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Federal Housing Finance Agency
Office of Inspector General

FHFA's Approval of Senior Executive Succession Planning at Fannie Mae Acted to Circumvent the Congressionally Mandated Cap on CEO Compensation

Evaluation Report • EVL-2019-001 • March 26, 2019

EVL-2019-001

March 26, 2019

Executive Summary

Pursuant to the Housing and Economic Recovery Act of 2008 (HERA), the Federal Housing Finance Agency (FHFA or Agency) is empowered to operate the Enterprises "with all the powers of the shareholders, the directors, and the officers" while they remain in conservatorship. With regard to succession planning for Enterprise senior executives, FHFA delegated responsibility to the respective boards of directors to develop a succession plan for the Chief Executive Officer (CEO) and President positions and to select candidates for vacant CEO and President positions, and the selections are subject to review by FHFA as conservator. According to FHFA, it has, as a practical matter, chosen to approve such selections after review. FHFA has retained the responsibility to approve compensation actions for senior executive officers.

In two evaluations that we are issuing today, we reviewed FHFA oversight of the Enterprises' boards of directors succession planning efforts for the CEO position. This evaluation focuses on FHFA oversight of the Fannie Mae Board of Directors (Board) and a companion report focuses on the Freddie Mac Board of Directors. See *FHFA's Approval of Senior Executive Succession Planning at Freddie Mac Acted to Circumvent the Congressionally Mandated Cap on CEO Compensation*, EVL-2019-002, available online at www.fhfaoig.gov/reports/auditsandevaluations.

Fannie Mae is in a period of significant transition in its executive and board leadership. According to the former Acting Deputy Director, Division of Conservatorship (DOC) and Special Advisor to the former FHFA Director, Fannie Mae's then-CEO, who also held the position of President, notified FHFA executives in early 2018 of the likelihood that he would leave Fannie Mae by the end of 2018. He left Fannie Mae in October 2018. Fannie Mae's Executive Vice President and General Counsel resigned in September 2018. During 2018, four directors resigned from Fannie Mae's Board, two of whom had served ten-year terms. Another director, who has served on the Board since November 2009 and is the current Board Chair, will likely depart by November 2019.

According to minutes of Board meetings and materials provided to us, the Board considered a potential CEO succession plan in 2016. FHFA reported to us that the then-FHFA Director raised the need for succession planning with the Board Chair in 2018, following the CEO's notice of his likely departure. The Board then resumed consideration of succession planning.

In June 2018, the Board Chair, on behalf of the Board, submitted the Board's written proposed transition plan (Board Transition Plan) for directors and senior executive leadership to FHFA for approval. The Board Transition Plan

represented that the statutory cap of $600,000 on compensation for Enterprise CEOs imposed by the Equity in Government Compensation Act of 2015 (EGCA) created challenges to recruit internal and external qualified candidates for the CEO position.

To address these challenges, the Board Transition Plan recommended a change to Fannie Mae's management structure by filling the positions of President and CEO with separate individuals. (Since 2008, those positions had been held by one individual.) According to the Board, this change would "best preserve as much stability and continuity as possible" for Fannie Mae senior leadership and employees, and allay market concerns. The Board nominated Fannie Mae's Chief Financial Officer (CFO) to the position of President and elevated the Deputy CFO to CFO. Under the Board Transition Plan, certain responsibilities previously executed by the individual holding the CEO and President positions were assigned to the position of President. The Board proposed that the annual compensation for the President position should be no less than Fannie Mae's most highly compensated Fannie Mae officer, which was then $3.25 million. The former FHFA Director approved the Board Transition Plan in July 2018.

We found that FHFA's approval of the Board Transition Plan acted to circumvent the congressionally mandated cap of $600,000 on CEO compensation. By authorizing Fannie Mae to fill the positions of CEO and President with two separate individuals and transfer substantial responsibilities from the CEO and President to the President position, FHFA permitted Fannie Mae to compensate its President at a level more than five times greater than the statutory cap. After the current President had served in the position for less than seven weeks, the Board approved an 11% increase in the President's target compensation, raising it to $3.6 million per year, which FHFA approved in October 2018. Fannie Mae is now compensating its interim CEO and President a total of $4.2 million to execute the same responsibilities for which it had previously paid $600,000.

FHFA has established internal controls for processing, tracking, and monitoring requests for conservator approval. We found that the then-FHFA Director overrode those controls, which he was authorized to do, when he determined to review the Board Transition Plan directly, without any staff analysis or recommendation. The decision by the former FHFA Director to override established FHFA internal controls for conservator review and approval of an Enterprise request created an information vacuum within DOC and rendered it unable to execute its responsibilities.

To address these shortcomings, we recommend that FHFA (1) re-assess the appropriateness of the annual compensation award of $3.6 million to the

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Fannie Mae President; and (2) establish a process for maintaining and monitoring sensitive conservator requests in its tracking system. In a written management response, FHFA disagreed with our first recommendation and agreed with our second recommendation.

This report was prepared by Jon Anders, Program Analyst, with assistance from Philip Noyovitz, Investigative Evaluator. We appreciate the cooperation of FHFA 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.

Kyle D. Roberts
Deputy Inspector General for Evaluations

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ABBREVIATIONS ....

2017 LOI	December 18, 2018, Letter of Instruction to the Fannie Mae Board of Directors
2017 Order	Conservatorship Order No. 2017-003
Board	Fannie Mae Board of Directors
Board Transition Plan	June 5, 2018, Transition Plan of the Fannie Mae Board of Directors
CEO	Chief Executive Officer
CFO	Chief Financial Officer
DOC	Division of Conservatorship
EGCA	Equity in Government Compensation Act of 2015
Enterprises	Fannie Mae and Freddie Mac, collectively
Fannie Mae	Federal National Mortgage Association
FHFA or Agency	Federal Housing Finance Agency
Green Book	U.S. Government Accountability Office, *Standards for Internal Control in the Federal Government*
HERA	Housing and Economic Recovery Act of 2008
LOI	Letter of Instruction
OIG	Federal Housing Finance Agency Office of Inspector General
STAR	DOC Status Tracking and Reporting System
Treasury	U.S. Department of the Treasury

BACKGROUND

Standards for Internal Control Systems in the Federal Government: The "Green Book"

FHFA, like other federal agencies, is responsible for implementing and maintaining an effective internal control system. Standards issued by the Comptroller General of the United States for internal controls in the federal government are set forth in *Standards for Internal Control in the Federal Government* (also known as the Green Book).[1] The Green Book defines an "Internal Control System" as a continuous built-in component of operations, effected by people, that provides reasonable assurance, not absolute assurance, that an entity's objectives will be achieved. The Green Book explains that an effective internal control system assists a federal agency in adapting to changing environments, evolving demands, evolving risks, and new priorities.

We use the standards set forth in the Green Book to assess the adequacy of the policies and procedures FHFA has put in place to facilitate its administration of the conservatorships of Fannie Mae and Freddie Mac (the Enterprises) and we review FHFA's practices against the internal controls established by its own policies and practices.

