6) (b)(6)

We found no evidence that, prior to the vote on the (b)(6) (b)(6) informed (b)(6) fellow Board members that: (1) (b)(6) previously disclosed to (b)(6) (b)(6) and considered that disclosure sufficient to satisfy (b)(6) duty to disclose "[a]ny situation that involves, or appears to involve, a conflict of interest"; (2) (b)(6) advised (b)(6) that (b)(6) created no actual or apparent conflict of interest; and (3) (b)(6) did not notify the NGC of (b)(6) (b)(6) and of the conclusion by FM Ethics, relayed to (b)(6) that this (b)(6) created no apparent or actual conflict of interest and did not require formal review by the NGC. In Ms. Minow's opinion, "the timing of and the rationale for (b)(6) (b)(6) is quite troubling." She explains:

> Taken in the light most favorable to (b)(6) (b)(6) without any disclosure to the NGC about (b)(6) potential conflict of interest issue and (b)(6) reliance on FM Ethics to resolve the issue, amounted to extremely poor judgment. At worst, (b)(6) (b)(6) raises the appearance of an improper quid pro quo to (b)(6) (b)(6) for not raising questions about (b)(6) or forwarding the issue to the NGC for its resolution.

(b)(6) Failure to Follow the Letter and Spirit of Fannie Mae's Codes of Conduct, COI Policy, and COI Procedure Set an Inappropriate "Tone at the Top"

Ms. Minow recognizes the critical role of "tone at the top" in establishing an ethical culture within an organization:

> [W]ritten codes of conduct and policies and procedures, distributed to new employees at orientation and at subsequent training sessions, are meaningless without actions to support them. For ethics to become part of an organization's DNA, senior management, starting with the CEO, and the board of directors, must demonstrate through their actions that ethics, integrity and honesty matter. Otherwise, employees will not believe that those values are core values and will not perceive that their path to success in the organization will require adherence to those values.

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[29] (b)(6)

Ms. Minow explains that, based on her experience, "employees in an organization watch what senior management does and says and follow that lead. If employees see that senior management doesn't follow the organization's clear ethical rules, they will be incentivized to bend the rules for their own benefit." She recognizes that, from time to time, there may be ethical lapses by senior leadership of an organization and, in her view, "the best practice is for that individual to acknowledge responsibility and commit to do better."

Ms. Minow observes that "Fannie Mae's Governance Authorities—its written codes of conduct and its COI Policy and [COI Procedure]—set the ethical standards for Fannie Mae. Those authorities provided a broad definition of a conflict of interest, require prompt and complete disclosure of situations that may give rise to an actual or apparent conflict of interest, and vest only the NGC with the authority to resolve conflicts raised by directors (b)(6) " Fannie Mae's Employee Code is (b)(6) in which (b)(6) (b)(6) Fannie Mae (b)(6) (b)(6) [30]

In Ms. Minow's opinion, the actions (and inactions) by (b)(6) with respect to timely and fulsome disclosure of (b)(6) "failed to comply with the letter or the spirit of the rules announced in Fannie Mae's Governance Authorities." She concludes: " (b)(6) disregard of the requirements in Fannie Mae's Governance Authorities sends a very clear message to Fannie Mae employees that (b)(6) does not place a high value on Fannie Mae's clear ethical standards."

CONCLUSION

FHFA views operational risk management as an important financial safety and soundness challenge facing Fannie Mae, and effective corporate governance is one element of an acceptable operational risk management program. Our investigation identified repeated failures by (b)(6) (b)(6) to disclose any information about (b)(6) (b)(6) a Fannie Mae counterparty, to the NGC so that it could determine whether that (b)(6) created an actual or apparent conflict of interest, prior to (b)(6)

Those failures: deprived the NGC of its duty to determine whether a conflict of interest existed; abrogated the duty of the NGC, on behalf of the Fannie Board of Directors, to exercise its oversight responsibilities over (b)(6) ; created the risk that (b)(6) would feel constrained in their ability to manage Fannie Mae's relationship with (b)(6) and set an inappropriate "tone at the top." As FHFA has delegated numerous responsibilities to Fannie Mae,

[30] FHFA's predecessor agency found, in connection with an intensive examination into Fannie Mae's accounting practices, that Fannie Mae's senior executive officers had failed to set an example of personal integrity and respect for the law. That examination resulted in a consent order, $400 million in fines, and a restatement of the company's financial statements. *OFHEO, Report of the Special Examination of Fannie Mae* (May 2006), at 52.

including corporate governance, (b)(6) failures raise questions about the rigor with which (b)(6) has executed other delegated governance responsibilities.

RECOMMENDATIONS

For these reasons, we recommend that:

1) The FHFA Director take appropriate disciplinary action against (b)(6) up to and including (b)(6) removal (b)(6) for repeated breaches of duty to Fannie Mae, as set forth in detail above.

