

**REDACTED**

Federal Housing Finance Agency  
Office of Inspector General



**Corporate Governance:  
Fannie Mae Senior Executive  
Officers and Ethics Officials Again  
Failed to Follow Requirements for  
Disclosure and Resolution of  
Conflicts of Interest, Prompting the  
Need for FHFA Direction**

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Evaluation Report • EVL-2021-001 • March 15, 2021



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March 15, 2021

## Executive Summary

Since 2017, we have published several reports on Fannie Mae’s framework for the disclosure, review, and resolution of senior executive officers’ (SEO) conflicts of interest (COIs), including implementation of and compliance with that framework. In these reports, we found failures by Fannie Mae’s former Chief Executive Officer (CEO) to timely and fully disclose potential conflicts as well as breakdowns in oversight by Fannie Mae Board of Directors’ (Board) Nominating and Corporate Governance Committee (NGC) and by the Federal Housing Finance Agency (FHFA) that created weaknesses in Fannie Mae’s risk management structure.

In response to our recommendations from a 2018 evaluation report, FHFA issued a conservatorship directive to Fannie Mae that established its expectations regarding disclosure and resolution of actual, potential, and apparent conflicts of interest involving SEOs (Directive). For COI matters involving an Enterprise CEO, the Directive instructed, without qualifications or limitations, that “[t]he Board makes the final decisions on all CEO COI matters.” It established a different process for other SEOs: the Directive authorized Fannie Mae’s Office of Compliance and Ethics (FM Ethics) to determine whether matters disclosed involving such SEOs present COI issues. Where FM Ethics determines that a COI exists, it must provide its analysis and recommended resolution to the NGC, which has sole authority to resolve the issue.

Fannie Mae recognizes that potential, actual, or apparent COIs, when not disclosed or addressed properly, pose significant risk to its reputation and undermine its goal of operations in accordance with “the highest standards of compliance and ethics.” Accordingly, the Board and Fannie Mae management revised their governance documents related to COIs in response to the Directive. Fannie Mae acknowledges that adherence to the letter and spirit of these governance documents requires buy-in from all employees. Internal Enterprise documents describe Fannie Mae as having “zero tolerance” for ethics violations.

In this evaluation, we assessed, for the period from November 1, 2018, to June 30, 2020 (Review Period), whether Fannie Mae and its SEOs followed the Directive and revised governance documents for the disclosure and resolution of potential, actual, or apparent COIs. Based on our review of Fannie Mae’s documents, we found a mixed record.

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We identified a total of 32 relevant COI matters involving all SEOs during our Review Period, 7 of which related to the current CEO and 25 related to other SEOs. We first assessed whether the CEO and other SEOs made timely disclosures of these COI matters. Of the seven involving the current CEO, Fannie Mae records show that he failed to make timely COI disclosures in three instances, in contravention of the FHFA Directive and governance documents. While the CEO instructs employees to comply with Fannie Mae's conflict of interest framework, Fannie Mae's records show that he failed to comply 43% of the time.

Of the 25 matters involving other SEOs, two other very senior SEOs failed to make timely disclosures in 2 instances. For example, an SEO failed to disclose a personal friendship with the co-founder of a supplier over a four-year period, during which approximately \$25 million in contracts were awarded to ■■■ friend.

We then assessed whether FM Ethics and the NGC adhered to the Directive and revised COI governance documents in their review and resolution of COIs involving SEOs. For three of seven COI matters involving the CEO during the Review Period, Fannie Mae documents show that FM Ethics substituted its judgment for that of the NGC and displaced the NGC as the final decision maker, in contravention of the Directive and revised governance documents. For the CEO, FM Ethics demonstrated a 43% rate of non-compliance with the COI framework. In the remaining four COI matters, both FM Ethics and the NGC executed their responsibilities.

For each of the 25 matters involving other SEOs, FM Ethics generally followed the requirements of the Directive and revised governance documents for reviewing and reporting the matters to the NGC once the SEO disclosed the COI matter. We found each of FM Ethics' determinations regarding the existence of conflict concerns to be reasonable under the COI Policy. We also found that the NGC properly executed its responsibilities to resolve COI matters for SEOs other than the CEO.

We provided a draft of this report to FHFA for technical comment and received extensive proposed editorial revisions from Fannie Mae, largely through FM Ethics, and three modest factual clarifications. The proposed edits from FM Ethics, in large measure, sought to put its spin on the factual record or argue that our "interpretation" would burden the NGC unduly.

A cohesive corporate culture of compliance cannot be built and maintained when the FHFA Director, as conservator of Fannie Mae, and Fannie Mae's

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Board share one view of that culture, as evidenced by the Directive and revised governance documents, that differs significantly from the view held by the current CEO, as demonstrated by his conduct, and FM Ethics, the office charged with ensuring compliance. When the actions of FM Ethics, the supposed gatekeeper for Fannie Mae compliance, do not align with its clearly defined responsibilities, stakeholders should question whether Fannie Mae is committed to a culture of compliance.

These failures provide an example of the conclusion voiced by the FHFA Director in his September 2020 testimony to Congress: “Fannie and Freddie have what I would consider some of the worst corporate cultures I’ve ever seen in corporate America.” In our view, absent clear instruction from the conservator, Fannie Mae’s culture, which the FHFA Director has described as arrogant and insular, will not change.

We made three recommendations to FHFA to address the shortcomings we observed. In a written management response, FHFA agreed with our recommendations.

This report was prepared by Jon Anders, Program Analyst; Jason Ramserran, Program Analyst; and Michael Kubik, Attorney Advisor. We appreciate the cooperation of FHFA and Fannie Mae staff, as well as the assistance of all those who contributed to the preparation of this report. This report has been distributed to Congress, the Office of Management and Budget, and others and will be posted on our website, [www.fhfaoig.gov](http://www.fhfaoig.gov).

/s/

Kyle D. Roberts  
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## ABBREVIATIONS .....

Board	Fannie Mae’s Board of Directors
CCO	Chief Compliance and Ethics Officer
CEO	Chief Executive Officer
█	█
CMS	Fannie Mae’s Ethics Case Management System
COI	Conflict of Interest
Directive	FHFA’s April 23, 2018 Directive and Policy on Conflicts of Interest
EDoA	Executive Delegations of Authority
FHFA or Agency	Federal Housing Finance Agency
FM Ethics	Fannie Mae’s Office of Compliance and Ethics
NGC	Fannie Mae Board of Directors’ Nominating and Corporate Governance Committee
OIG	Federal Housing Finance Agency Office of Inspector General
Review Period	November 1, 2018 – June 30, 2020
SEO	Senior Executive Officer

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## BACKGROUND .....

### **FHFA Has Long Recognized the Critical Need for Compliance by Fannie Mae’s Senior Leadership with Fannie Mae’s Conflict of Interest Policy and Procedure**

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. By regulation, it requires Fannie Mae to “establish 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 . . . .”<sup>1</sup>

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 former Chair and CEO of the Financial Industry Regulatory Authority has observed, “a CEO’s behavior tells employees what matters, and what behaviors are rewarded and punished.”<sup>2</sup> When, by their conduct, the directors and senior leadership of an organization do not demonstrate ownership of the organization’s core values and standards, employees will not believe that their path to success in the organization requires adherence to those core values and standards.