FHFA's Internal Controls for Conservatorship Decisions

FHFA, as Conservator, Exercises Sweeping Statutory Powers

Created by Congress in 2008, FHFA is charged by the Federal Housing Enterprises Financial Safety and Soundness Act, as amended by HERA, with supervision and regulation of Fannie Mae, Freddie Mac, and the Federal Home Loan Bank System. HERA vested FHFA with the authority to place the Enterprises into conservatorship and granted it sweeping powers to act as conservator. After FHFA placed the Enterprises into conservatorship in September 2008, the Agency succeeded to all rights, titles, powers, and privileges of the Enterprises, and of any shareholder, officer, or director with respect to the Enterprises and their assets. As conservator, FHFA is empowered by HERA to operate the Enterprises "with all the powers of the shareholders, the directors, and the officers."[2] These powers position FHFA to potentially control every aspect of Fannie Mae's and Freddie Mac's governance and operations.

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[1] *See generally*, Government Accountability Office, *Standards for Internal Control in the Federal Government* (Sept. 2014) (GAO-14-704G) (online at www.gao.gov/products/GAO-14-704G).

[2] *See* 12 U.S.C. § 4617(b)(2)(B)(i), (D)(ii).

FHFA Has Delegated Certain Authorities to the Enterprise Boards

Although Congress granted FHFA authority to operate the Enterprises, FHFA determined, for reasons of efficiency, concordant goals with the Enterprises, and operational savings, to (1) delegate authority for general corporate governance and day-to-day matters to the Enterprises' boards of directors and executive management, and (2) retain authority for certain significant decisions.[3] Shortly after placing the Enterprises into conservatorship in September 2008, FHFA issued formal orders to each Enterprise board of directors that delegated specified general corporate governance authority to them and addressed specific governance matters.[4] In conjunction with these Orders, FHFA issued to the Enterprises' respective boards the first Letters of Instruction (LOI) that defined and outlined the scope of delegated and undelegated authorities. On November 15, 2012, FHFA revised and replaced the 2008 LOI to provide more specificity regarding the responsibilities of FHFA, the boards, and Enterprise management.

On July 12, 2017, FHFA issued Conservatorship Order No. 2017-003 (2017 Order) to the Enterprises' boards, replacing Order No. 2008-006. The 2017 Order outlines functions, responsibilities, and authorities of the Enterprises' boards. The 2017 Order also clarified that FHFA, as conservator, was exercising its statutory authority under HERA by which it "may, by regulation or order, provide for the exercise of any function by any stockholder, director, or officer of any regulated entity for which [FHFA] has been named conservator or receiver."[5] On June 27, 2018, FHFA issued Conservatorship Order No. 2018-002, replacing the 2017 Order. Order No. 2018-002 carries over all provisions in the 2017 Order with added language to make the Conservator's authority more explicit.

On December 18, 2017, FHFA issued another revision to the LOI, replacing all prior versions (2017 LOI). The 2017 LOI became effective on March 31, 2018. Under the 2012 and 2017 LOIs, FHFA delegated authority to the Enterprise boards of directors to address and resolve many of the same issues that boards of directors of public companies address and resolve, save for those matters carved out by FHFA for its review and decision (or for which prior notice must be provided by the Enterprises).

The Orders and LOIs create significant differences between the responsibilities of Enterprise directors (for the duration of the conservatorships) and directors of publicly traded companies.

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[3] *See* OIG, *FHFA's Conservatorships of Fannie Mae and Freddie Mac: A Long and Complicated Journey*, at 11–12 (Mar. 25, 2015) (WPR-2015-002) (online at www.fhfaoig.gov/Content/Files/WPR-2015-002_0.pdf).

[4] Conservatorship Order No. 2008-006 issued November 24, 2008. For a general discussion of the authorities delegated by FHFA to the Enterprise boards under its different orders and LOIs, see OIG, *FHFA Letters of Instruction to the Enterprises* (July 23, 2018) (WPR-2018-004) (online at www.fhfaoig.gov/Content/Files/WPR-2018-004.pdf).

[5] 12 U.S.C. § 4617(b)(2)(C).

In publicly traded companies, directors owe their fiduciary duties of care and loyalty to the shareholders. Enterprise directors, however, solely owe their fiduciary duties to the conservator and their authority is limited to the scope of the delegation from the conservator. Limits of the delegation of authority relevant to this evaluation are succession planning for directors and senior executive leadership of Fannie Mae and selection of a new CEO and President. In publicly traded companies, the boards of directors are responsible for succession planning for directors and senior executive leadership and for selecting a new CEO and President, as the need arises. Here, FHFA delegated responsibility to the Enterprise boards (1) to develop a succession plan for board positions, the CEO, and President and (2) to select candidates for vacant board positions and for the CEO and President positions, and the selections are subject to review by FHFA, as conservator. According to FHFA, it has, as a practical matter, chosen to approve such selections after review. FHFA has retained the responsibility to approve compensation actions for senior executive officers.

FHFA Has Adopted Policies and Procedures to Facilitate its Execution of Retained Responsibilities

Under the Green Book, agency management is responsible for establishing policies and procedures as an integral part of the agency's operations. Generally, management implements "control activities" (the actions management establishes to achieve its objectives) through written policies.

DOC is tasked with, among other things, evaluating the Enterprises' requests for conservatorship approval and facilitating review of such requests and decision-making processes within FHFA. Consistent with the principles set forth in the Green Book, FHFA established an internal control framework that includes policies and procedures for processing formal Enterprise requests for conservator approvals.[6]

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[6] Those policies and procedures include the LOIs, the Conservatorship Decision Policy, the Conservatorship Decision Procedure, the Official Documents Policy. The DOC Status Tracking and Reporting System (STAR), DOC's internal tracking and reporting system for conservator decisions, is also a part of the internal control framework.

FACTS AND ANALYSIS ....

Transition in Executive Leadership at Fannie Mae

Fannie Mae is in a period of transition. FHFA's corporate governance regulations limit service on Fannie Mae's Board to ten years or age 72, whichever comes first, unless a waiver is granted.[7] During 2018, four directors resigned from Fannie Mae's Board, two of whom had served ten-year terms. Another director, who has served on the Board since November 2009 and is the current Board Chair, will depart by November 2019, unless a waiver is sought and granted. Fannie Mae's CEO and President, who joined Fannie Mae in 2009 as its General Counsel and was approved by Fannie Mae's Board and FHFA in 2012 to serve in both the CEO and President positions, departed in October 2018.[8] Its Executive Vice President and General Counsel resigned in September 2018.

