

Corporate & Financial Weekly Digest

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FHFA Adopts Final Rule on Fannie Mae and Freddie Mac Portfolio Holdings

On December 22, the Federal Housing Finance Agency (FHFA) adopted a final rule for Fannie Mae and Freddie Mac (the Enterprises) pertaining to portfolio holdings. The final rule implements section 1109 of the Housing and Economic Recovery Act of 2008 (HERA) and adopts without change FHFA's interim final rule on portfolio holdings, which was effective January 30, 2009. The final rule establishes, as the standard for the Enterprises' portfolio holdings, the criteria set forth in the Senior Preferred Stock Purchase Agreements (PSPAs), which specified that each Enterprise may hold mortgage assets up to \$900 billion as of December 31, 2009. Under the final rule, for each subsequent year starting December 31, 2010, each Enterprise is required to reduce its maximum holdings of mortgage assets by 10% of the maximum limit in the preceding year until the limit reaches \$250 billion. At that point, no further reduction in the maximum limit is "currently" required.

The PSPAs were entered into to on behalf of the Enterprises by the FHFA acting as conservator and the U.S. Treasury Department to capitalize the Enterprises following severe losses by the Enterprises in 2007. In return for the support provided through the PSPAs, Fannie Mae and Freddie Mac provided certain compensation (including preferred stock and warrants) to the Treasury and accepted various restrictions. Following additional amendments to the PSPAs, on December 24, 2009, the parties again amended the PSPAs to provide further capital to the Enterprises, which had depleted all their capital and had combined losses that required them to draw \$150.8 billion of senior preferred stock pursuant to the PSPAs through September 2010. The latest amendment let stand the maximum allowable amount of mortgage assets each Enterprise could own on December 31, 2009—\$900 billion. However, the covenant requiring the Enterprises to reduce their mortgage assets was revised such that it is based on the maximum amount that they were permitted to own as of December 31 of the immediately preceding calendar year, rather than the amounts they actually owned at that time.

The rule is effective upon publication in the *Federal Register*.

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