### **Our Prior Reviews of Fannie Mae’s Conflict of Interest Framework Revealed Failures by the CEO to Timely and Fully Disclose Potential Conflicts and Breakdowns by the Fannie Mae Board’s Nominating and Corporate Governance Committee and by FHFA**

Since 2017, we have published four reports on Fannie Mae’s framework for the disclosure, review, and resolution of SEOs’ COIs, including implementation of and compliance with that framework.<sup>3</sup>

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<sup>1</sup> See 12 C.F.R. § 1239.10 (Code of Conduct and Ethics).

<sup>2</sup> Richard G. Ketchum, former Chair and CEO, Financial Industry Regulatory Authority, Remarks from the 2016 FINRA Annual Conference (May 23, 2016).

<sup>3</sup> See [OIG, \*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-2017-004, Mar. 23, 2017), [Corporate Governance: Review and Resolution of Conflicts of Interest Involving Fannie Mae’s Senior Executive Officers Highlight the Need for Closer Attention to Governance Issues by FHFA](#) (EVL-2018-001, Jan. 31, 2018), [Administrative Review of a Potential Conflict of Interest Matter Involving a Senior Executive Officer at an Enterprise](#) (OIG-2018-001, July 26, 2018), and [Compliance Review of Fannie Mae’s Conflicts of Interest Policies and Procedures Regarding its Senior Executive Officers](#) (COM-2020-005, Aug. 26, 2020).

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## ***Resolution of Conflicts of Interest Involving Fannie Mae's then-CEO***

Fannie Mae's COI Policy and COI Procedure have long required the NGC to resolve all potential COIs relating to Fannie Mae's CEO.

In a March 2017 Management Alert,<sup>4</sup> we found that Fannie Mae's then-CEO/Fannie Mae director failed to timely and fully disclose his significant and ongoing personal relationship with the General Counsel of a business counterparty. We determined that his eventual disclosure was made to Fannie Mae's Chief Compliance and Ethics Officer (CCO), who oversees FM Ethics, seven months after the COI arose. The corporate governance expert retained by us opined that the then-CEO's failure to disclose his significant personal relationship with the General Counsel of a counterparty when the conflict first arose (and later in response to an annual conflict of interest questionnaire) constituted a breach of his duties.

The Charter of the NGC tasked the NGC with sole responsibility to resolve all potential COIs involving the CEO, which was reinforced by Fannie Mae's COI Policy and COI Procedure. The NGC Charter did not contemplate any decisional role for management (including FM Ethics and the CCO) in conjunction with such interpretations, because, in our view, of the significant risk that subordinates to the CEO will not exercise independent judgment with respect to the CEO's COI matters. However, we found that FM Ethics, not the NGC, determined that no COI existed as a result of the then-CEO's personal relationship, even though it lacked authority to make that determination. Neither FM Ethics, the CCO, nor the then-CEO notified the NGC of this COI issue or of FM Ethics' determination at the time of the CEO's disclosure.<sup>5</sup>

In a 2018 Management Alert,<sup>6</sup> we found that the then-CEO apparently again made incomplete disclosures about a potential COI arising from the same significant personal relationship that was the subject of a 2017 Management Alert. FM Ethics' records reflected two disclosures by the then-CEO, in January and April 2018, regarding a potential COI relating to the prospective and, later, actual employment of his romantic partner by a credit reporting agency. Based on our review of these records, we found no evidence to show that the then-CEO disclosed critical information about the credit reporting agency's interests that was

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<sup>4</sup> See OIG, [\*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-2017-004, Mar. 23, 2017).

<sup>5</sup> We also found that the then-CEO subsequently sponsored a significant increase in compensation for the CCO, five months after the CCO was awarded an increase in compensation as part of the annual performance review cycle. The reasons provided by management for this increase were in direct contradiction to management's prior assessment.

<sup>6</sup> See OIG, [\*Administrative Review of a Potential Conflict of Interest Matter Involving a Senior Executive Officer at an Enterprise\*](#) (OIG-2018-001, July 26, 2018).

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known, or should have been known, by him. The interests of that credit reporting agency were necessarily significant to any conflict of interest analysis and to the design of controls put into place to mitigate the conflict. His failure to make those disclosures created the risk that he could participate in the assessment of a credit scoring model in which his romantic partner's employer held a significant ownership interest, or participate in related discussions with FHFA regarding that assessment. On the day that FHFA provided its response to a draft of our Management Alert, Fannie Mae announced that the then-CEO would step down as CEO and a director by the end of the year. He resigned from Fannie Mae on October 15, 2018.

### ***Resolution of Conflicts of Interest Involving Fannie Mae SEOs***

In a January 2018 evaluation,<sup>7</sup> we assessed whether the NGC, which had responsibility for reviewing SEOs' potential COIs, effectively executed those responsibilities, and FHFA's role as conservator in overseeing the Board's execution of its responsibilities.

The version of the NGC Charter in effect during that evaluation, adopted by the Board, placed responsibility on the NGC to review and resolve COI issues involving the CEO and all other SEOs. Fannie Mae's COI Policy and COI Procedure, approved by the CCO, directed that COI issues involving SEOs must be escalated to the NGC.<sup>8</sup>

We reviewed the resolution of 57 potential COIs involving SEOs, including the CEO, over a five-year period. We found that FM Ethics determined, on its own, whether a COI existed for 33 of the 57, in contravention of the COI Policy and COI Procedure. In the majority of the instances, FM Ethics did not notify the NGC of its determination. Those unauthorized actions deprived the NGC of its ability to satisfy its duties under its Charter.

We made eight recommendations to remediate the shortcomings we identified, with which FHFA agreed. FHFA committed to issue a conservatorship directive to Fannie Mae to implement the following four recommendations:

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<sup>7</sup> See OIG, [\*Corporate Governance: Review and Resolution of Conflicts of Interest Involving Fannie Mae's Senior Executive Officers Highlight the Need for Closer Attention to Governance Issues by FHFA\*](#) (EVL-2018-001, Jan. 31, 2018).

<sup>8</sup> The Executive Delegations of Authority from the CEO to his subordinates (EDoA), as amended, was in tension with the NGC charter and COI Policy and COI Procedure and created interpretive challenges regarding the responsibilities of the NGC. The EDoA contained an annex, titled "Matters Requiring Approval of the Board of Directors, a Committee thereof, or FHFA and/or the Conservator," which was approved by the Board. The annex did not identify the resolution of conflict of interest matters involving SEOs as requiring Board approval, which, according to FHFA, meant that the NGC was not vested with sole authority to resolve such matters.

- Provide guidance to Fannie Mae on the Agency’s governance expectations regarding authority to review and resolve actual, potential, and apparent COIs involving SEOs;
- Direct Fannie Mae to review its governance documents regarding assignment of authority and the process to review and resolve such conflicts;
- Direct the Board to determine whether a Board committee or management should retain authority for COIs, and establish reporting relationships as necessary between management and the Board based on that decision; and
- Counsel the Board to amend the relevant governance documents as needed to reflect any changes in reporting relationship between the NGC, FM Ethics, and the CCO.