Board Approval of a Transition Plan for Directors and Senior Executive Leadership and Submission of this Plan to FHFA for its Approval

We agree with FHFA that the selections of Board members and the CEO "are significant, foundational decisions for any company" and "remains the case for the Enterprises under conservatorship." According to minutes of Board meetings and Board materials, the Board considered a potential CEO succession plan in 2016. Based on our review of Board and examination materials, we found that the Board ended its work on succession planning after 2016. The former Acting Deputy, DOC and Special Advisor to the former FHFA Director (who remains a Special Advisor to the Acting FHFA Director) reported to us that the CEO notified FHFA executives in early 2018 of the likelihood that he would leave Fannie Mae by the end of 2018. This Special Advisor recalled that the former FHFA Director discussed the need for the Board to develop a CEO succession plan with the Board Chair. Board minutes reflect that the Board resumed its discussions about a CEO succession plan in early 2018.

On June 5, 2018, the Board Chair, on behalf of the Board,[9] submitted the written Board Transition Plan for directors and senior executive leadership to the former FHFA Director for

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[7] *See* 12 C.F.R. § 1239.20(a)(1).

[8] FHFA, currently the conservator and supervisor for Fannie Mae, is also in the midst of a transition. Former FHFA Director Melvin Watt departed from FHFA after completion of his five-year term in early January 2019, and President Trump named the Comptroller of the Currency to serve as Acting FHFA Director until a permanent Director is confirmed by the Senate. On January 3, 2019, President Trump officially nominated Mark Calabria to serve as the next FHFA Director.

[9] We found no formal Board resolution or Board minutes reflecting formal review and approval of the Transition Plan by the Board, prior to submission of it to the former FHFA Director on June 5, 2018. The Board Chair represented to FHFA that the Transition Plan was submitted on behalf of the Board. Based on his

approval. The Board Transition Plan identified changes at the board and management levels and proposed certain actions to manage those changes.

1. Board transition. The Board Transition Plan recognized both a current vacancy on the Board and vacancies expected to arise in the near future because several directors were nearing the end of their ten-year terms. It set forth the steps that the Board was taking to identify and vet new director candidates for approval by FHFA.

2. Management transition. The Board Transition Plan explained that the Board anticipated "the likely departure" of Fannie Mae's former CEO and President. It attributed this likely departure, in large measure, to the cap imposed by Congress on compensation for Enterprise CEOs in 2015 (which was $600,000) and the unlikely prospect that the conservatorship would end in the near future.[10] (The former FHFA Director had previously awarded $4 million compensation packages to each CEO in July 2015, both of which were suspended by the Act.) The Board Transition Plan highlighted the 2015 congressional compensation cap on Enterprise CEOs as the most significant challenge to identify a CEO successor. It advised that the Board had "little reason to be confident that any" of Fannie's Mae senior executives would be willing to take on the "substantial responsibilities and challenges of the CEO" position in exchange for a "very significant cut in pay,"[11] and asserted that internal candidates, a "normal source of top leadership in well run companies," would not likely be candidates. (The Board Transition Plan included no data to support the Board's views.) The Board Transition Plan represented that this statutory cap would also "create potential challenges in attracting an external candidate with deep financial services expertise" and meaningful operational experience in a large and complex company.[12]

To address these challenges, the Board Transition Plan proffered a change to Fannie Mae's management structure: to separate the positions of President and CEO. FHFA, in its management response, asserts that a "common corporate management arrangement" is to fill

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representation, we considered the Transition Plan to have been reviewed and approved by the Board, notwithstanding the lack of documented approval in Board minutes.

[10] Under the EGCA, Congress set the compensation and benefits for Enterprise CEOs at $600,000 and directed that such compensation "may not thereafter be increased." P.L. 114-93, Section 3(a). 12 U.S.C. 4518 note.

[11] Total compensation earned in 2017 for the four highest-compensated Fannie Mae executive vice presidents ranged from $2.31 million to $3.15 million. *See* Fannie Mae, *2017 Annual Report on Form 10-K*, at 182 (Feb. 14, 2018) (online at www.fanniemae.com/resources/file/ir/pdf/quarterly-annual-results/2017/10k_2017.pdf). According to Fannie Mae data, 34 Fannie Mae officers and employees received total compensation in 2017 that exceeded the CEO's salary of $600,000 and 9 Fannie Mae officers and employees received total compensation greater than $1,000,000.

[12] Another challenge, according to the Board in its Transition Plan, was the January 2019 departure of FHFA Director Watt because the "CEO effectively works for—and at the pleasure of—the Director of FHFA, as the conservator" and candidates would want to learn the identity of the new Director before considering the opportunity.

each position with a separate individual and that "it is permissible, and may be appropriate, to assign some responsibilities and duties that could, or once were, undertaken by the CEO to other officers, such as a president or executive vice president, who support and are accountable to the CEO." We lack sufficient data to reach a determination on the commonality or advisability of this practice. However, it has not been the practice at Fannie Mae: since Fannie Mae was placed into conservatorship in September 2008, both positions had been held by one individual who received one salary.

According to the Board Transition Plan, this structural change would "best preserve as much stability and continuity as possible" for Fannie Mae senior leadership and employees, and allay market concerns. It set forth specific responsibilities for the position of President, all of which had previously been executed by the individual holding both the CEO and President positions:

- Responsible for Fannie Mae's operations both internally and to market participants;
- Manage the ongoing execution of company strategy, policies, and practices approved by the Board and CEO, with a focus on internal operations, including plans and targets at the business unit level;
- Communicate and build commitment to the strategic direction and key policies and procedures internally;
- Reinforce innovation by engaging with business units and overseeing the Chief Operating Officer;
- Lead the Management Committee;
- Manage resources, commitments, and conflicts across business units;
- Manage governance, financial information, and operations across the company; and
- Establish and maintain operating systems and company infrastructure to execute core business activities.

The Board, in its Transition Plan, envisioned that the position of President would report to the CEO.

In its Transition Plan, the Board explained that it had considered potential internal candidates for the position of President and concluded that the best candidate was Fannie Mae's then-CFO (Candidate A). The Board proposed that the annual compensation for the President position should be no less than Fannie Mae's most highly compensated Fannie Mae officer, which was then $3.25 million. At the time it made this recommendation, the Board was

aware that its candidate for this position, the then-CFO, was currently compensated at the rate of $3.25 million. The Board Transition Plan sought approval from FHFA to separate the positions "as soon as possible" and to ratify both the Board's selection of Candidate A for the President position and compensation for that position. The Board proposed to fill the CFO position by elevating the Deputy CFO and increasing her compensation, and sought FHFA approval for those actions.

As the Board Transition Plan explained, the Board envisioned that Fannie Mae would conduct a "thorough search," both internally and externally, for a new CEO. It proposed that the CEO position would continue to report to the Board and oversee the Enterprise's strategic direction and control environment. Should the then-CEO depart prior to the selection of a new CEO candidate, the Board recognized the need for an interim solution. The Board Transition Plan suggested either that a current director could serve as an interim CEO, or that the President (in the event FHFA approved separation of that position from the CEO position) could also serve as interim CEO. It asserted that appointment of an individual to the President position would "facilitate the potential service of a board member as the Interim CEO" and could expand the pool of external candidates for the CEO position.

