

**FINANCIAL AGENCY AGREEMENT**  
**for a**  
**HOMEOWNERSHIP PRESERVATION PROGRAM**  
**under the**  
**EMERGENCY ECONOMIC STABILIZATION ACT OF 2008**

This Financial Agency Agreement (FAA) is entered into as of February 18, 2009 (Effective Date), by and between the U.S. Department of the Treasury (Treasury), and Fannie Mae (Financial Agent).

**Recitals**

To implement the Emergency Economic Stabilization Act of 2008 (Act), the Treasury may designate Financial Institutions as financial agents of the United States to provide all such reasonable duties related to the Act as may be required.

Pursuant to the Act, the Treasury is establishing a Homeownership Preservation Program (Program) encompassing loan modifications, foreclosure prevention, loss mitigation, and other services, and has determined that it is in the interests of the United States to designate a financial agent to provide for such services.

The Financial Agent desires to serve as a financial agent of the United States under the terms and conditions contained herein.

Accordingly, in consideration of the representations, warranties, and mutual agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Treasury and the Financial Agent agree as follows.

**1. Designation and authorization**

Pursuant to the authority of the Secretary of the Treasury under the Act, the Treasury hereby designates and authorizes the Financial Agent to act as a financial agent of the United States under the terms and conditions of this FAA to perform certain services as more fully described in Exhibits A and C.

**2. Term**

A. The initial term of this FAA is for 5 years from the Effective Date and shall expire on February 17, 2014, unless terminated earlier by the Treasury pursuant to the provisions hereof.

B. The Treasury shall have the right and option to extend the term of this FAA beyond the initial expiration date for a total of 5 consecutive 1-year extensions. The Treasury may exercise any such extension option by giving written notice to the Financial Agent at least 60 calendar days prior to the end of the then current term. In the event any such extension option is

exercised by the Treasury, this FAA shall continue in full force and effect for the term of the extension.

C. The Financial Agent acknowledges that the services provided under this FAA are vital to the United States and must continue without interruption during any transition period if the Treasury decides to use a different entity to perform such services in the future, if the Treasury decides to perform such services itself, or if termination of the FAA requires an orderly shutdown of services. To provide for such a transition, the Treasury shall have the right to extend the term of this FAA beyond any expiration date for a period not to exceed 1 year. The Treasury may exercise such option by giving written notice of such extension to the Financial Agent prior to the end of the then current term. The Treasury will use reasonable efforts to provide such written notice at least 30 calendar days prior to the end of the then current term. The Treasury may reduce the number or extent of services to be provided by the Financial Agent during any such transition period. The Treasury agrees that it will work diligently to transfer or shutdown the services performed hereunder as soon as reasonably possible.

D. The Financial Agent agrees to cooperate with the Treasury and/or any successor service providers or financial agents and to provide such services as are necessary to ensure an effective and orderly transfer or shutdown of services, functions, records, and data during the transition period.

E. If this FAA is terminated before the end of the term, the Financial Agent will only be compensated for services performed through the effective date of termination.

### **3. Services to be provided by Financial Agent**

A. The Financial Agent shall perform the services required under this FAA, as more fully described in Exhibits A and C, in accordance with the practices, high professional standards of care, and degree of attention used in a well-managed operation, and no less than that which the Financial Agent exercises for itself under similar circumstances. The Financial Agent shall use qualified individuals with suitable training, education, experience and skills to perform the services.

B. Unless specifically authorized otherwise by the Treasury in writing, the Financial Agent shall ensure that all employees of the Financial Agent and its contractors providing services under this FAA are United States citizens or lawful permanent residents performing their work in the United States, and that the operation and maintenance of all systems and databases used in providing services under this FAA are in the United States.

C. The Treasury may, in its sole discretion, modify, add to, or reduce the specific services required under the general scope of this FAA by providing written notice to the Financial Agent. If any such modification, addition or reduction causes an increase or decrease in the cost of, or the time required for, performance of any service required by this FAA, the Treasury and the Financial Agent will negotiate an equitable adjustment in the compensation for the service or other terms of performance.