### **FHFA Issued a Conservatorship Directive Setting Forth Its Expectations that the NGC Has Sole Authority to Resolve All COI Issues for SEOs**

On April 23, 2018, FHFA issued a conservatorship directive (Directive)<sup>9</sup> to the Enterprises setting forth its expectations for review and resolution of COI matters involving the CEO and other SEOs. For COI matters involving an Enterprise CEO, the Directive instructed:

- FM Ethics makes “a written recommendation to the Board for resolving all CEO COI issues, including matters where [it] recommends a determination that no COI issue exists, and provides documentation of all relevant facts to the Board.”<sup>10</sup> and
- “The Board makes the final decisions on all CEO COI matters.”<sup>11</sup>

The Directive contains no qualifications or limitations on the Board’s sole authority to resolve CEO COI matters.

For COI matters involving all SEOs other than the CEO, the Directive established a different process. The Directive instructed:

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<sup>9</sup> The conservatorship directive was accompanied by a conservator policy. For presentational purposes, these are collectively referred to herein as the Directive.

<sup>10</sup> Directive § 1(a)(vii)(3).

<sup>11</sup> Directive § 1(a)(vii)(4).

- FM Ethics reviews COI matters involving SEOs other than the CEO and determines whether a COI issue exists;<sup>12</sup>
- “If after full review [FM Ethics] determines that there is no COI issue raised by the matter, [FM Ethics] informs the SEO of its determination” and reports its “determinations to the [NGC] for the [NGC]’s information, not approval, during the next scheduled briefing.”;<sup>13</sup> and
- Where FM Ethics determines that a COI issue exists, it shall “provide[] a written recommendation for resolving the COI issue and provide[] documentation of all relevant facts to the [NGC].”<sup>14</sup>

The Directive reaffirmed longstanding Fannie Mae COI policy that the NGC has sole decision-making authority to resolve COI issues for SEOs.

### **To Implement the FHFA Directive, the Board and Fannie Mae Management Revised Governance Documents Related to COIs in May and June 2018**

To implement FHFA’s Directive, the Board, in May 2018, revised its governing COI documents.<sup>15</sup> The changes conformed the documents to the Directive for the review and resolution of CEO and SEO COIs and increased the frequency and scope of FM Ethics reporting on CEO and SEO potential conflicts to the NGC. The Board reinforced that the NGC has exclusive authority to make the final decision on all COI matters involving the CEO. The revisions approved by the Board, and relevant to this evaluation, include:

- *Nominating and Corporate Governance Committee Charter*: The Board revised the NGC Charter to reaffirm that the NGC is solely responsible for “[a]pproving all matters regarding the President and Chief Executive Officer in accordance with the Conflict of Interest Policy.”<sup>16</sup>

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<sup>12</sup> As an exception to this rule, FHFA’s Directive states that the Chief Legal Officer must make the final determination on whether the CCO’s matters constitute COI issues, following FM Ethics’ analysis and recommendation on the matters.

<sup>13</sup> Directive § 1(a)(iv)(1).

<sup>14</sup> Directive § 1(a)(iv)(2).

<sup>15</sup> Fannie Mae’s governing documents for SEO COIs include the NGC Committee Charter, Fannie Mae Code of Conduct for Employees, COI Policy, COI Procedure, COI Standard, and the Fannie Mae Code of Conduct for the Board of Directors.

<sup>16</sup> Nominating and Corporate Governance Committee Charter §§ 4.xv and 4.xvi (May 5, 2018), hereinafter “NGC Charter.” In January 2019, the Board removed the reference to the President from these sections of the NGC Charter.

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- *Executive Delegations of Authority, Annex B, Matters Requiring Approval of the Board of Directors or a Committee thereof, or FHFA and/or the Conservator Decision:* The Board revised its delegations of authority to management to mirror the responsibilities reserved to the NGC for resolution of CEO and SEO COIs.

In June 2018, Fannie Mae management issued a revised COI Policy and COI Procedure to conform to the FHFA Directive.<sup>17</sup> Consistent with the Directive, the revised COI Policy and COI Procedure established a two-tiered approach to resolution of CEO and other SEO disclosures of COI matters.

In an August 2020 compliance report, we determined that Fannie Mae revised its COI Policy, COI Procedure, and NGC Charter to be consistent with the FHFA Directive.<sup>18</sup>

## FACTS AND ANALYSIS .....

The foundation of corporate governance is the effort to recognize and mitigate conflicts of interest. Because both real and apparent conflicts of interest severely threaten the reputation and credibility of corporations, they impose structures and mechanisms—such as codes of conduct and conflict 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 requirements 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.<sup>19</sup>

FHFA, in its Directive, set forth its clear expectations for timely disclosure, review, and resolution of COI matters involving SEOs, including the CEO, which Fannie Mae implemented in its governance documents.

<sup>17</sup> Management subsequently revised the policy and procedure multiple times during our Review Period. Our review of these revisions found that they were not material. In this evaluation, we generally refer to the requirements of the December 2019 COI Policy and the November 2019 COI Procedure, the last versions of the policy and procedure in use during our Review Period.

<sup>18</sup> See OIG, [Compliance Review of Fannie Mae’s Conflicts of Interest Policies and Procedures Regarding its Senior Executive Officers](#) (COM-2020-005, Aug. 26, 2020).

<sup>19</sup> See Minow, Nell, *Expert Report of Nell Minow in re: Timothy Mayopoulos Conflict of Interest Matter*, at 5 (Mar. 23, 2017) (attachment to OIG, [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-2017-004, Mar. 23, 2017)).

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In this evaluation, we assessed whether (1) the CEO and other SEOs complied with requirements for timely disclosure of actual, potential, and apparent COIs; and (2) FM Ethics and the NGC adhered to the revised COI governance documents in their review and resolution of COIs involving the CEO and other SEOs during our Review Period. Our assessment involved the review and disposition of 32 COI matters—7 involving the CEO and 25 involving the other SEOs during the Review Period.<sup>20</sup>

### **Fannie Mae’s CEO and Two Other SEOs Failed to Make Timely Disclosures, in Contravention of FHFA’s Directive and Fannie Mae’s COI Policy and COI Procedure, and Their Actions Were Not Consistent with Fannie Mae’s Goal of Operating with the Highest Standards of Compliance and Ethics**

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, CEO, and senior officers—communicate its values by their deeds as well as their words. Senior leadership is expected to emphasize the importance of an organization’s reputation and to take seriously issues that could threaten its reputation.<sup>21</sup> FHFA’s Directive instructs that Enterprise employees should disclose potential, actual, or apparent COIs on “a timely basis, i.e., whenever possible, before the involved action or decision occurs.”<sup>22</sup> Implementing this provision of the Directive, Fannie Mae’s COI Policy requires employees to seek resolution of COIs, pursuant to the COI Procedure; and the COI Procedure requires all employee to “make disclosures timely and if possible before engaging in the activity, interest or relationship.”<sup>23</sup>

The governance expert retained in connection with our 2017 Management Alert explained the critical importance for leadership of an organization to comply with its rules:

[E]mployees in an organization watch what senior management does and says and follow that lead. If employees see that senior management doesn’t follow the

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<sup>20</sup> A total of 53 matters potentially involving COI issues was received by FM Ethics during the Review Period. Of these 53 matters, we excluded 21 because they related to annual COI questionnaires with no new disclosures (16 matters), business courtesy requests (2 matters), board member conflicts (1 matter), duplication of another entry (1 matter), and withdrawal prior to FM Ethics’ analysis (1 matter).