2) As conservator of Fannie Mae, the FHFA Director has sole authority to determine the discipline to be imposed on (b)(6) for (b)(6) repeated breaches of duty to Fannie Mae. Should the FHFA Director impose discipline short of removal on (b)(6) the FHFA Director should direct (b)(6) to amend (b)(6) (b)(6) (b)(6) Fannie Mae employees on (b)(6) with a new (b)(6) in which (b)(6) acknowledges that (b)(6) did not follow Fannie Mae Governance Authorities in connection with (b)(6) disclosure of a situation that could give rise to a conflict of interest and recommits to follow the letter and spirit of those authorities.

Attachment

Introduction

I have been retained by the Federal Housing Finance Agency (FHFA) Office of Inspector General (OIG) to provide an expert report and opinion on whether certain actions of (b)(6) (b)(6) Fannie Mae (b)(6) and (b)(6) its Board of Directors, comport with Fannie Mae codes of conduct and conflict of interest policies and procedures applicable to (b)(6) and with generally-accepted principles of corporate governance on ethics and conflicts of interest.

Background and Qualifications

I am an expert on corporate governance issues and have served as an independent expert on such issues for more than three decades. Named one of the 20 most influential people in corporate governance by Directorship magazine in 2007, I have also received lifetime achievement awards for my work in corporate governance from the International Corporate Governance Network and Corporate Secretary Magazine. I have helped the National Association of Corporate Directors (NACD) develop model corporate governance guidelines and policies for its members, have spoken and moderated panels at more than a dozen of their annual conferences, and have been identified several times by NACD Directorship as one of the most influential people in the country on corporate governance matters. I understand that the Fannie Mae Board of Directors has retained the NACD to evaluate the effectiveness of its Audit Committee and to review the full Board's governance practices, as well as its oversight practices for cyber risks. More than 10 years ago, Business Week online dubbed me "the queen of good corporate governance."

I am the co-author with Mr. Robert G. Monks of three books, including five editions of the leading textbook on corporate governance (Corporate Governance, published by Blackwell/Wiley), and have written hundreds of published articles on governance related matters and chapters on governance issues for a number of treatises. I have been quoted as an expert on corporate governance in articles appearing in the Wall Street Journal, the New York Times, the Washington Post, Forbes, Fortune, and Barron's, among others, and have frequently appeared on broadcast news programs to discuss corporate governance issues. I have testified numerous times before Senate and House Committees and the SEC on legislative and regulatory proposals involving corporate governance issues and have spoken, by invitation, at conferences sponsored by the American Bar Association, the Practicing Law Institute, the Council of Institutional Investors, the NACD, the Conference Board, and trade associations for corporate secretaries and governance professionals and for securities analysts.

In 1986, I joined Institutional Shareholder Services (ISS), a firm that advised institutional investors on issues of corporate governance. Four years later, we spun off an investment fund, LENS, with a mission to take positions in underperforming companies and use shareholder activism to increase their value. In 1999, I co-founded The Corporate Library, an independent

firm that provided corporate governance research and analysis. It developed an extensive searchable database of public information relating to corporate governance and performance about thousands of companies, such as SEC filings, CEO employment contracts, ages, backgrounds and attendance records of directors, as well as books, studies, articles, speeches and legislative materials relating to corporate governance. Using a proprietary set of governance risk factors and metrics, it evaluated publicly-traded companies on the effectiveness of their corporate governance policies and procedures and governance oversight by their boards of directors and assigned ratings. These ratings enabled investors, insurers, auditors, and analysts to evaluate governance as an element of investment risk. It also conducted in-depth research on specific governance issues, such as CEO compensation, and issued special reports with its analysis.

In 2010, The Corporate Library merged with Audit Integrity and GovernanceMetrics International (GMI) to create GMI Ratings, the leading independent provider of global corporate governance, environmental, social, and accounting risk ratings for publicly-traded companies and related research to institutional investors. I was a co-founder of GMI Ratings and served as one of its directors. That firm was sold to MSCI in 2014. Currently, I am the Vice Chair of ValueEdge Advisors, a consulting firm which advises institutional investors on a range of corporate governance issues.

I am a graduate of Sarah Lawrence College and the University of Chicago Law School.

Summary of Opinion

My opinions are as follows:

- The affirmative decision by (b)(6), Fannie Mae (b)(6) not to disclose (b)(6) (b)(6) (b)(6) a counterparty of Fannie Mae, in (b)(6) constitutes a breach of (b)(6) duties. Based on my professional experience, I find that a reasonably prudent director (b)(6) (b)(6) in like position and under similar circumstances and similar governance authorities would have disclosed (b)(6) to the Nominating and Governance Committee (NGC).