The Former FHFA Director Overrode Established FHFA Internal Controls for Conservator Review and Approval for the Board Transition Plan

As discussed previously, FHFA has established internal controls for Enterprise requests for conservator approval. Under FHFA's procedures, an Enterprise seeking conservator approval submits a request for conservator decision to FHFA through an electronic portal established for that purpose. The request is logged and tracked in FHFA's official internal tracking system (known as STAR). FHFA personnel are assigned to review the request and prepare a staff analysis memorandum that includes a recommendation for decision. Typically, the staff analysis memorandum is circulated among senior Agency stakeholders for review and revision. The final staff analysis memorandum and supporting documentation are submitted to the FHFA Director for review and decision, which is communicated to the Enterprise by email and the STAR system.[13]

The Special Advisor reported to us that the former FHFA Director instructed the Board Chair to submit the Board Transition Plan to him, rather than to submit it through the electronic portal for staff analysis. The Board Chair followed that instruction and addressed the Board

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[13] In a 2012 audit report, we explained the established process used by the then-FHFA Acting Director. *See* OIG, *FHFA's Conservator Approval Process for Fannie Mae and Freddie Mac Business Decisions* (Sept. 27, 2012) (AUD-2012-008) (online at www.fhfaoig.gov/Content/Files/AUD-2012-008_2.pdf). The former FHFA Director used a similar process for Enterprise matters requiring conservator approval. *See* OIG, *Compliance Review of FHFA's Revised Process for Reviewing the Enterprises' Annual Operating Budgets* (Sept. 19, 2017) (COM-2017-006) (online at www.fhfaoig.gov/Content/Files/COM-2017-006_Redacted.pdf).

Transition Plan, dated June 5, 2018, to the former FHFA Director and caused it to be delivered that same day. Several days later, on June 11, 2018, the former FHFA Director advised the Board Chair by email that he had received the Board Transition Plan and he would treat it as a request for approval and respond within the applicable time parameters. He confirmed his prior instruction: "[b]ecause of the urgency and sensitivity of the matters discussed in the [Board Transition Plan], however, we will not process these decisions through the regular portal process . . ." By deciding to bypass this process, the former Director opted not to follow FHFA's established procedures for processing, tracking, and monitoring requests for conservator approval. The FHFA Special Advisor (and former Acting Deputy Director, DOC) reported to us that only he and the former FHFA Director had knowledge of Fannie Mae's request within FHFA. He provided two explanations for their determination to override established policy and procedures.[14] First, had Fannie Mae's request been submitted through FHFA's portal and subject to staff analysis, numerous Fannie Mae and FHFA employees would have been aware of the content of the Board Transition Plan, which heightened the potential for a leak and public disclosure. Second, public disclosure of the Board Transition Plan, including the likely departure of Fannie Mae's CEO, could cause internal disruption within Fannie Mae management.

In technical comments to a draft of this report, FHFA took issue with our determination that the former FHFA Director "overrode" internal controls when he directed the Board Chair not to use the existing process for conservator review and approval. According to FHFA, the conservator portal "is one process by which the FHFA Director may instruct an Enterprise to seek conservator approval, but it is not the exclusive method." We have reviewed numerous sensitive Enterprise matters where conservator approval is required, such as executive compensation and annual operating budgets.[15] Where we found that FHFA did not follow its existing process, such as with review of the annual operating budgets, we recommended that FHFA strengthen and follow its process, to which FHFA agreed.[16] We note that the Special

[14] OIG did not interview the former FHFA Director prior to the expiration of his term in early January 2019.

[15] *See*, *e.g.*, OIG, *Evaluation of Federal Housing Finance Agency's Oversight of Fannie Mae's and Freddie Mac's Executive Compensation Programs* (Mar. 31, 2011) (EVL-2011-002) (online at www.fhfaoig.gov/Content/Files/Exec%20Comp%20DrRpt%2003302011%20final%2C%20signed.pdf); OIG, *FHFA's Exercise of Its Conservatorship Powers to Review and Approve the Enterprises' Annual Operating Budgets Has Not Achieved FHFA's Stated Purpose* (Sept. 30, 2015) (EVL-2015-006) (online at www.fhfaoig.gov/Content/Files/EVL-2015-006.pdf); OIG, *Compliance Review of FHFA's Oversight of Enterprise Executive Compensation Based on Corporate Scorecard Performance* (Mar. 17, 2016) (COM-2016-002) (online at www.fhfaoig.gov/Content/Files/COM-2016-002_0.pdf); and OIG, *Compliance Review of FHFA's Revised Process for Reviewing the Enterprises' Annual Operating Budgets* (Sept. 19, 2017) (COM-2017-006) (online at www.fhfaoig.gov/Content/Files/COM-2017-006_Redacted.pdf).

[16] *See* OIG, *FHFA's Exercise of Its Conservatorship Powers to Review and Approve the Enterprises' Annual Operating Budgets Has Not Achieved FHFA's Stated Purpose* (Sept. 30, 2015) (EVL-2015-006) (online at www.fhfaoig.gov/Content/Files/EVL-2015-006.pdf).

Advisor during his interview did not take issue with the characterization that the former FHFA Director overrode FHFA's established procedures for processing, tracking, and monitoring requests for conservator approval. We do not question that the former FHFA Director, as conservator of Fannie Mae, had the authority to override established internal controls. As we discuss shortly, his decision to override those controls caused an information vacuum in DOC and rendered it unable to execute its responsibilities. According to the Special Advisor, he and the former FHFA Director reviewed the Board Transition Plan and discussed it with the Board Chair,[17] and became "comfortable" with it. The Special Advisor reported that he and the Director relied exclusively on the Board Transition Plan and their discussions with the Board Chair and did not review supplemental materials. The Special Advisor stated that no other DOC employees participated in the review process. He confirmed that no staff analysis memorandum or other FHFA work product was created by him during his evaluation of the Board Transition Plan.

The FHFA Director Approved the Board Transition Plan, with Conditions, on July 24, 2018

The former FHFA Director formally approved the Board Transition Plan in writing on July 24, 2018, and communicated that approval by email dated July 24, 2018, to the Board Chair. According to that email, the former FHFA Director approved the Board Transition Plan because he determined that it was the best means to minimize disruption to Fannie Mae's operations in light of the transitions to occur within the Board and the change in the conservator. The Board Transition Plan, as approved, was to be implemented as "soon as possible."

Approval by the former FHFA Director of the Board Transition Plan was conditional upon completion of specific actions: (1) the Board's timely development of a proposed plan to search for a successor to the CEO and submission of that plan to FHFA; (2) FHFA's review and approval of that proposed plan; and (3) FHFA's approval of the CEO candidate recommended by the Fannie Mae Board and of the terms and conditions of his/her employment. That approval, and the attached conditions, was not recorded in FHFA's STAR system.

[17] The former FHFA Director and Special Advisor did not create any contemporaneous written records of these discussions or their timing.