D. The Treasury may periodically issue instructions through bulletins, letters, or other communications, consistent with this FAA, which will further describe or clarify the scope of the duties and services of the Financial Agent under this FAA. To the extent that any such instructions are inconsistent with the terms of this FAA or would constitute a material change in the terms or scope of services under this FAA, the terms of this FAA shall govern.

E. The Financial Agent shall keep the Treasury informed of changes in technology and business methods that might allow the Financial Agent to perform its services under this FAA in a more efficient or cost effective manner.

F. Consistent with Section 3B, the Treasury may authorize the Financial Agent to engage non-citizens working outside the United States to perform certain functions, provided such functions represent routine practices used to support other Financial Agent activities similar to those under this FAA.

#### **4. Compensation**

A. The Treasury shall compensate the Financial Agent for services in accordance with Exhibit B, as amended from time to time.

B. The Treasury does not guarantee any set quantity of transactions, minimum volume of assets or business, or related level of compensation to the Financial Agent and shall not adjust compensation on the basis that volumes or quantities did not meet the Financial Agent's expectations.

C. The Financial Agent shall maintain complete and accurate records of and supporting documentation for the amounts billable to the Treasury, and payments made by the Treasury. The Financial Agent shall follow generally accepted accounting principles when recording or reporting any such administrative accounting of the services provided under this FAA. The Financial Agent agrees to provide the Treasury with documentation and other information with respect to any amounts billed to the Treasury as may be reasonably requested by the Treasury.

D. The Treasury may deduct from any amount to be paid to the Financial Agent any amount that the Financial Agent is obligated to reimburse or pay to the Treasury.

E. Notwithstanding any other provision in this FAA, all compensation and funding shall be subject to the availability of funds. Notwithstanding any other provision of this FAA, the Financial Agent shall not enter into any agreements, commitments, or otherwise obligate the Treasury to provide Program funds to a servicer, borrower, or investor until the Financial Agent has received written direction from the Treasury to do so.

#### **5. Financial Agent's fiduciary duty**

The Financial Agent acknowledges and agrees that it owes a fiduciary duty of loyalty and fair dealing to the United States when acting as a financial agent of the United States. The Financial Agent agrees to act at all times in the best interests of the United States when carrying out its

responsibilities under this FAA and in all matters connected with this agency relationship. The Financial Agent acknowledges and agrees that its fiduciary duties under this FAA include, but are not limited to, the following:

- to perform its obligations with care, competence, and diligence;
- to construe the terms of this FAA and any related instructions from the Treasury in a reasonable manner to serve the purposes and interests of the United States;
- to use any nonpublic information or assets of the United States received or developed in connection with this FAA solely for the purposes of fulfilling its duties to the Treasury and not for its own commercial purposes or for those of a third party;
- to comply with 31 CFR Part 31, as may be amended from time to time, and with all conflict of interest, non-disclosure, and information barrier obligations and restrictions, and all conflict of interest mitigation measures, fully and in good faith, as set forth in the FAA; and
- to act only within the scope of its actual authority and to comply with all lawful instructions or directions received from the Treasury.

## **6. Nonpublic information**

A. The Financial Agent shall take appropriate measures to ensure the confidentiality of nonpublic information and to prevent its inappropriate use, and shall document these measures in sufficient detail to demonstrate compliance. Nonpublic information shall include any information that the Treasury provides to the Financial Agent pursuant to this FAA, or that the Financial Agent obtains or develops pursuant to this FAA, until the Treasury determines the information is otherwise in writing, or until the information becomes part of the body of public information from a source other than the Financial Agent. Nonpublic information includes, but is not limited to, information about the Treasury's business, economic, and policy plans, financial and asset information, trade secrets, information subject to the Privacy Act, personally identifiable information (PII), and sensitive but unclassified (SBU) information.

B. SBU information is defined as any information that the loss, misuse, or unauthorized access to or modification of could adversely affect the national interest or the conduct of Federal programs, or the privacy of individuals that they are entitled to under the Privacy Act. In addition, this includes trade secret or other information protected by the Trade Secrets Act. This definition may include other information designated by the Treasury or as defined by other Federal Government sources not mentioned above.

C. PII means any information about an individual, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and information which can be used to distinguish or trace an individual's identity, such as their name, social security number, date and place of birth, mother's maiden name, biometric records, etc., including any other personal information which is linked or linkable to an individual.