- (b)(6) affirmative decision not to report (b)(6) (b)(6), in response to Fannie Mae's annual Conflict of Interest Questionnaire (COI Questionnaire), constitutes a breach of (b)(duties. Based on my professional experience, I conclude that a reasonably prudent director (b)(6) in like position and under similar circumstances and similar governance authorities would have disclosed (b)(6)

- The "letter and spirit" of Fannie Mae's Code of Conduct and Conflict of Interest Policy for Members of the Board of Directors (Director Code) mandates that directors "exercise good faith by disclosing information relating to conflicts or potential conflicts of interest" to the NGC. (b)(6) breached (b)(6) duties because (b)(6) disclosed no information relating to the potential conflict arising from (b)(6) to the NGC, prior to (b)(6)

- (b)(6) breached (b)(6) duties under Fannie Mae's Code of Conduct for employees (Employee Code) and Conflict of Interest Policy and its accompanying procedure for employees (COI Policy and procedure) because the information (b)(6) provided to (b)(6) (b)(6) Fannie Mae's Office of Compliance and Ethics (FM Ethics), fell far short of the mark demanded by the Employee Code and COI Policy. Based on my professional experience, a reasonably prudent Director (b)(6) in like position and under similar circumstances and similar governance authorities would not have considered (b)(6) request for guidance to (b)(6) —about whether (b)(6) could (b)(6) —to satisfy (b)(6) obligation to disclose "any situation that involves, or appears to involve, a conflict of interest" to the NGC.

- According to a (b)(6) memo from FM Ethics, it determined in (b)(6) that (b)(6) did not present a conflict of interest requiring formal review under the COI Policy and did not require notification to the NGC. Thereafter, (b)(6) which the Board approved on (b)(6) The record reflects that the NGC was not notified of (b)(6) until after the Board approved (b)(6) (b)(6) first notified the Board Chair on (b)(6) of the (b)(6) after (b)(6) Taken in the light most favorable to (b)(6) (b)(6) without any disclosure to the NGC about (b)(6) potential conflict of interest issue and (b)(6) reliance on FM Ethics to resolve the issue, amounted to extremely poor judgment. At worst, (b)(6) raises the appearance of an improper quid pro quo (b)(6) for not raising questions about (b)(6) (b)(6) or forwarding the issue to the NGC for its resolution.

- For ethics to become part of an organization's DNA, senior management, starting with the CEO, and the board of directors, must demonstrate through their actions that ethics, integrity and honesty matter. Fannie Mae's written codes of conduct and its COI Policy and procedure set the ethical standards for Fannie Mae. (b)(6) disregard of the requirements in Fannie Mae's codes of conduct and conflict of interest policies and procedure sends a very clear message to Fannie Mae employees that (b)(6) did not place a high value on Fannie Mae's clear ethical standards.

Methodology

I conducted no fact finding in connection with this report. To render this opinion, I examined the following materials:

- Fannie Mae's Code of Conduct and Conflict of Interest Policy for Members of the Fannie Mae Board of Directors
- Fannie Mae's Code of Conduct for Fannie Mae Employees
- Fannie Mae's Conflict of Interest Policy for Fannie Mae Employees
- Fannie Mae's Conflict of Interest Procedure for Fannie Mae Employees
- Fannie Mae's Charter of the Nominating and Corporate Governance Committee of the Fannie Mae Board of Directors
- Fannie Mae Bylaws
- Fannie Mae Corporate Governance Guidelines
- FHFA regulation governing responsibilities of boards of directors, corporate practices, and corporate governance matters (12 C.F.R. § Part 1239)
- Memorandum prepared by Fannie Mae's Office of Compliance and Ethics (FM Ethics) dated (b)(6)
- (b)(6) email memorandum from FM Ethics and recusal agreement relating to (b)(6)
- Memorandum opinion by Crowell & Moring dated (b)(6), a law firm retained by Fannie Mae
- Two detailed memoranda, dated (b)(6), and (b)(6) submitted by (b)(6) personal counsel, Cadwalader, Wickersham & Taft LLP, to the Inspector General of OIG
- OIG Memorandum of Interview of the Chair of Fannie Mae's Board of Directors
- Letter dated (b)(6), from Chair of Fannie Mae's Board of Directors to the FHFA Inspector General
- OIG Memorandum of Interview of the Chair of the Fannie Mae Board's Nominating and Corporate Governance Committee
- OIG Memorandum of Interview of (b)(6)
- Emails and attachments sent to (b)(6) by Fannie Mae's FM Ethics group regarding its review of issues raised by (b)(6) disclosures
- Log entries from Fannie Mae's case management system
- Minutes and materials from (b)(6) Fannie Mae Board and committee meetings pertaining to (b)(6) and (b)(6) other Fannie Mae (b)(6)
- Statement of facts prepared by OIG and contained in OIG's Management Alert
- Documents on which that Statement of Facts is based

- "Preliminary and Tentative Timeline" prepared by Fannie Mae and provided to OIG on (b)(6)

In addition to the foregoing, I have considered and applied my knowledge, experience and training regarding well-recognized principles and standards of corporate governance developed during my decades of professional experience.