<sup>21</sup> See Smith-Bingham, Richard, *Reputation Risk, A Rising C-Suite Imperative*, at 18-20 (Oliver Wyman) (2014).

<sup>22</sup> Directive § 1(a)(iii)(1).

<sup>23</sup> Fannie Mae, Conflict of Interest Procedure, Version 06.01, at 5, Section 4.2 (Nov. 11, 2019). Fannie Mae’s COI Policy and COI Procedure are governed by and implement its Employee Code of Conduct. The Employee Code of Conduct requires employees to avoid and disclose conflicts of interest, and it states that compliance with Fannie Mae’s Code and policies is a condition of employment.

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organization’s clear ethical rules, they will be incentivized to bend the rules for their own benefit.<sup>24</sup>

As we now discuss, Fannie Mae’s CEO failed to make timely COI disclosures, in contravention of the FHFA Directive, COI Policy, and COI Procedure, in 3 out of 7 instances; and two other very senior SEOs failed to make timely disclosures in 2 out of 25 instances.

### ***Fannie Mae’s CEO Failed to Disclose One COI Matter and Failed to Timely Disclose Two Other COI Matters to FM Ethics***

FHFA’s Directive commands that the CEO, as an SEO, disclose potential COI matters “on a timely basis, i.e., whenever possible, before the involved action or decision occurs.” Of the seven relevant COI matters involving the CEO during the Review Period, the CEO failed to disclose or failed to timely disclose three—43%—to FM Ethics. For one of these three COI matters, the CEO failed to disclose it to FM Ethics: notice of that COI matter was provided to FM Ethics by another employee. In the other two matters the CEO made untimely disclosures, **after** he took the “involved action,” in contravention of the Directive.

- **Non-Disclosure.** The CEO formerly worked for a counterparty that did business with Fannie Mae and held a financial interest in the counterparty. Prior to our Review Period, the CEO was recused from all Fannie Mae business discussions and decisions related to the counterparty. The counterparty asked the CEO to participate in a video it was producing to celebrate the company’s anniversary. The record contains no evidence that the CEO disclosed this request to FM Ethics prior to accepting the invitation. According to the log in FM Ethics’ Case Management System (CMS)<sup>25</sup>—its formal record in which it captures all information relating to each COI matter—a member of Fannie Mae’s communications staff notified FM Ethics of the request *after* the CEO advised the counterparty he would participate in the video. FM Ethics confirmed to us that a communications staffer first contacted it regarding this matter.
- **Untimely Disclosure.** Fannie Mae’s CEO served on the board of directors of an insurance company and had a financial interest in that company. The CEO was walled off from “any business decisions, discussions, negotiations, and deliberations relating to” the insurance company. Notwithstanding this recusal, the CEO introduced Fannie Mae’s Chief Operating Officer to the insurance company’s CEO and its leadership for

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<sup>24</sup> See Minow, Nell, *Expert Report of Nell Minow in re: Timothy Mayopoulos Conflict of Interest Matter*, at 14 (Mar. 23, 2017).

<sup>25</sup> FM Ethics maintains documentation of its COI review process in CMS and on a related system. Such evidence includes emails, memoranda, and log entries documenting its steps. See Fannie Mae, Conflict of Interest Procedure, Version 6.01, Section 7 (Nov. 11, 2019).

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the purpose of exploring a potential business relationship. Subsequent to the introduction, he informed Fannie Mae's CCO by email of the introduction and reminded her of his relationship to the company.

- **Untimely Disclosure.** The CEO's [REDACTED]—a marketing executive—contacted him in March and September 2019 seeking work from Fannie Mae for a vendor with which the family member was affiliated. In October 2019, the CEO referred that vendor to a senior vice president, but failed to disclose his relationship with the marketing representative who sought the business for the vendor. After he made the referral, the CEO forwarded his referral email to Fannie Mae's CCO, disclosed the family relationship, and sought after the fact guidance on the “proper procedures, refusals [sic], etc.”

### ***Untimely Disclosures by Other SEOs***

As we observed in our prior reports and earlier in this report, Fannie Mae's COI governance documents have long required all employees to promptly disclose to FM Ethics all “personal relationships” when such relationships could intersect with Fannie Mae.<sup>26</sup> This requirement ensures 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.

Of the 25 COI matters involving SEOs other than the CEO, we found that two disclosures by very senior officers—[REDACTED] and the [REDACTED]—involving personal relationships were not timely.

- [REDACTED] **Failed to Disclose, over a Four-Year Period, a Close Personal Relationship with a Supplier that Was Awarded Six Contracts Totaling Approximately \$25 Million by that Business.** One of Fannie Mae's critical business divisions is its [REDACTED], which is headed by an [REDACTED], an SEO. According to Fannie Mae's 10-K filed for 2018, the [REDACTED] for that division joined Fannie Mae [REDACTED], and was promoted to [REDACTED]. This individual was one of the five highest compensated officers at Fannie Mae in 2018.

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<sup>26</sup> In addition, the COI Policy requires all employees to understand and adhere to the requirements of the policy, including the requirement to disclose such personal relationships.

This SEO had a long-standing, close personal friendship with the co-founder of a supplier.<sup>27</sup> Subsequent to the SEO's promotion to [REDACTED], this business unit awarded six service agreements to the firm of the SEO's friend and paid that firm approximately \$25 million for services. In one case, the SEO became personally involved in negotiating contract terms with the supplier. In addition, this SEO appeared to act as a personal representative for [REDACTED] friend: [REDACTED] recommended [REDACTED] friend's company as a potential supplier to Fannie Mae employees, including [REDACTED] subordinate.

While subsequent Fannie Mae records show that the SEO's friendship with the supplier's co-founder was well known among [REDACTED] direct reports, it appeared to remain a secret from FM Ethics. According to a Fannie Mae investigation report, the SEO did not disclose [REDACTED] personal friendship with the co-founder of the supplier until December 2018, four years after [REDACTED] gained authority over the business area. The investigation conducted by Fannie Mae subsequent to the SEO's untimely COI disclosure found, in March 2019, misconduct by the SEO because [REDACTED] knew or should have known that [REDACTED] close longstanding friendship with the supplier would create at least the appearance of a conflict of interest, and that [REDACTED] failure to disclose the relationship before December 2018 did not comply with the Employee Code of Conduct and COI Policy.

