

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

BERKLEY INSURANCE CO., et al., <i>Plaintiffs,</i> v. THE FEDERAL HOUSING FINANCE AGENCY, et al., <i>Defendants.</i>	Case No. 1:13-cv-1053-RCL
IN RE FANNIE MAE/FREDDIE MAC SENIOR PREFERRED STOCK PURCHASE AGREEMENT CLASS ACTION LITIGATIONS <hr/> This document relates to: ALL CASES	Case No. 1:13-mc-1288-RCL

REQUEST FOR JUDICIAL NOTICE PURSUANT TO FED. R. EVID. 201(b)

Pursuant to Fed. R. Civ. P. 201, Plaintiffs ask the Court to take judicial notice of the following:

There was no legislation introduced or pending in 2011 or 2012 addressing the wind down of the GSEs that passed the Senate Banking Committee. The legislation referenced in Acting Director DeMarco’s testimony passed the Senate Banking Committee in 2014, never received a floor vote, and never became law.

As shown below, these facts are appropriately judicially noticed because they “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned”— including among others, the congress.gov web-site which contains links below with indisputably accurate bill histories.

The facts are relevant and necessary to correct an inaccurate assertion in Acting Director DeMarco’s October 21, 2022, testimony as follows:

Q. Right. But you've said several times in your testimony with Mr. Stern, you said that part of your thinking was informed by the fact that there were numerous bills, I think you said three bills on Congress and a proposal from the Treasury Department, all of which -- they were different, but they had one thing in common: Shrinking the GSEs; correct?

A. Yes.

Q. But it required legislation; correct? Let me rephrase that. Excuse me. You talked about three proposed bills and a Treasury proposal; correct?

A. We talked about multiple bills in Congress, and we talked about the Treasury plan, all of which talked about wind-down. It was the FHFA strategic plan that talked about gradually shrinking the footprint, and that was something that I could do without legislation.

Q. There were some things you could do without, some things you couldn't; correct?

A. Correct.

Q. Okay. At that time, summer of 2012, President Obama is in the White House; correct?

A. Yes.

Q. And the Republicans control the House; correct?

A. I believe so. Yeah, that's right.

Q. Did it strike you as a time of particularly productive bipartisan unity where they were going to get together and pass legislation together?

A. Actually, the Senate bill was a bipartisan bill that was supported by both the leader –

Q. Did it pass?

A. It did. It actually passed through the Senate Banking Committee and went to the Senate floor.

Q. Did it pass into law?

A. No, it did not.

See Trial Transcript 1003-04 (October 21, 2012).

This testimony inaccurately stated (or at a minimum left the distinct misimpression) that a bill addressing shrinking the GSEs proceeded through the Senate Banking Committee to the Senate floor in 2012. That assertion is incorrect. The bills addressing wind down that were proposed in that period did not proceed through Committee.

For example, one bill (S. 1963), introduced by Senator Isaakson, received only four cosponsors and never was taken up by any Committee. *See* [S.1963 - 112th Congress \(2011-2012\): Mortgage Finance Act of 2011 | Congress.gov | Library of Congress](#).

The other (S. 693), introduced by Senator McCain on March 31, 2011, received five Republican cosponsors and had not been acted upon by any committee as of the Net Worth Sweep. See [S.693 - 112th Congress \(2011-2012\): GSE Bailout Elimination and Taxpayer Protection Act | Congress.gov | Library of Congress](#). The House companion (H.R. 1182) was referred to committee and subcommittee, and no further action was taken. [Actions - H.R.1182 - 112th Congress \(2011-2012\): GSE Bailout Elimination and Taxpayer Protection Act | Congress.gov | Library of Congress](#).

The parties have met and conferred about this issue, and Defendants say the referenced legislation was S.1217. That bill was introduced in June 2013 and reported by the Committee in September 2014. It never received a floor vote and did not become law. [Actions - S.1217 - 113th Congress \(2013-2014\): Housing Finance Reform and Taxpayer Protection Act of 2014 | Congress.gov | Library of Congress](#).

Plaintiffs request that the first sentence be read to the jury to correct the inaccurate impression left by Acting Director DeMarco's testimony. It has proposed the second sentence in fairness to avoid inadvertently leaving a misimpression in the other direction that no such legislation ever passed the Senate Banking Committee.

Plaintiffs thus respectfully request that either the first or both sentences be judicially noticed by the Court.

Dated: October 28, 2022

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Respectfully submitted,

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