Questions Presented and Opinion

I was engaged by OIG to provide my professional opinion on the questions presented below. I have been asked to consider a series of questions involving (b)(6) obligations, pursuant to Fannie Mae's codes of conduct applicable to directors and employees, and policies and procedure governing conflicts of interest (collectively, "Governance Authorities" for purposes of this report) to disclose a possible conflict of interest arising from (b)(6) (b)(6) (b)(6) and the harm, if any, to Fannie Mae from (b)(6) affirmative decision not to disclose (b)(6) to the Fannie Mae Board until after (b)(6) This report considers whether the letter and spirit of those Governance Authorities were met by (b)(6)

I begin with observations on corporate governance principles and the structures and mechanisms adopted by Fannie Mae to address conflicts of interest, followed by my opinion on the specific questions posed.

The foundation of corporate governance is an effort to recognize and minimize conflicts of interests (or agency costs). Conflicts of interest are inherent in any organization: organizations consist of individual human beings with many different relationships and priorities and these personal interests and relationships may conflict, or appear to conflict, with the best interest of the organization. Because both real and apparent conflicts of interest severely threaten the reputation and credibility of organizations, organizations impose structures and mechanisms — such as codes of conduct and conflicts of interest policies that set forth the obligations of employees and directors to disclose situations that may present an actual or apparent conflict of interest, and assign responsibility to resolve potential conflicts of interest to compliance officers and board committees. These include mandatory self-reporting of all situations that appear to present an actual or apparent conflict of interest, ethics training, annual verification of familiarity with the applicable codes of conduct and policies, and annual ethics questionnaires for directors and senior executive officers, to ensure that all potential conflicts of interest are promptly disclosed, managed and mitigated to avoid favoritism or self-dealing, in fact as well as in appearance.

Fannie Mae's Governance Authorities, including the (b)(6) its Code of Conduct for Employees, announce that Fannie Mae intends to act in accordance with

"the highest ethical standards." Those Governance Authorities broadly define a conflict of interest and in a manner that reaches personal relationships and indirect business connections.[1]

Fannie Mae has put into place a number of mechanisms and structures to promote prompt disclosure of potential, apparent or actual conflicts of interest and to resolve or mitigate them. These mechanisms and structures include: periodic reviews of its codes of conduct and policies for adequacy; annual director certification of compliance with the Director Code; annual officer and director COI Questionnaires; codes and policies that require prompt disclosure of a potential, apparent, or actual conflict of interest to a designated entity (for directors, the NGC, and for employees, FM Ethics). No individual burdened by a potential conflict can assess the extent or implications of it. A structured decision-making hierarchy for resolution of conflict of interest questions ensures that potential conflicts are evaluated, managed, or mitigated by the appropriate authority senior in rank to the affected director or employee. Pursuant to Fannie Mae's Governance Authorities, only the NGC is authorized to resolve conflict of interest issues involving directors (b)(6) [2]

Did (b)(6) affirmative decision not to disclose (b)(6) (b)(6) (b)(6) to a significant Fannie Mae counterparty breach (b)(6) duties under Fannie Mae's Governance Authorities?

Yes.

As I noted earlier, Fannie Mae's Governance Authorities define a potential, apparent, or actual conflict of interest quite broadly. Fannie Mae's Employee Code announces that the standard for determining whether a situation or relationship merits disclosure to FM Ethics and conflict of interest review includes: "How would it look in the media, to shareholders, or to regulators?" Its COI Policy defines "outside activities" that should be disclosed to FM Ethics to include (b)(6) And, its Director Code instructs: "A conflict of interest arises when a person's private interests in any way interfere—or even appear to interfere—with the interests of the Corporation as a whole." This language is intentionally broad and, by its terms, reaches personal relationships and indirect business connections. As a Fannie Mae (b)(6) (b)(6) (b)(6) (b)(6) the Director and Employee Codes and the COI Policy

[1] The Director Code states that a conflict of interest "arise[s] when a person's private interest interferes in any way—or even appears to interfere – with the interests of the Corporation as a whole." It requires a Fannie Mae director to report "[a]ny situation that involves, or appears to involve, a conflict of interest" to the Chair of the NGC or another NGC member. Fannie Mae's Employee Code requires employees to avoid any conflict or the appearance of a conflict between Fannie Mae's business interests and their personal interest. Its COI Policy defines a conflict of interest to reach situations which: impair an employee's objectivity; interfere with an employee's ability to execute his or her duties and responsibilities at Fannie Mae or embarrass Fannie Mae. Employees must promptly report potential conflict of interest to FM Ethics.