The Fannie Mae Employee Code of Conduct provides that compliance with the Code and policies is a condition of employment and violations can result in "disciplinary action up to and including termination of employment." What was the disciplinary action imposed on this SEO for [REDACTED] violations of the Employee Code of Conduct and COI Policy? According to Board minutes, "additional conflict of interest training" had been required. Minutes from meetings of the Board's Compensation Committee during 2019 and early 2020 provide no indication that this Committee considered this SEO's failure to timely disclose this COI as a factor in determining [REDACTED] compensation for 2019.<sup>28</sup>

- [REDACTED] **After the Fact Disclosure of a Referral of a Close Friend's Son as a Possible Vendor.** In May 2018, [REDACTED] [REDACTED] was approached by the son of [REDACTED] close personal friend with a request to

<sup>27</sup> Review of Fannie Mae records shows that this supplier began to do business with Fannie Mae in 2008. We were unable to determine what role, if any, this SEO played in securing Fannie Mae contracts worth millions of dollars for [REDACTED] friend prior to 2014; the [REDACTED] that awarded these contracts was outside the scope of [REDACTED] direct authority. Fannie Mae paid the supplier approximately \$98 million for services between 2011 and 2015. We found no evidence that this SEO disclosed [REDACTED] friendship with the supplier to FM Ethics between 2008 and 2014.

<sup>28</sup> In an 8-K filed on [REDACTED], Fannie Mae announced that this SEO [REDACTED] [REDACTED], after this evaluation was announced and underway.

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pitch his company's services to Fannie Mae employees. ██████████ referred the son of this friend to several individuals within Fannie Mae for the purpose of determining whether Fannie Mae should pursue future business with the company. In those instances, the ██████████ stated ██████████ expectation of being kept apprised of the initial discussion with ██████████ friend's son. One of the individuals referred his company to the Single-Family Analytics Group for potential work. FM Ethics' related CMS log entry contains no record that the ██████████ disclosed ██████████ personal relationship with the friend's son to FM Ethics before ██████████ made the referral.

The ██████████ was promoted to ██████████, placing him over the head of the ██████████

██████████ After the Single-Family Analytics Group engaged this company for a proof-of-concept project worth approximately \$50,000, ██████████ ██████████ disclosed the COI matter to FM Ethics.<sup>29</sup>

***Non-Disclosures and Untimely Disclosures of COI Matters by the CEO and Other SEOs Are Inconsistent with Fannie Mae's Goal of Operating with the Highest Standards of Compliance and Ethics***

More than 500 years ago, Lorenzo de' Medici observed: "What the Prince does then do many for upon the Prince are the eyes of all." Fannie Mae expresses the same sentiment this way: it expects its executives to "lead[ ] by what we say and what we do." To set the appropriate tone at the top, it is critical that the leaders of an organization set an example by their deeds as well as their words. The tone at the top shapes an organization's guiding values and provides a foundation upon which its culture is built.

Fannie Mae recognizes that potential, actual, or apparent conflicts of interest, when not disclosed or addressed properly, pose significant risk to its reputation and undermine its goal of operations in accordance with "the highest standards of compliance and ethics."<sup>30</sup> While Fannie Mae has long had processes to manage reputation risks associated with activities by its employees, including its senior executives, we demonstrated, in three reports issued in 2017 and 2018, that the then-CEO as well as FM Ethics failed to follow those processes. The controversies concerning the former CEO's lack of timely and adequate disclosure of a personal relationship with a senior officer of a counterparty created reputational risk for Fannie Mae. In April 2018, FHFA issued its Directive setting forth its expectation for timely

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<sup>29</sup> Once this COI matter was belatedly disclosed by ██████████ to FM Ethics, FM Ethics analyzed the COI issue and recommended to the NGC that the issue involved the appearance of a COI that required mitigation, which the NGC approved.

<sup>30</sup> The members of the Fannie Mae Board state in their own Code of Conduct for the Board of Directors that "the Corporation is committed to the highest standards of corporate compliance and ethics."

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and full disclosure of all COI matters by Enterprise SEOs, in order to mitigate and avoid potential reputation risk arising from such matters. FHFA’s Directive is not voluntary: it directs potential COIs matters to be disclosed “on a timely basis, i.e., whenever possible, before the involved action or decision occurs.”

Adherence to the letter and spirit of this Directive requires buy-in from senior management. However, Fannie Mae’s current CEO and two other SEOs ignored the Directive’s command for timely disclosure. Their non-disclosures, and untimely disclosures, are especially concerning given the attention that had recently been placed on the prior Fannie Mae CEO’s COI disclosure failures and FHFA’s remedial actions.

### Resolution of COI Matters Involving the CEO and Other SEOs

Fannie Mae’s governance documents create a framework for resolution of COI matters involving Fannie Mae SEOs.

- For the CEO: the FHFA Directive instructs, without exception: “the Board makes the final decisions on all CEO COI matters.” Implementing this Directive, the NGC Charter states: the NGC has sole authority to approve “all matters” regarding the CEO “in accordance with the Conflict of Interest Policy.”<sup>31</sup> The COI Policy instructs: “the [NGC] must review and approve all Conflicts disclosures pertaining to the CEO regardless of whether Ethics or the Policy Owner determine the disclosure raises an Actual Conflict of Interest, a Potential Conflict of Interest, the Appearance of a Conflict of Interest, or Reputational Risk.”<sup>32</sup>
- For SEOs other than the CEO: The FHFA Directive, and the COI Policy and COI Procedure, authorize FM Ethics to determine whether matters disclosed involving such SEOs present COI issues.<sup>33</sup> Where FM Ethics determines that COI issues do not exist, it is authorized to notify the affected SEO and the NGC. Where it determines that a COI exists, it must provide its recommended resolution to the NGC for final decision.<sup>34</sup>

We followed a comparable process for this evaluation that we followed for our 2018 evaluation. We identified a total of 32 relevant COI matters involving all SEOs during our

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<sup>31</sup> NGC Charter § 4.xv.

<sup>32</sup> Fannie Mae, Conflict of Interest Policy, Version 6.7, at 6, Section 6.2 (Dec. 4, 2019).

<sup>33</sup> The Chief Legal Officer must make the final determination on whether the CCO’s matters constitute COI issues. *See* Note 12, *supra*.

<sup>34</sup> *See* Directive § 1(a)(iv); Fannie Mae, Conflict of Interest Policy, Version 6.7, Sections 6.2 and 6.5 (Dec. 4, 2019); and Fannie Mae, Conflict of Interest Procedure, Version 6.01, Section 4.5 (Nov. 11, 2019).

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Review Period, which were documented in Fannie Mae’s CMS, NGC meeting materials, and/or minutes of NGC meetings. Using the materials and minutes of NGC meetings related to these matters and CMS entries, we mapped how each matter was ultimately resolved.

***For Three of Seven Relevant COI Matters Involving the CEO During the Review Period, FM Ethics Substituted Its Judgment for that of the NGC and Displaced the NGC as the Final Decision Maker, in Contravention of FHFA’s Directive, the NGC Charter, and Fannie Mae’s COI Policy and COI Procedure***

Fannie Mae records reflect seven new COI matters involving the CEO during the Review Period. Because FHFA’s Directive and Fannie Mae’s governance documents require the NGC to resolve all COI matters involving the CEO, minutes for NGC meetings should reflect resolution of each of these COI matters by the NGC. However, records from FM Ethics show that the NGC was asked by FM Ethics to resolve only four of the seven COI matters involving the CEO (57%).