Fannie Mae's Announcement of CEO Departure, New Leadership Structure, and Appointment of a New President on July 23

On July 23, 2018, Fannie Mae issued a press release announcing a new leadership structure.[18] It explained that it had separated the positions of President and CEO and that the President would report to the CEO. Fannie Mae stated that it had appointed its current CFO to the President position and that its current Deputy CFO would be promoted into the CFO position, both effective August 6, 2018. Under this new leadership structure, Fannie Mae's then-CEO and President would no longer serve as President, effective August 6, 2018. It also announced that the CEO had notified Fannie Mae that he decided to step down as CEO by December 31, 2018, and that the Board would search for his successor.

In this press release and securities filing, Fannie Mae did not disclose the compensation to be paid to its newly appointed President, effective August 6, 2018.

Prior to August 6, 2018, one individual held both the positions of CEO and President and was compensated at the annual rate of $600,000 for his services in both positions. As of August 6, 2018, the responsibilities executed by the then-CEO and President since 2012 were separated into two positions, to be held by two individuals. Annual compensation for the CEO continued at the statutory cap of $600,000 and annual compensation for the President was set at $3.25 million. Accordingly, compensation for execution of the same set of responsibilities increased from $600,000 to $3.85 million.

In 2015, the former FHFA Director explained that his award of annual target compensation of $4 million to each Enterprise CEO was designed to "promote CEO retention, allow reliable succession planning, and ensure the continuity, efficiency and stability of enterprise operations." In imposing a compensation cap of $600,000 for Enterprise CEOs, Congress reasoned that the Enterprises should not pay CEO compensation commensurate with the private sector because their risk is borne by taxpayers on an ongoing basis and the conservatorships are not over.[19] As such, Congress implicitly rejected the former Director's

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[18] The former FHFA Director was aware of Fannie Mae's intent to issue this press release on July 23, 2018, and took responsibility for failing to communicate written approval of the Board Transition Plan until July 24, 2018. In his July 24, 2018, email conveying his written approval, the former FHFA Director wrote: "in our effort to get the announcement of the transition plan out yesterday I failed to communicate our formal, written approval [of Fannie Mae's request for approval of the transition plan]."

[19] The House Committee on Financial Services explained the need for the Equity in Government Compensation Act of 2015 in a committee report that accompanied the house bill. In the report, the Committee referred to the bipartisan disapproval of the former FHFA Director's decision to allow the Enterprises to increase CEO salaries. It quoted statements from the U.S. Department of the Treasury (Treasury) and the White House in support of limits on executive compensation due to taxpayers' ongoing backstop of the Enterprises. The report stated that the Enterprises "continue to function in ways unlike private

rationale when it imposed a compensation cap of $600,000 on the CEO position. The Board's rationale for separating the CEO and President positions and attaching an annual compensation package of $3.25 million to the position of President was virtually the same as the one provided by the former FHFA Director in 2015: "to best preserve as much stability and continuity as possible among our senior leadership team below the CEO level as the company manages through" transitions at the Board and with the CEO.

According to the Senior Advisor, FHFA did not approve the separation of the positions of CEO and President and $3.25 million in compensation to the President in an effort to circumvent the congressional cap on CEO compensation.[20] Regardless of its intent in approving the Board Transition Plan, FHFA's approval acted to circumvent the statutory cap of $600,000. For the past 10 years, the positions of CEO and President had been combined and held by the incumbent with the titles, "President and CEO." That incumbent was charged with executing a bundle of responsibilities and, since 2015, was subject to the statutory compensation cap. By authorizing Fannie Mae to fill the positions of CEO and President with two separate individuals and transfer a subset of the CEO's responsibilities to the President, we found that FHFA permitted Fannie Mae to pay a total of $3.85 million in compensation for the same responsibilities for which it had previously paid $600,000.

In its technical comments to a draft of our report, FHFA took issue with this finding. Relying on the Board Transition Plan, it asserted "the Board also contemplated in the [Board Transition Plan] that the current President would retain certain nonfinancial responsibilities that he had performed as CFO." However, the actual language in the Board Transition Plan explains clearly that the Board recognized that Candidate A was responsible for "non-financial responsibilities" and, upon his elevation to the position of President, those responsibilities would either be "transferred to other executives ***or*** retained by" him (emphasis added). Contrary to FHFA's claim, the Board Transition Plan acknowledged that Candidate A's non-financial responsibilities as CFO could be executed by other executives. We reviewed the materials prepared by Fannie Mae to support its September 2018 request to increase the President's compensation, the Board approval of that increase, and the FHFA staff analysis memo that recommended approval of the compensation action and found no suggestion that certain non-financial responsibilities migrated with Candidate A from the

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industry." See House of Representatives, Rept. 114-339 Part 1 (Nov. 16, 2015) (online at www.congress.gov/congressional-report/114th-congress/house-report/339).

[20] In its technical comments to a draft of this report, FHFA asserted that no credit had been given to Fannie Mae for a management reorganization that did not increase head count. We do not dispute that this reorganization maintained executive headcount. However, this report focuses on the compensation to be paid to Fannie Mae's President, who is now charged with a subset of the responsibilities that the individual holding the positions of CEO and President had previously executed.

CFO to the President position. Absent supporting documentation provided by FHFA, we have no basis on which to credit FHFA's claim.

In its management response, FHFA challenges this finding with a different claim. It asserts that the express language of the statutory compensation cap and the legislative history of that statutory cap demonstrate that Congress only intended to impose a cap on compensation for one position—an Enterprise CEO—and did not constrain the compensation that could be paid to other Enterprise executives. Applying FHFA's logic, Fannie Mae could create a number of additional executive officer positions, assign each position certain responsibilities previously executed by the CEO, and award compensation for each position well in excess of the statutory cap. The result of Fannie Mae's financial engineering caused it to circumvent the congressionally mandated compensation cap and to pay a total of $3.85 million in compensation for the same responsibilities for which it had previously paid $600,000.

FHFA Failed to Log or Track the Conditions Imposed by the Former FHFA Director to His Approval of Fannie Mae's Board Transition Plan and, as a Result, Could Not Confirm that Fannie Mae Satisfied those Conditions

The Special Advisor confirmed that the former FHFA Director's approval of the Board Transition Plan was subject to three specific conditions, discussed previously. However, we found that these conditions were not logged in DOC's STAR system and DOC did not track whether any of the conditions had been satisfied. Because neither the Special Advisor nor the former FHFA Director alerted other FHFA employees of Fannie Mae's request for approval of its Board Transition Plan nor notified other FHFA employees of the conditional approval for the Board Transition Plan, the Special Advisor acknowledged that no other FHFA employee was assigned responsibility to monitor whether the conditions were met.

The current Deputy Director, DOC, who was named in October 2018, reported to us that he was unaware of: the June 5, 2018, Board Transition Plan; the Board's request for approval; the conditional approval provided by the former FHFA Director on July 24, 2018; or the conditions attached by the former FHFA Director to his approval. The first condition imposed by the then-FHFA Director was timely development of a proposed CEO search plan by the Board and submission of that plan to FHFA. The current Deputy Director, DOC advised us that he had received a draft search plan from Fannie Mae's Chief Human Resources Officer but did not know whether the draft search plan was Fannie Mae's final plan or whether Fannie Mae submitted this draft search plan for FHFA review and approval.