[2] This responsibility, as well as those delegated to all committees, is still subject to the full Board's overall authority.

and procedure. These require prompt disclosure of a potential conflict of interest. For example, Section A, paragraph 1 of the Director Code mandates: "any situation that involves, or appears to involve, a conflict of interest must be disclosed to the [NGC] Chair or another member of the [NGC]."

(b)(6) reported to OIG that (b)(6) (b)(6) and that (b)(6) (b)(6) Under the Director Code and Employee Code, (b)(6) was required to disclose (b)(6) to both FM Ethics and the NGC once (b)(6) a Fannie Mae counterparty. (b)(6) advised OIG, and (b)(6) counsel confirmed in memoranda to OIG, that (b)(6) did not.

(b)(6) and (b)(6) counsel offered several rationales to excuse (b)(6) actions and lack of disclosure. As I now discuss, none has merit.

- *Unilateral determination by* (b)(6) *was appropriate*. It is almost tautological that a conflict of interest cannot be objectively evaluated by someone who is (b)(6) subject to that very conflict. By definition, conflicts impair objectivity. The conflict itself makes it impossible to self-assess the extent or implications of the conflict. Indeed, as (b)(6) (b)(6) and (b)(6) counsel acknowledge, (b)(6) self-assessment focused only on (b)(6) potential involvement with specific transactions between Fannie Mae (b)(6) which demonstrates the inadequacy of the analysis, as I now discuss.

- *Self-analysis limited to* (b)(6) *direct involvement in specific transactions between Fannie Mae* (b)(6) (b)(6) and (b)(6) counsel maintain that no "reasonable person" could question (b)(6) impartiality, and hence, no conflict of interest could exist, because (b)(6) was not directly or indirectly involved in any transactions between (b)(6) (b)(6) Fannie Mae. And yet (b)(6) made no attempt to formalize this recusal by notifying the staff that (b)(6) would play no role in any transactions with (b)(6), or in overseeing those who were directly involved. (b)(6) (b)(6) (b)(6) is a director (b)(6) Fannie Mae and supervised, either directly or indirectly, those Fannie Mae (b)(6). While (b)(6) (b)(6) acknowledged that (b)(6) first disclosed (b)(6) in (b)(6) (b)(6) asserted that (b)(6) about it and (b)(6) was not aware whether Fannie Mae employees knew about it. The fact that (b)(6) were (b)(6) (b)(6) meant that it was likely within the small world of banking and financial services that people would (b)(6) (b)(6) which created the real risk that Fannie Mae (b)(6) (b)(6) (b)(6) (b)(6) Fannie Mae (b)(6) (b)(6) (b)(6)

Fannie Mae's COI Policy defines a conflict of interest to reach exactly those situations: a conflict under that Policy is an instance which could "cause us to fail to advance Fannie

Mae's best interest and/or favorably treat certain outside organizations or individuals with whom Fannie Mae does business." I note that (b)(6) affirmatively recognized the effect that (b)(6) could have on Fannie Mae subordinates in (b)(6) (b)(6) explained to OIG that (b)(6) determined to disclose (b)(6) to the Fannie Mae Board and provide Fannie Mae (b)(6) (b)(6) because, if (b)(6) did not, a Fannie Mae employee could think it could be in Fannie Mae's interest to retaliate against (b)(6) (b)(6) Where, as here, the potentially conflicted party– (b)(6) – (b)(6) (b)(6) of the Fannie Mae (b)(6) (b)(6), there is a heightened disclosure obligation on the potentially conflicted party in order to eliminate any perceptions of unfairness. Nothing in Fannie Mae's Governance Authorities authorized (b)(6) to refrain from disclosing (b)(6) (b)(6) provided (b)(6) made no decisions relating to (b)(6) And significantly, at the time of (b)(6) when (b)(6) or when (b)(6) first raised the issue of the (b)(6), (b)(6) made no effort to formally recuse (b)(6) from any involvement or oversight with transactions at (b)(6) with a memorandum to the file and to the relevant staff.