For three of the seven COI matters (43%), Fannie Mae records show that (1) FM Ethics determined, on its own, whether conduct by the CEO fell within an existing recusal agreement between the CEO and Fannie Mae, and (2) subsequently notified the NGC of its determinations, notwithstanding the express requirement in Fannie Mae governance documents that the NGC must review and approve all conflicts disclosures involving the CEO. We found no evidence in the applicable meeting minutes that any NGC member: asked FM Ethics to explain why it presented four COI matters involving the CEO to the NGC for its resolution, but retained and resolved three other COI matters and subsequently notified the NGC of its determination; pressed FM Ethics to explain the basis of its authority to resolve conflicts determinations for the CEO; or reminded FM Ethics about the NGC’s exclusive authority to resolve CEO conflicts.

In each of the three COI matters involving the CEO that were decided by FM Ethics, the same question was presented. In each, the CEO previously entered into a written plan to mitigate a recognized conflict of interest;<sup>35</sup> the NGC adopted a resolution approving written plans for the three conflicts; and that resolution contained boilerplate language delegating to the CCO and her designees responsibility to take all necessary and advisable actions to carry out the mitigation plan. Subsequently, COI questions arose about the scope of that plan. Inherent in the boilerplate language in the NGC resolution, maintains FM Ethics, is the delegated authority to interpret the scope of mitigation plans for the CEO as new facts are disclosed.

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<sup>35</sup> Mitigation plans specify the conditions, such as recusal and divestment, to which Fannie Mae employees must adhere to alleviate or moderate COIs.

Using that delegated authority, it determined that none of these three COI matters amounted to a “new” conflict issue that should be presented to the NGC for resolution.<sup>36</sup>

We find that FM Ethics’ assertion of delegated authority fails, for several reasons.

First: FHFA’s Directive, and Fannie Mae’s revised governance framework, were adopted to correct serious shortcomings identified by us in prior reports, as we explained earlier. With respect to the CEO, this revised governance framework ensures that only the NGC has authority to resolve COI issues involving the CEO, which precludes subordinates of the CEO from making decisions on his COI matters. The Directive and that framework makes clear—without any equivocation—that the NGC, not FM Ethics, will resolve all COI matters involving the CEO.<sup>37</sup>

Second: Fannie Mae’s COI Policy and COI Procedure do not carve out an exception for FM Ethics to resolve questions involving the scope of existing mitigation plans put into place by the NGC where it has found a conflict.<sup>38</sup> Our review of the NGC meeting minutes where each resolution was approved found no discussion, by any committee members, of the scope of FM Ethics’ role in interpreting the mitigation plans or the authority to determine that scope.

Third: FM Ethics cannot leverage boilerplate language in each resolution to create authority to resolve COI matters for the CEO that it was denied by FHFA (the Directive), the Board (NGC Charter), and Fannie Mae management (COI Policy and COI Procedure). Where the CEO provides additional information that prompts an analysis of a potential, apparent, or actual conflict of interest, consistent with the plain language of the COI Policy and COI Procedure, the final decision must rest with the NGC.

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<sup>36</sup> According to FHFA, the FHFA Director, as Fannie Mae’s conservator, has not opined on whether FM Ethics has the authority to resolve the scope of existing mitigation plans for the CEO’s conflicts. FHFA officials proposed hypothetical situations in which decisions by FM Ethics on the scope of the CEO’s mitigation plans could be consonant with the Directive. Absent a clear explanation from the FHFA Director, COI decisions involving the CEO by FM Ethics are not compatible with the Directive’s unequivocal principle that “the Board makes the final decisions on all CEO COI matters.”

<sup>37</sup> FM Ethics grouses that a rejection of its position would “convert [FM] Ethics into an administrative office that simply shuttles all [conflict] inquiries related to the CEO, regardless of content, to the [NGC].” That is exactly the role contemplated for it in the Directive and Fannie Mae’s governance documents.

<sup>38</sup> In October 2020, FHFA’s Division of Enterprise Regulation completed a targeted examination that covered Fannie Mae SEO COI disclosures and it issued a Matter Requiring Attention to Fannie Mae. FHFA’s finding required Fannie Mae to ensure that [REDACTED].

[REDACTED]. In response to FHFA’s finding, Fannie Mae asserted that it is [REDACTED]. In its technical comments to a draft of this report, Fannie Mae stated that the new COI Policy for SEOs would clarify that questions related to current recusals that do not raise “independent” conflict concerns are not disclosures requiring review by the NGC. In our view this is not consistent with the clear language of the Directive that “the Board makes the final decisions on all CEO COI matters.”

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Last: FM Ethics' efforts to conjure hypothetical scenarios of hardship to justify its unauthorized conflicts determinations for the CEO have no support in this record. Because mitigation plans approved by the NGC cannot address every situation, FM Ethics reasons that requiring review by the NGC for the particular scope of a CEO's recusals could cause a delay, and that delay might prevent the CEO from performing his day-to-day work.<sup>39</sup> It further claims that the NGC would be required to meet more frequently to opine on the appropriateness of Ethics' interpretation of the recusal agreements in place, which does not align with its oversight role.

Over the 20-month Review Period, the record reflects that three questions were raised about the scope of the CEO's mitigation plans: one involved an internal anniversary video on behalf of a counterparty; one involved an additional, personal financial investment; and one involved introduction of a current subordinate/colleague to a company for which he serves as a board member and in which he has a financial interest. Hardly the stuff which interrupts a CEO from his day-to-day work. As the Directive and NGC Charter make clear, the NGC—not FM Ethics—acts as the decision maker for all COI matters involving the CEO. FM Ethics' claim demonstrates its misunderstanding of the NGC's role for such COI matters involving the CEO, which is to make decisions, not to oversee FM Ethics.

In each of these three instances, FM Ethics substituted its judgment for that of the NGC and displaced the NGC as the final decision maker on COI matters involving the CEO. It lacked authority under Fannie Mae's governance documents to make these determinations. Failures by FM Ethics to follow the clear instructions of the Directive and Fannie Mae's COI Policy with respect to the CEO are virtually identical to its prior failures detailed previously in our reports. Its unauthorized determinations involving 43% of COI matters concerning the CEO raises significant questions whether FM Ethics understands its role in such matters, notwithstanding the significant attention we have directed to that role in past reports. When the actions of FM Ethics, the supposed gatekeeper for Fannie Mae compliance, do not align with its clearly defined responsibilities, it is reasonable for stakeholders to question whether Fannie Mae is committed to a culture of compliance.

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<sup>39</sup> FM Ethics also claims that it notified the NGC of its interpretations of the CEO's mitigation plans so that the NGC committee members could challenge those interpretations. FM Ethics' contemporaneous records demonstrate that this claim is not accurate. In each of these three matters, those records show that FM Ethics provided notice to the NGC of its interpretations after it had already communicated its interpretation and approval to the CEO. For the NGC to have any meaningful opportunity to challenge FM Ethics' interpretations, that opportunity needs to happen before the CEO is given the green light.