FHFA's documents show that the Fannie Mae submitted a draft CEO search plan to the current Deputy Director, DOC and the Special Advisor, among others, in September 2018. While Fannie Mae submitted a CEO search plan labeled "final" to the current Deputy Director, DOC and the Special Advisor in November 2018, we found no evidence that this

search plan was formally approved by the Board or that Fannie Mae sought FHFA approval for it. Hence, we found that the first condition was not met. The second condition required FHFA review and approval of that proposed search plan. We found no evidence to show that this condition was met. The last condition—FHFA approval of the CEO candidate recommended by the Fannie Mae Board and of the terms and conditions of his or her employment—is not ripe because no candidate has been selected.

The decision by the former FHFA Director to override established FHFA internal controls for conservator review and approval of an Enterprise request created an information vacuum within DOC and rendered it unable to execute its responsibilities.

Fannie Mae's Board Approved a Significant Compensation Increase for the President Less Than Seven Weeks After He Was Assigned to the Position, Which FHFA Approved

As discussed earlier, both the Board and FHFA, in June and July 2019, recognized that the elevation of the then-CFO to the position of President would entail responsibilities far different and more significant than his existing position. Nevertheless, the Board recommended, and FHFA approved, that his compensation for the position of President would be no less than the most highly compensated officer, which was $3.25 million. Less than seven weeks after the then-CFO assumed the position of President, with its increased responsibilities, Fannie Mae management proposed to increase compensation by $350,000. In its September 20, 2018, recommendation memorandum to the Board's Compensation Committee, management wrote that the proposed increase reflected the "responsibilities, scope and complexity of the President role that he assumed on August 6, 2018," which were "significantly larger than that of [the President's] prior role as Executive Vice President and Chief Financial Officer."

Management's proposed increase of $350,000 was made prior to any performance assessment of the President and amounted to an 11% increase over the compensation package sponsored by the Board Transition Plan and approved by the former FHFA Director.[21] According to management, its proposed increase would place the President's compensation between the 25th and 50th percentiles of market pay for presidents of other financial firms within Fannie Mae's comparator group.

The Board's Compensation Committee approved management's proposal on September 27, 2018, and recommended the increase to the Board. Later that same day, the Board approved this recommendation. Minutes for the September 27, 2018, Board meeting do not summarize

[21] Management's proposed package consisted of a $600,000 base salary, $1,920,000 in fixed deferred salary, and $1,080,000 in an at-risk deferred salary.

the discussion over the proposed increase nor explain the reasons that the Board determined an increase was warranted after less than seven weeks of performance by the President.

On October 9, 2018, Fannie Mae submitted a request to FHFA to approve the President's compensation increase, pursuant to FHFA's established processes. FHFA staff reviewed management's proposal and source data from Fannie Mae's compensation consultant and drafted an analysis memorandum dated October 25, 2018, that largely repeated Fannie Mae's analysis and justifications for the increase. This memorandum concluded that Fannie Mae's compensation adjustment for the President was "reasonable and comparable," and recommended that the Director approve the request. The former FHFA Director approved the President's compensation increase on October 29, 2018.[22] As a result of this increase, Fannie Mae is now compensating its Interim CEO and President a total of $4.2 million to execute the same responsibilities for which it had previously paid $600,000. FHFA did not address the appropriateness of this compensation increase in its management response.

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[22] Under the Senior Preferred Stock Purchase Agreement, FHFA is required to consult with Treasury on new compensation arrangements with and increases in compensation for certain executive officers. FHFA shared information from Fannie Mae relating to the proposed increase in compensation for the Fannie Mae President with Treasury for its consultation but received no response from Treasury prior to the drafting of the staff analysis memorandum on October 25, 2018.

FINDINGS

1. **FHFA's Approval of the Board Transition Plan Acted to Circumvent the Congressionally Mandated Cap of $600,000 on the Compensation for Enterprise CEOs.**

2. **The Former FHFA Director Overrode Internal Controls for Conservator Review and Approval of the Board Transition Plan, and FHFA Failed to Log or Track the Conditions Imposed by the Former Director to his Approval of the Board Transition Plan.**

CONCLUSIONS

In 2015, the former FHFA Director awarded annual target compensation of $4 million to each Enterprise CEO in order to "promote CEO retention, allow reliable succession planning, and ensure the continuity, efficiency and stability of enterprise operations." Following that award, Congress suspended those awards and imposed a cap of $600,000 on the compensation for each Enterprise CEO.

In June 2018, the Board Chair, on behalf of the Board, submitted the Board Transition Plan to FHFA for approval. In it, the Board recommended a change to Fannie Mae's management structure by filling the positions of President and CEO with separate individuals. (Since 2008, those positions had been held by one individual.) The Board nominated Fannie Mae's CFO to the position of President and elevated the Deputy CFO to CFO. Under the Board Transition Plan, some responsibilities previously executed by the CEO and President would be assigned to the President, and annual compensation would be no less than Fannie Mae's most highly compensated Fannie Mae officer, which was then $3.25 million. The former FHFA Director approved the Board Transition Plan in July 2018.

We found that FHFA's approval of the Board Transition Plan acted to circumvent the congressionally mandated cap of $600,000 on CEO compensation. By authorizing Fannie Mae to fill the positions of CEO and President with two separate individuals and transfer substantial responsibilities from the CEO and President to the President position, FHFA permitted Fannie Mae to compensate its President at a level more than five times greater than the statutory cap.

After the current President had served in the position for less than seven weeks, the Board approved an 11% increase in the President's target compensation, raising it to $3.6 million per

year, which FHFA approved in October 2018. Fannie Mae is now compensating its interim CEO and President a total of $4.2 million to execute the same responsibilities for which it had previously paid $600,000.

Fannie Mae has established internal controls for processing, tracking, and monitoring requests for conservator approval. We found that the former FHFA Director overrode those controls when he determined to review the Board Transition Plan directly, without any staff analysis or recommendation, which he was authorized to do. As a result, the former Director and a Special Advisor were the only FHFA employees aware of the former Director's approval of the Board Transition Plan, which was subject to specific conditions, and these conditions were not logged in FHFA's tracking system. Because DOC employees were not aware of the conditions imposed by the former FHFA Director, they were unable to track whether any of the conditions had been satisfied. The record reflects that two of those conditions have not been met.

RECOMMENDATIONS

We recommend that FHFA:

1. Re-assess the appropriateness of the annual compensation package of $3.6 million to the Fannie Mae President with consideration paid to the following factors: the congressional intent behind the statutory cap on compensation; Fannie Mae's continued conservatorship status and the burdens imposed on the taxpayers from that status; and the 10-year practice at Fannie Mae where one individual executed the responsibilities of both the CEO and President positions, with annual compensation capped at $600,000 since 2015; and

2. Establish a process for maintaining and monitoring sensitive conservator requests in DOC's STAR System.

FHFA COMMENTS AND OIG RESPONSE ....