- (b)(6) *epresented a "miniscule" amount of business from Fannie Mae's perspective.* (b)(6) and (b)(6) counsel reported to OIG that (b)(6) had no direct involvement in business matters relating to (b)(6) and it was unlikely (b)(6) would because of the "miniscule" amount of business that (b)(6) represented to Fannie Mae. (b)(6) (b)(6) however, acknowledged to OIG that, in considering the potential conflict of interest implications of (b)(6) (b)(6) did not inform (b)(6) of the business relationship between Fannie Mae (b)(6). I understand that, as of (b)(6) (b)(6) (b)(6) was approved to sell up to (b)(4) in loans to Fannie Mae and serviced approximately (b)(4) in single-family loans and was one of its top servicers. Put differently, (b)(6) sells billions of dollars of loans to Fannie Mae and Fannie Mae relies on (b)(6) to service billions of dollars of loans it has purchased or guaranteed. The importance of those transactions to (b)(6) (b)(6) was not considered. There is no de minimis exemption in Fannie Mae's Governance Authorities limiting conflicts of interest only to those instances involving the most significant business relationships with Fannie Mae and, as (b)(6) reported, (b)(6) lacked information about the size of the relationship between Fannie Mae (b)(6) so (b)(6) ability to assess the significance of those transactions is questionable.

- *Self-determination that* (b)(6) *"did not in any way interfere with* (b)(6) *duties."* (b)(6) acknowledges that (b)(6) was involved in (b)(6) (b)(6) (b)(6) a Fannie Mae counterparty. The Director Code defines a conflict of interest to arise when "a person's private interest interferes in any way—or even appears to interfere—with the interests of the Corporation as a whole." As I noted earlier, the individual burdened by the conflict is unable to determine whether the conflict interferes

with the performance of (b)(6) duties, whether in fact or appearance. By their nature, (b)(6) (b)(6) such as (b)(6) (b)(6) are not business contracts: they involve (b)(6) that can interfere with purely business concerns in ways that are not easily self-assessed. The quantity and quality of the time (b)(6) and the quantity and detail of information (b)(6) about what goes on in (b)(6) create greater risks of disclosing information that could provide an unfair advantage or create a perception of favoritism. Even if it were possible for an individual in a (b)(6) to be purely objective, (b)(6) can create a perception of favoritism. Those conflicts can create benefits that range from quantifiable financial advantage to casual or intentional exchange of information or just a perception among observers that favoritism may be a factor. Fannie Mae's Governance Authorities recognize the particular challenges of actual or apparent conflicts involving senior executives, which have implications and ramifications that extend beyond specific transactions. Accordingly, those authorities direct that only the NGC—a board committee—must resolve such conflicts.

- *Self-determination that it was not foreseeable that (b)(6) would become public and cause reputational damage or embarrassment to Fannie Mae.* Fannie Mae's COI Policy includes those situations which could "embarrass Fannie Mae" as cognizable potential conflicts of interest. That definition is substantially similar to a commonly used standard: "How would you feel to see it on the front page of the newspaper?" (b)(6) reported to OIG that (b)(6) did not think that (b)(6) (b)(6) would come out and cause embarrassment to Fannie Mae or create reputational risk. According to (b)(6) counsel, "it is impossible to conceive how (b)(6) could have reasonably foreseen [the] risk" that (b)(6) would become public and could embarrass Fannie Mae. And yet (b)(6) also said that (b)(6) (b)(6) and (b)(6) Those justifications again demonstrate why the individual burdened by a conflict of interest cannot assess the extent or implications of the conflict. (b)(6) large financial institutions, involved in ongoing business transactions (b)(6) is (b)(6) Look (b)(6) (b)(6) once (b)(6) (b)(6) It was not just that (b)(6) could become public and embarrass Fannie Mae: it was likely.

- (b)(6) *history shows that (b)(6) has diligently reported other possible conflicts.* According to (b)(6) counsel (b)(6) frequently consulted with FM Ethics on a wide range of matters, including more than a dozen relating to conflicts of interest. By way of example, (b)(6) counsel explained that (b)(6) "disclosed when (b)(6) Fannie Mae"; "disclosed (b)(6) and another (b)(6) Fannie Mae (b)(6) and "disclosed (b)(6) (b)(6) " If anything, those disclosures show that

(b)(6) understood the breadth of the conflict of interest prohibition in Fannie Mae's Governance Authorities and affirmatively elected not to disclose the potential conflict of interest arising from (b)(6)

In my opinion, (b)(6) affirmative decision not to disclose (b)(6) (b)(6) constitutes a breach of his duties under Fannie Mae's Governance Authorities. Based on my professional experience, a reasonably prudent Director (b)(6) in like position and under similar circumstances and similar governance authorities would have disclosed (b)(6) to the NGC.

(b)(6) affirmative decision not to disclose the potential conflict of interest arising from (b)(6) for almost (b)(6) denied the NGC the opportunity to exercise its essential oversight responsibilities. The NGC could not investigate or evaluate a potential conflict about which it lacked any information. Had (b)(6) made timely disclosure to the NGC, it could have evaluated the potential for conflicts, determined whether further investigation was needed, and, at the conclusion of its assessment, put into place those controls it deemed appropriate to mitigate any potential harm from the conflict.