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## Resolution of Twenty-Five COI Matters Involving SEOs Other than the CEO

### ***For the 25 COI Disclosures Involving SEOs, FM Ethics Reasonably Determined that 19 Did Not Raise COIs***

The FHFA Directive, and the COI Policy and COI Procedure, authorize FM Ethics to determine whether matters disclosed involving SEOs other than the CEO present COI issues. Where FM Ethics determines that COI issues do not exist, it is authorized, by the COI Policy and COI Procedure, to notify the affected SEO and the NGC. For 19 of the 25 disclosures involving COI issues respecting SEOs, FM Ethics determined that no COI issue existed.<sup>40</sup>

We reviewed the 19 SEO matters to assess whether FM Ethics' determinations that no conflict concerns were presented were reasonable under the COI Policy. We were able to determine, from the written record, the sections of the COI Policy upon which FM Ethics relied in its analyses. We found each of these 19 conclusions to be reasonable. For each of these matters, FM Ethics submitted a notification to the NGC, as required by the FHFA Directive, COI Policy, and COI Procedure.

### ***FM Ethics Properly Determined that 6 of the 25 Disclosures Involving COI Matters for SEOs Other than the CEO Required a Final Decision by the NGC; Prepared an Analysis and Recommendation to the NGC for Each of These Matters; and the NGC Reached a Final Decision for Each of These Matters***

Where FM Ethics determines that a matter involving a SEO (other than the CEO) presents an actual, apparent, or potential COI, the FHFA Directive, COI Policy, and COI Procedure require it to present its analysis and recommendation to the NGC.

For 6 of the 25 COI matters involving SEOs other than the CEO, FM Ethics identified an actual, potential, or apparent COI. We reviewed the written conflict analysis by FM Ethics for each of these six COI matters and found each analysis and determination to be reasonable under the COI Policy. As with the 19 matters above, we were able to determine, from the written record, the sections of the COI Policy upon which FM Ethics relied in its analyses.

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<sup>40</sup> We also reviewed whether FM Ethics adhered to the COI Policy when it reported its COI determinations for SEOs other than the CEO. The COI Policy requires periodic reporting to the NGC on "all Conflict disclosures received from, or directly involving, SEOs, regardless of whether Ethics and/or the Policy Owner determined the disclosures presented a Conflict," which generally should occur during the NGC's next scheduled quarterly briefing. For 17 of these 19 matters, FM Ethics timely notified the NGC of its determination of no COI. For one of the two untimely notifications, FM Ethics self-identified that it provided incomplete information to the NGC and amended its reporting four months later. For the other, FM Ethics delayed by one quarter its notification to the NGC of its determination of no conflict.

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For five of the six COI matters, NGC materials and minutes reflect that FM Ethics timely submitted its analysis to the NGC for a final decision, which the NGC made. For the sixth matter, we found that the written analysis prepared by FM Ethics found the appearance of a conflict of interest and recommended mitigation, but was submitted one quarter later than directed by the COI Policy. However, the delayed submission did not adversely impact the ability of the NGC to reach a final decision on the COI matter before the intended actions were scheduled to occur.

## Impact of Non-Compliance on Fannie Mae’s Corporate Culture

We provided a draft of this report to FHFA for technical comment and received extensive proposed editorial revisions from Fannie Mae, largely through FM Ethics, and three modest factual clarifications. The proposed edits from FM Ethics, in large measure, sought to put its spin on the factual record or argue that our “interpretation” would burden the NGC unduly.

A cohesive corporate culture of compliance cannot be built and maintained when the FHFA Director, as conservator of Fannie Mae, and Fannie Mae’s Board share one view of that culture, as evidenced by the Directive and revised governance documents, that differs significantly from the view held by the current CEO, as demonstrated by his conduct, and FM Ethics, the division charged with ensuring compliance. The failures described in this report provide an example of the conclusion voiced by the FHFA Director in his September 2020 testimony to Congress: “Fannie and Freddie have what I would consider some of the worst corporate cultures I’ve ever seen in corporate America.”<sup>41</sup> In our view, absent clear instruction from the conservator, Fannie Mae’s culture, which the FHFA Director has described as arrogant and insular, will not change.

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<sup>41</sup> See U.S. House Committee on Financial Services, [\*Prioritizing Fannie’s and Freddie’s Capital over America’s Homeowners and Renters? A Review of the Federal Housing Finance Agency’s Response to the COVID-19 Pandemic\*](#) (Sept. 16, 2020) (FHFA Director’s response to a question from Congressman Barry Loudermilk, at approximately 3:03 hours).

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## **FINDINGS .....**

- 1. Fannie Mae’s CEO failed to make timely COI disclosures in 3 out of 7 instances and two other very senior SEOs failed to make timely disclosures in 2 out of 25 instances, in contravention of the FHFA Directive and Fannie Mae’s governance documents. Their non-disclosures and untimely disclosures of COI matters were inconsistent with Fannie Mae’s goal of operating with the highest standards of compliance and ethics.**
- 2. For three COI matters involving the CEO, FM Ethics determined, on its own, whether conduct by the CEO fell within an existing recusal agreement with the CEO and subsequently notified the NGC of its determinations, notwithstanding the requirement of FHFA’s Directive and Fannie Mae’s governance documents for the NGC to resolve all COI matters involving the CEO. In doing so, FM Ethics substituted its judgment for that of the NGC and displaced the NGC as the final decision maker.**

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## CONCLUSIONS .....

Fannie Mae recognizes that potential, actual, or apparent COIs, when not disclosed or addressed properly, pose significant risk to its reputation and undermine its goal of operations in accordance with “the highest standards of compliance and ethics.” In three prior reports issued in 2017 and 2018, we demonstrated significant failures of the then-CEO and FM Ethics to follow established processes to disclose and address COI matters. In response to the shortcomings we identified, FHFA issued its Directive setting forth its expectation for the review and resolution of COI matters involving the CEO and other SEOs, and the Fannie Mae Board and management revised their governance documents related to COIs in response to the Directive. Internal Enterprise documents describe Fannie Mae as having “zero tolerance” for ethics violations.

In this evaluation, we assessed, for the period from November 1, 2018, to June 30, 2020, whether Fannie Mae and its SEOs followed the Directive and revised governance documents for the disclosure and resolution of potential, actual, or apparent COIs. Based on our review of Fannie Mae’s documents, we found a mixed record. We found that the current CEO either failed to disclose, or failed to timely disclose, three of seven COI matters that arose during our Review Period, a non-compliance rate of 43%. We also found that two very senior SEOs failed to make timely disclosures for two COI matters. Contemporaneous FM Ethics records show that, for three of the seven COI matters involving the CEO that arose during the Review Period, FM Ethics substituted its judgment for that of the NGC and displaced the NGC as the final decision maker, in contravention of the Directive and revised governance documents. For each of the 25 matters involving other SEOs, FM Ethics generally followed the requirements of the Directive and revised governance documents for reviewing and reporting the matters to the NGC once the SEO disclosed the COI matter. We found each of FM Ethics’ determinations regarding the existence of conflict concerns to be reasonable under the COI Policy. We also found that the NGC properly executed its responsibilities to resolve COI matters for SEOs other than the CEO.