We provided FHFA with an opportunity to respond to a draft of this evaluation report and its response is included in the Appendix to this report. Because FHFA disagreed with our recommendation to re-assess the appropriateness of the annual compensation award of $3.6 million to the Fannie Mae President, we consider this recommendation to be closed as rejected. FHFA agreed with our recommendation to establish a process for maintaining and monitoring sensitive conservator requests in its tracking system.

OBJECTIVE, SCOPE, AND METHODOLOGY ....

The objective of this report was to evaluate FHFA's oversight of the Enterprise Boards of Directors, with a particular focus on succession planning for the CEO position. Based on information that came to our attention during this evaluation, we also sought to assess FHFA's oversight of Fannie Mae's compensation practices relating to its President.

To achieve this objective, we requested and reviewed FHFA guidance pertaining to CEO succession planning. Additional materials reviewed include FHFA correspondence with the Fannie Mae Board and CEO, documentation of FHFA's review of compensation arrangements for the Fannie Mae President, Fannie Mae Board documentation of its succession planning activities, and Fannie Mae's policy for succession planning.

In addition to our document review, we interviewed a Special Advisor to the Acting Director and the DOC Deputy Director.

The field work for this report was completed between October 2018 and February 2019.

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 Evaluation* (January 2012). These standards require us to plan and perform an evaluation based upon 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.

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

Federal Housing Finance Agency

MEMORANDUM

TO: Kyle D. Roberts, Deputy Inspector General for Evaluation

FROM: Robert Fishman, Deputy Director, Division of Conservatorship RJF
Bob Ryan, Special Adviser, Office of the Director BR

SUBJECT: OIG Evaluation: *FHFA Approval of Senior Executive Succession Planning at Freddie Mac*

OIG Evaluation: *FHFA Approval of Senior Executive Succession Planning at Fannie Mae*

DATE: March 21, 2019

We appreciate the opportunity to respond to the Office of Inspector General (OIG) evaluation reports.

In its role as conservator of Fannie Mae and Freddie Mac, FHFA "succeed[ed] to…all rights, powers, and privileges of the regulated entity, and of any stockholder, officer, or director of such regulated entity with respect to the regulated entity and the assets of the regulated entity."[1] In carrying out this significant authority, FHFA authorizes the boards of directors and senior management of the Enterprises to run the day-to-day operations of the companies. FHFA provides strategic direction for the Enterprises, requires the Enterprises to seek advance approval of certain business activities, and oversees and monitors Enterprise activities.

Background. The selections of board members and chief executive officers (CEOs) are significant, foundational decisions for any company. This remains the case for the Enterprises under conservatorship. In fact, because these individuals are accountable to the FHFA Director as conservator, the reliance upon the boards of directors and senior management under conservatorship makes the selection of these individuals critical to the effectiveness of FHFA's responsibilities as conservator. As a result, the Director, board chairs, and CEOs engage with

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[1] 12 USC 4617(b)(2)(A)(i).

one another in ways that would not otherwise occur outside of conservatorship. For example, the Director often attends executive sessions of Enterprise board meetings, communicates directly with the board chairs, and meets regularly with the CEOs of each Enterprise.

In recognition of the importance of the boards of directors at each company, FHFA has taken consistent steps to ensure that the companies have qualified and actively-engaged board members with clearly defined responsibilities. FHFA approves the selection of board members and has worked with each board of directors to delineate their responsibilities during conservatorship. These responsibilities include succession planning for company leadership, including the role of CEO. FHFA's oversight of this process depends upon not only frequent dialogue with the boards but also the leadership of the boards to develop and carry out a well-crafted succession planning process.

While last year's announcements about CEO searches at both Fannie Mae and Freddie Mac were the first public statements about this process, the boards of directors at both companies, in consultation with FHFA, have focused on succession planning efforts long before these announcements. The long-term nature of these discussions reflects both the importance of the topic and the commitment of the boards and FHFA to maintaining the stability of the companies during the inherently uncertain circumstances of conservatorship.

The selection of a CEO for any company is a challenging undertaking, and there are additional challenges unique to the conservatorships of Fannie Mae and Freddie Mac. This includes the uncertainty of the protracted conservatorships of the Enterprises and the compensation restrictions for the CEO role. While these factors have the effect of limiting the overall candidate pool for the CEO positions at each Enterprise, FHFA does not believe that they preclude finding qualified, experienced CEO leadership.

The interim leadership decisions made last year resulted in the CEO and President roles being held by different individuals at both Fannie Mae and Freddie Mac, a common corporate management arrangement.[2] In Fannie Mae's case, the CEO role is being held on an interim basis by an individual who had previously served on the board of directors. A different person, who was a Fannie Mae executive in another capacity, is serving in the position of President at Fannie Mae. In Freddie Mac's case, the existing CEO has announced his intent to retire in the second

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[2] For example, there is a range of corporate management arrangements in place across the 23-member peer group FHFA currently uses for assessing the comparability of Enterprise executive officer compensation. Among this peer group, some companies combine the roles of CEO and President and have no other officer titled as President. Other companies in the peer group combine the roles of CEO and President, but also have other officers titled as President. Another subset of companies separate the roles of CEO and President entirely (meaning, the CEO does not have the title President, and one or more other officers in the company do have the title President). Lastly, some companies in the peer group have a CEO and no officer titled as President. Each company presumably determines its structure based on different variables, to provide the best corporate governance.

half of 2019. A separate individual, who was also a Freddie Mac executive in another capacity, is serving in the position of President at Freddie Mac.

Both companies are conducting internal and external searches for the CEO position.

While both companies have split the CEO and President roles during their respective search processes, they reflect different succession planning approaches by the board of directors at each company. The Fannie Mae board of directors envisions that the company would retain separate CEO and President positions upon selection of a permanent CEO. The Freddie Mac board of directors envisions that, upon the selection of a new CEO, the position of President would be eliminated.

Identifying separate individuals for the roles of CEO and President at both companies does not diminish the essential executive responsibilities of the CEO role. The CEO retains ultimate management decision-making responsibility – and accountability – for the strategic direction set by the board and the conservator. The CEO also certifies company financial statements with the Chief Financial Officer and is the only corporate officer to serve on the board of directors.

The decision to have the positions of CEO and President at each Enterprise held by different individuals, whose compensation is set differently depending on their positions, did not – and does not – violate the CEO pay cap in the Equity in Government Compensation Act of 2015 (EGCA) and is consistent with other requirements of the Enterprise charter acts and the Safety and Soundness Act.