Did (b)(6) failure to disclose (b)(6) (b)(6) in (b)(6) COI Questionnaire meet the standard of conduct of a reasonably prudent director (b)(6)?

No.

Because real and apparent conflicts of interest severely threaten the reputation and credibility of organizations, organizations impose structures and mechanisms to identify, disclose, resolve, and mitigate or minimize conflicts of interest. Annual ethics questionnaires are one of the mechanisms used by Fannie Mae and many other publicly traded companies to elicit information about conflicts of interest that had not been previously disclosed.

The Director Code (Section A, paragraph 2) instructs: "it is imperative that all directors, whether appointed or elected, exercise good faith by disclosing information relating to conflicts or potential conflicts of interest." While the Director Code burdens directors with coming forward, the (b)(6) COI Questionnaire sought to provide "belt and suspenders" confirmation that all potential conflicts had been disclosed when it asked: "[a]re you aware of any issue or conflict of interest involving yourself or a family member that could potentially cause negative publicity to Fannie Mae that has not previously been disclosed?" (b)(6), in (b)(6) response, answered "No" to this question.

In my opinion, (b)(6) affirmative decision not to report (b)(6) (b)(6) in response to this COI Questionnaire constitutes a breach of (b)(6) duties under the Director Code. Based on my professional experience, a reasonably

prudent Director (b)(6) in like position and under similar circumstances and similar governance authorities would have disclosed (b)(6)

Did (b)(6) disclosure in (b)(6) of (b)(6) (b)(6) satisfy (b)(6) obligations under the Governance Authorities?

No.

I understand that (b)(6) could not recall the details of (b)(6) disclosure to Fannie Mae (b)(6) but was certain that (b)(6) understood, from what (b)(6) said, that (b)(6) (b)(6) (b)(6) said (b)(6) "impression was that (b)(6) got it." According to (b)(6) the disclosure (b)(6) made to (b)(6) satisfied (b)(6) disclosure obligations. I now address each of (b)(6) points.

Disclosure of situations involving potential conflicts of interest require more than an "impression" or "understanding." They require complete candor and an explicit statement of the nature of (b)(6) The record demonstrates that (b)(6) made no such disclosures. The written materials created by FM Ethics and provided to me by OIG state that a question was asked by Fannie Mae (b)(6) whether (b)(6) could (b)(6) (b)(6) Disclosure of a potential conflict of interest based on incomplete information is, by definition, inadequate.

As both a director and employee of Fannie Mae, (b)(6) was bound by the Director and Employee Code and COI Policy. Pursuant to the Director Code, "[e]ach director must comply with the letter and spirit of the Code and must annually certify his or her compliance with the Code." (b)(6) knew, or should have known, from (b)(6) annual certification that the Director Code requires each director to disclose potential conflicts of interest to the NGC Chair or a member of the NGC.

(b)(6) counsel reported to OIG that (b)(6) developed a familiarity with relevant Fannie Mae policies and procedure as a result of (b)(6) annual code of conduct certifications, periodic compliance training, and consultations with FM Ethics. The record shows that (b)(6) the Employee Code with (b)(6) (b)(6) Part 6 of the Employee Code explains the guiding principles for conflicts of interest and refers employees to the COI Policy and procedure. The COI Policy states that "if the request [for interpretation of a potential conflict of interest] relates to (b)(6) then the interpretation will be made by the [NGC]." In my experience, these provisions represent "best practices" because compliance officers cannot objectively evaluate or resolve conflicts issues faced by executives who are senior to them.

According to a (b)(6) memo from FM Ethics, it determined, in both (b)(6) and again in (b)(6), that (b)(6) did not present a conflict of

interest requiring formal review under the COI Policy and did not require notification to the NGC. It is almost tautological that conflict of interest cannot be objectively evaluated by someone who is himself or herself subject to a conflict. By that I mean the following: because (b)(6) and (b)(6) has significant (b)(6) (b)(6) is burdened by a conflict in any effort to independently evaluate and resolve a sensitive conflicts issue raised by (b)(6) For those reasons, Fannie Mae's Governance Authorities make clear that (b)(6) lacks the power to resolve potential conflicts of interest involving (b)(6) or to provide a final interpretation whether a situation creates a potential conflict of interest.

Instead, the Governance Authorities mandate that all such potential conflicts must be presented to the Board's NGC and can only be resolved by the NGC. Here, (b)(6) and FM Ethics placed themselves in the position of determining that no conflict of interest, real or apparent, arose from (b)(6) which is not countenanced by Fannie Mae's Governance Authorities. Those actions, in turn, created a real or apparent conflict of interest when (b)(6) I will address this issue in response to the next question.