A cohesive corporate culture of compliance cannot be built and maintained when the FHFA Director, as conservator of Fannie Mae, and Fannie Mae’s Board share one view of that culture, as evidenced by the Directive and revised governance documents, that differs significantly from the view held by the current CEO, as demonstrated by his conduct, and FM Ethics, the division charged with ensuring compliance. When the actions of FM Ethics, the supposed gatekeeper for Fannie Mae compliance, do not align with its clearly defined responsibilities, stakeholders should question whether Fannie Mae is committed to a culture of compliance. In our view, absent clear instruction from the conservator, Fannie Mae’s culture, which the FHFA Director has described as arrogant and insular, will not change.

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## RECOMMENDATIONS.....

To address the shortcomings identified in this evaluation, we recommend that FHFA, as conservator:

1. Determine the appropriate disciplinary action against the CEO for his non-disclosure and untimely disclosures of COI matters;
2. Provide timely instruction to the Fannie Mae Board regarding FM Ethics' authority to interpret CEO mitigation plans where new facts are presented; and
3. In accordance with Recommendation 2, direct the Fannie Mae Board and/or management to amend and clarify the appropriate COI governance documents to identify all instances in which FM Ethics is required to submit COI matters involving the CEO to the NGC for its resolution.

## FHFA COMMENTS AND OIG RESPONSE.....

We provided FHFA an opportunity to respond to a draft report of this evaluation. FHFA and Fannie Mae provided technical comments on the draft report, which we incorporated as appropriate. In its management response, which is reprinted in its entirety in the Appendix, FHFA agreed with our recommendations.

## OBJECTIVE, SCOPE, AND METHODOLOGY .....

The objectives of this evaluation were to assess whether (1) the CEO and other SEOs complied with requirements for timely disclosure of actual, potential, and apparent COIs; and (2) FM Ethics and the NGC adhered to the revised COI governance documents in their review and resolution of COIs involving the CEO and other SEOs for the period from November 1, 2018, to June 30, 2020. To achieve these objectives, we reviewed relevant Fannie Mae policies, procedures, and codes; Board materials and minutes; and CMS logs and documents related to conflict of interest matters involving SEOs. We also interviewed the Vice President for Ethics and Investigations and the Director of FM Ethics.

We requested all annual COI questionnaires and COI matters submitted by SEOs, including the CEO, to FM Ethics during our Review Period. Fannie Mae provided CMS records for all matters that had a COI component and were received from SEOs during the Review Period. We also requested the disclosure correspondence for each of these matters, and all associated documents for certain matters, to determine the timeliness of the disclosures. Finally, we requested records of all inquiries and business courtesy matters received from SEOs to ensure that our population was complete. Based on our review of the CMS documents, we identified a total of 32 relevant COI matters involving SEOs that arose during the Review Period. Using the materials and minutes of NGC meetings related to these matters, we mapped how each matter was ultimately resolved.

The Review Period for this report was between November 1, 2018, and June 30, 2020.

This evaluation was conducted under the authority of the Inspector General Act and in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluations* (January 2012). These standards require us to plan and perform an evaluation based on evidence sufficient to provide a reasonable basis to support its findings and recommendations. We believe that the findings and recommendations discussed in this report meet those standards.

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## APPENDIX: FHFA MANAGEMENT RESPONSE.....



### Federal Housing Finance Agency

#### MEMORANDUM

TO: Kyle Roberts, Deputy Inspector General for Evaluations

FROM: Jason Cave, Deputy Director, Division of Resolutions **Cave, Jason** Digitally signed by Cave, Jason  
Date: 2021.03.11  
15:55:14 -05'00'

SUBJECT: Draft Audit Report: *Corporate Governance: Fannie Mae Senior Executive Officers and Ethics Officials Again Failed to Follow Requirements for Disclosure and Resolution of Conflicts of Interest, Prompting the Need for FHFA Direction*

DATE: March 11, 2021

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Thank you for the opportunity to respond to the above-referenced draft evaluation report (Report) by the Federal Housing Finance Agency's Office of Inspector General (OIG). The evaluation assessed whether Fannie Mae and its senior executive officers (SEOs) followed a conservatorship directive and revised governance documents for the disclosure and resolution of potential, actual or apparent conflicts of interest (COIs).

As the Report notes, Director Calabria has publicly expressed concerns regarding the corporate culture at Fannie Mae, including in recent congressional testimony. Improving the corporate culture at both Enterprises, especially the "tone at the top," is foundational for the Agency's efforts to ensure they are safe and sound, and to prepare them for an eventual exit from conservatorship. The Agency shares OIG's concerns over actual and potential conflicts of interest, and is currently assessing additional steps to address them, including through and through ongoing examination activities.

Management's response to the Report's three recommendations are outlined below.

**Recommendation No. 1:** *Determine the appropriate disciplinary action against the CEO for his non-disclosure and untimely disclosures of COI matters.*

**Management Response:** FHFA agrees with the recommendation and, as Conservator, will review the instances identified in the Report. FHFA will determine the extent of disciplinary action necessary and appropriate for the CEO and report its conclusions to the Fannie Mae board of directors by June 30, 2021.

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**Recommendation No. 2:** *Provide timely instruction to the Fannie Mae Board regarding FM Ethics' [Fannie Mae Ethics] authority to interpret CEO mitigation plans where new facts are presented.*

**Recommendation No. 3:** *In accordance with Recommendation 2, direct the Fannie Mae Board and/or management to amend and clarify the appropriate COI governance documents to identify all instances in which FM Ethics is required to submit COI matters involving the CEO to the NGC [Nominating and Governance Committee of the Board] for its resolution.*

**Management Response:** FHFA agrees with the recommendations to clarify FM Ethic's authority related to COI matters involving the CEO, and to amend and clarify appropriate COI governance documents accordingly. FHFA's Division of Enterprise Regulation recently conducted a targeted examination of Fannie Mae's Conflict of Interest disclosures and identified deficiencies for Fannie Mae to address. The efforts to remediate, validate actions taken, and complete the supervisory review should be completed by the end of 2021. FHFA will then be able to evaluate any policy changes proposed by Fannie Mae to determine if additional actions by FHFA, as conservator, are necessary to: 1) clarify FM Ethics' authority to interpret CEO mitigation plans where new facts are presented; and 2) clarify the appropriate COI governance documents accordingly.

In addition, following this supervisory review, FHFA, as conservator, will review its current guidance to Fannie Mae regarding COIs to determine what, if any, changes to that guidance are warranted to clarify the items identified above.

FHFA expects to complete these actions by March 15, 2022.

If you have any questions relating to our response, please do not hesitate to contact me.

## ADDITIONAL INFORMATION AND COPIES.....

For additional copies of this report:

- Call: 202-730-0880
- Fax: 202-318-0239
- Visit: [www.fhfaoig.gov](http://www.fhfaoig.gov)

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

- Call: 1-800-793-7724
- Fax: 202-318-0358
- Visit: [www.fhfaoig.gov/ReportFraud](http://www.fhfaoig.gov/ReportFraud)
- Write:

FHFA Office of Inspector General  
Attn: Office of Investigations – Hotline  
400 Seventh Street SW  
Washington, DC 20219

This report contains redactions of information that is privileged or otherwise protected from disclosure under applicable law.

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