Scope of the EGCA. The EGCA explicitly addresses compensation provided to the "chief executive officer" and does not address compensation to be provided to any other Enterprise officer. In contrast, the Enterprise charter acts authorize their respective boards to provide compensation to each "officer" that is "reasonable and comparable with compensation for employment in other similar businesses (including publicly held financial institutions or other major financial services companies) involving similar duties and responsibilities" and further require "that a significant portion of potential compensation of all executive officers (as such term is defined in subsection (h)(3) of this section) . . . shall be based on the performance" of the Enterprise.[3] FHFA is required to prohibit an Enterprise from providing compensation to an "executive officer" if that compensation does not meet the foregoing "reasonable and

[3] 12 USC 1452(c) (Freddie Mac) and 1723a(d)(2) (Fannie Mae). The quoted language is from Freddie Mac's charter act; Fannie Mae's charter act contains a substantively identical provision. Freddie Mac's charter act further states that directions on compensation of "executive officers" are "all without regard to any other law except as may be provided by . . . laws hereafter enacted by the Congress expressly in limitation of this sentence." Id. at 1452(c). The EGCA expressly limits only the compensation of the "chief executive officer."

comparable" standard.[4] For these purposes, "executive officer" is statutorily defined and includes, separately, the positions of "chief executive officer" and "president."[5]

The Enterprises' governance structure during conservatorship has been transparently communicated through their Securities and Exchange Commission filings. At the time the EGCA was enacted, Fannie Mae's governance structure combined the roles of "chief executive officer" and "president," with the same incumbent serving in both positions. Freddie Mac's governance structure assigned the position of "chief executive officer" to one incumbent and did not assign the position of "president" to any incumbent.

Considering the express language of the EGCA and the broader statutory language in the Enterprises' charter acts and the Safety and Soundness Act, FHFA reasonably interprets the EGCA as applying only to the "chief executive officer." Relevant to this interpretation is the canon of statutory construction that Congress is presumed to act with awareness of other existing, relevant, statutory provisions including, in this case, statutory provisions on executive compensation that distinguish the positions of "chief executive officer" and "president."[6]

The legislative history of the EGCA also supports FHFA's interpretation. As the House Report cited in these OIG evaluation reports notes (at footnote 7 in the evaluation report for Freddie Mac and footnote 19 in the report for Fannie Mae), prior to enactment of the EGCA the House Financial Services Committee considered H.R. 2243, which would have directed FHFA to suspend the pay of all Enterprise executive officers and establish a compensation system in accordance with the pay provisions applicable to FHFA, with no executive officer whose pay was suspended being compensated at a rate higher than the highest-paid FHFA employee.[7] That Committee subsequently voted to amend H.R. 2243 by substituting the text ultimately enacted as the EGCA. Thus, legislation with a broader application was considered, but a narrower approach

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[4] 12 USC 4518(a).

[5] 12 USC 4502(12) (stating that "[t]he term 'executive officer' means, with respect to an enterprise, the chairman of the board of directors, chief executive officer, chief financial officer, president, vice chairman, any executive vice president, and any senior vice president in charge of a principal business unit, division, or function.").

[6] "Congress is presumed to be aware of pertinent, existing law when it passes legislation." *Haas v. I.R.S. (In Re Haas)*, 48 F.3d 1153, 1157 (1995), *citing Miles v. Apex Marin Corp.*, 498 U.S. 19, 32 (1990) and *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 184-85 (1988). *See also Cannon v. University of Chicago*, 441 U.S. 677, 696-97 (1979) ("It is always appropriate to assume that our elected representatives . . . know the law.").

[7] *Compare* H.R. 2243, 115th Cong., as introduced on May 8, 2015, with H.R. 2243, 115th Cong., as reported by the House Financial Services Committee (HFSC) on November 16, 2015. The HFSC action to amend H.R. 2243 followed Senate action, where S. 2036 – ultimately enacted as the EGCA – was introduced in and passed by the Senate on September 15, 2015, and referred to the House the following day. The substituted language that formed the amendment to H.R. 2243 was the language of S. 2036. Thereafter, the whole House took up and passed S. 2036 as referred by the Senate by voice vote, also on November 16, 2015, and that bill – the EGCA – was signed by the President on November 25, 2015.

was ultimately taken. This history reflects congressional intent that Enterprise executive officers other than the chief executive would continue to be governed by the statutory provisions then – and currently – in place, which FHFA continues to implement and which apply to the president.

Interpretation of "Chief Executive Officer." The EGCA does not define the term "chief executive officer." FHFA interprets the essential function of the "chief executive officer" of an Enterprise to be the person with sole ultimate managerial decision-making authority for the Enterprise as a whole, with direct accountability to the board of directors.

FHFA also recognizes that it is permissible, and may be appropriate, to assign some responsibilities and duties that could be, or once were, undertaken by the CEO to other officers, such as a president or executive vice president, who support and are accountable to the CEO. No statute FHFA administers with regard to the Enterprises prevents this. Many corporations have a president who reports to the CEO and is second-in-command of the organization. Some corporations have more than one president.

Regarding the specific decisions under OIG review, the Fannie Mae board determined it was in the best interest of the company to adopt a structure that separated responsibilities of the CEO from those of the company president. The officer now in the president position was promoted from within the company, and the board is currently seeking a CEO.

The Freddie Mac board initially determined it was in the best interest of that company to name a current officer as the "Deputy CEO" – clearly indicating that this individual was not the CEO and thus not yet subject to the EGCA cap, but was in line to become the CEO and was aware that the cap would apply if and when that person became CEO. FHFA and the Freddie Mac board subsequently determined that Freddie Mac should consider external candidates for the CEO position and, as a result, considered the title "Deputy CEO" a misnomer given its intended use as designating the expected next CEO. Against that background, the board changed the title of "Deputy CEO" to President.

In each case, the executive officer who ultimately became President at each Enterprise has taken on new responsibilities. That increase in job scope was the basis for an increase in compensation that did not cause the officer's total direct compensation to exceed a level that would be reasonable and comparable, in accordance with each Enterprise's charter act and the Safety and Soundness Act.[8]

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[8] 12 USC 4518(a) requires FHFA to prohibit an Enterprise from providing compensation to any executive officer (as defined at sec. 4502(12)) that is not reasonable and comparable with compensation for employment involving similar duties and responsibilities in other similar businesses, including other publicly held financial institutions or major financial services companies.

Conclusion. For these reasons, the decisions discussed here further FHFA's overarching responsibilities as conservator, including supporting the stability of senior Enterprise leadership, and do not exceed the CEO compensation limitations put in place by the EGCA. At each Enterprise, the compensation of the individual currently serving as CEO is subject to the EGCA cap, and the existing CEO salaries for both companies are in compliance with this restriction. In addition, the individuals selected for the CEO positions as a result of the current search process will also be subject to this compensation restriction. Compensation for the positions of President at Fannie Mae and Freddie Mac have been handled in a manner similar to other senior level executives at the two companies and consistent with statutory requirements.

The ongoing conservatorships add complexity to the already complex tasks of corporate governance, including succession planning, assigning executive responsibilities, and selecting CEOs. FHFA will continue to responsibly assess these issues and reach responsible decisions in the Agency's role as conservator, including on the selections of permanent CEOs at both companies. FHFA does not plan to re-open its decisions related to the individuals currently serving as President at Fannie Mae and Freddie Mac.

FHFA agrees that it will evaluate how to modify its systems to maintain and monitor sensitive conservatorship requests and will implement approved recommendations after completion of the Agency's evaluation by September 30, 2019.

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