

**UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA**

FAIRHOLME FUNDS, INC., et al.,  <p style="text-align: center;"><i>Plaintiffs,</i></p> <p style="text-align: center;">v.</p> THE FEDERAL HOUSING FINANCE AGENCY, et al.,  <p style="text-align: center;"><i>Defendants.</i></p>	Case No. 1:13-cv-1053-RCL  <b>Oral Argument Requested</b>
IN RE FANNIE MAE/FREDDIE MAC SENIOR PREFERRED STOCK PURCHASE AGREEMENT CLASS ACTION LITIGATIONS  <p style="text-align: center;"><i>Defendants.</i></p>	Case No. 1:13-cv-1288-RCL  <b>Oral Argument Requested</b>

Pursuant to Federal Rule of Civil Procedure 56, Plaintiffs move for partial summary judgment as to the enforceability of Sections 3.2(b) of the Preferred Share Purchase Agreements entered into between FHFA, acting as conservator on behalf of Fannie Mae and Freddie Mac, and the U.S. Treasury Department. These agreements govern the terms of assistance between Treasury and the Companies. Section 3.2(b) refers to a “Periodic Commitment Fee” to be paid to Treasury in return for Treasury’s “Commitment” to the Companies, in addition to the considerable additional compensation that the agreements required.

Section 3.2(b) was unenforceable under governing New York law because it left the amount of the fee to be determined later through mutual agreement and because it provided no readily ascertainable objective criteria, methodology, or extrinsic source for determining the “market value” of the Commitment, or for determining whether and at what point Treasury otherwise had been fully compensated “with reference to” that market value in light of the

significant other compensation provided. *See Teutul v. Teutul*, 912 N.Y.S.2d 664, 665-66 (N.Y. App. Div. 2010). Additionally, the provision violated federal law prohibiting the Executive Branch from charging any fee in relation to securities issued by the Companies. *See* 12 U.S.C. §§ 1455(i), 1719(f). Finally, even if the fee were initially enforceable and otherwise lawful, FHFA and Treasury failed to mutually agree on the amount of the fee at any point and before December 31, 2010—the deadline for setting the fee amount for at least the next five-year period under the terms of the agreements. Thus, and in addition to the reasons that the provision was unenforceable, the fee amount could not be set until January 2016 at the earliest.

For these reasons and those set forth in the accompanying brief, the Court should grant partial summary judgment in Plaintiffs' favor by holding that the provisions of the PSPAs that provided for a periodic commitment fee were unenforceable as a matter of law.

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Respectfully submitted,

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