(b)(6) knew, or should have known, from (b)(6) familiarity with the Governance Authority, including the Director and Employee Codes and the COI Policy and procedure, that only the NGC, and not (b)(6) was authorized to resolve any questions involving a potential conflict of interest related to (b)(6) (b)(6) knew, or should have known, that neither (b)(6) nor FM Ethics had the authority to interpret and resolve whether a conflict of interest was created by (b)(6)

In my opinion, (b)(6) disclosure to (b)(6) about (b)(6) (b)(6) fell far short of what was required of Fannie Mae's senior officers and directors by Fannie Mae's Governance Authorities. The "letter and spirit" of the Director Code mandates that directors "exercise good faith by disclosing information relating to conflicts or potential conflicts of interest" to the NGC. (b)(6) failed to disclose any information to the NGC, as (b)(6) was required to do by the Director Code and COI Policy, and the information (b)(6) provided to (b)(6) fell far short of the mark demanded by the Governance Authorities. Based on my professional experience, a reasonably prudent Director (b)(6) in like position and under similar circumstances and similar governance authorities would not have considered (b)(6) request for guidance to (b)(6) —about whether (b)(6) could (b)(6) (b)(6) —to satisfy (b)(6) obligation to disclose "any situation that involves, or appears to involve, a conflict of interest" to the NGC.

Did (b)(6) (b)(6) create the appearance of an improper quid pro quo?

Yes.

According to the (b)(6) memo prepared by FM Ethics, it determined in (b)(6) that (b)(6) did not present a conflict of interest requiring formal review under the COI Policy and did not require notification to the NGC. I understand from the information that I reviewed that neither the Board Chair nor the NGC was aware of (b)(6) (b)(6) until (b)(6) after (b)(6) (b)(6) Based on that information, I assume that neither (b)(6) nor FM Ethics reported (b)(6) disclosure to (b)(6) in (b)(6) —whatever it was—to the NGC prior to (b)(6)

Before (b)(6) and (b)(6) (b)(6) (b)(6) was made (b)(6) (b)(6) as part of the annual performance review cycle and the reasons provided by management for (b)(6) stand in direct contradiction to management's assessment in (b)(6) The record shows that, on (b)(6) the (b)(6) Committee of the Board, in consultation with the Audit Committee, recommended that the Board approve the (b)(6) and the Board approved the (b)(6)

In my opinion, the timing of and the rationale for the (b)(6) is quite troubling. Taken in the light most favorable to (b)(6) (b)(6) (b)(6) without any disclosure to the NGC about (b)(6) potential conflict of interest issue and (b)(6) reliance on FM Ethics to resolve the issue, amounted to extremely poor judgment. At worst, (b)(6) raises the appearance of an improper quid pro quo to (b)(6) for not raising questions about (b)(6) (b)(6) or forwarding the issue to the NGC for its resolution.

Did (b)(6) actions, or inactions, in connection with disclosure of a possible conflict of interest arising from (b)(6) (b)(6) set an appropriate "Tone at the Top"?

No.

More than 15 years after the collapse of Enron, every publicly-traded company has a code of ethics and written policies and procedures to enforce and reinforce those ethical standards. But written codes of conduct and policies and procedures, distributed to new employees at orientation and at subsequent training sessions, are meaningless without actions to support them. For ethics to become part of an organization's DNA, senior management, starting with the CEO, and the board of directors, must demonstrate through their actions that ethics, integrity and honesty matter. Otherwise, employees will not believe that those values are core values and will not perceive that their path to success in the organization will require adherence to those values.

Here, Fannie Mae's Governance Authorities—its written codes of conduct and its COI Policy and procedure—set the ethical standards for Fannie Mae. Those authorities provided a broad

definition of a conflict of interest, require prompt and complete disclosure of situations that may give rise to an actual or apparent conflict of interest, and vest only the NGC with the authority to resolve conflicts raised by directors and (b)(6) While Fannie Mae (b)(6) exhorted employees, in (b)(6) to the Employee Code of Conduct, about the critical need to act with the highest ethical standards (b)(6) actions (and inactions) with respect to a conflict of interest arising from (b)(6) failed to comply with the letter or the spirit of the rules announced in Fannie Mae's Governance Authorities.

In my professional experience, employees in an organization watch what senior management does and says and follow that lead. If employees see that senior management doesn't follow the organization's clear ethical rules, they will be incentivized to bend the rules for their own benefit. The ethical standards of an organization apply to every one of its employees and directors. Where, as here, the organization's ethical standards were not followed by the most senior member of Fannie Mae's leadership, the best practice is for that individual to acknowledge responsibility and commit to do better. No such acknowledgement was forthcoming from (b)(6).

In my opinion, (b)(6) disregard of the requirements in Fannie Mae's Governance Authorities sends a very clear message to Fannie Mae employees that (b)(6) does not place a high value on Fannie Mae's clear ethical standards.

(b)(6)

Nell Minow

March 23, 2017