D. The Financial Agent shall use such nonpublic information solely for the purposes of fulfilling its duties under this FAA and not for its own commercial purposes or for those of a third party. The Financial Agent may disclose such nonpublic information only to those employees of the Treasury or the Financial Agent or its contractors, who have a legitimate need to know the information to assist in the proper performance of services required by this FAA, consistent with 31 CFR Part 31 and with the conflict of interest mitigation and information barrier measures identified in Exhibit F. The Financial Agent shall require any contractor that provides services under this FAA to agree in writing to confidentiality obligations substantially the same as those in this FAA.

E. The measures required by this Section to protect nonpublic information shall include, but are not limited to, (i) security measures to prevent unauthorized access to facilities and storage containers where nonpublic information is stored, (ii) security measures to detect and prevent unauthorized access to computer equipment and data storage devices that store or transmit nonpublic information, in accordance with Section 9, (iii) periodic training to ensure that persons receiving nonpublic information know their obligations to maintain its confidentiality and to use it solely for purposes contemplated by this FAA, and (iv) programs to ensure compliance with Federal securities laws, including laws relating to insider trading.

F. The Treasury may periodically issue other policy statements or guidance to clarify the Financial Agent's obligations regarding nonpublic information. If the Financial Agent has any questions on the designation or proper handling of nonpublic information, it shall immediately seek clarification from the Treasury whose decision shall be binding upon the Financial Agent.

G. The Financial Agent's agreement with respect to nonpublic information is a continuing one that shall survive the termination or expiration of this FAA. However, the Financial Agent shall not be required to protect nonpublic information that becomes part of the body of public information from a source other than the Financial Agent.

H. The Financial Agent shall strictly enforce the terms of any non-disclosure agreements it has with its employees and contractors regarding services provided under this FAA. In addition, the Financial Agent shall ensure that each employee of the Financial Agent and all contractor personnel to whom nonpublic information is or may be disclosed, shall review and sign a Non-Disclosure Agreement containing substantially the provisions and obligations in Exhibit E.

I. Notwithstanding the requirements of this Section, the Financial Agent may disclose nonpublic information if required pursuant to a lawful court order or valid subpoena after giving prior notice to the Treasury, or may disclose nonpublic information to and if required by its Federal regulator.

## **7. Breaches of nonpublic information**

A. The Financial Agent shall immediately notify the Treasury of any actual or suspected breaches of nonpublic information that may occur while handling Treasury data, whether paper or electronic, including unauthorized access, use, disclosure, or loss of nonpublic information.

Such immediate notification should occur whether before or after regular business hours or on a weekend or holiday, and should not be delayed as the Financial Agent researches or confirms the particular details on an incident or suspected incident.

B. In response to a reported breach of nonpublic information, the Treasury may request the Financial Agent to conduct an investigation and report detailed findings as to the cause and impact of the breach as well as the remediation taken. As determined by the Treasury after reviewing any investigation conducted by the Financial Agent, the Financial Agent may be liable and may be required to reimburse the Federal Government or any affected individual for any costs, expenses, or damages which result from the fraud, theft, willful misuse or negligence of the Financial Agent, its contractors, Financial Agent employees, or contractor personnel with respect to the handling and maintenance of nonpublic information.

C. The Financial Agent must ensure that all of its employees and contractor personnel impacted by this Section receive the proper education and guidance.

## **8. Privacy Act**

The Treasury may determine that, in connection with the services provided under this FAA, the Financial Agent has obtained or developed a system of records as defined under the Privacy Act of 1974, 5 U.S.C. § 552a. For purposes of the Privacy Act, when a Government agency delegates the development, operation or maintenance of a system of records on individuals to accomplish an agency function, the person that operates the system is bound by the Privacy Act as if such person were an employee of the agency. Violations of the Privacy Act may involve the imposition of criminal penalties. If the Treasury makes such a determination, it shall so notify the Financial Agent. After receiving such notice, the Financial Agent shall promptly provide training to all of its employees and contractor personnel with access to such system of records on the duties and responsibilities imposed on them by the Privacy Act and by applicable regulations and guidance, including the potential penalties for wrongful disclosure.

## **9. Information technology security**

A. The Financial Agent shall develop, maintain, enforce, and at least annually review for effectiveness, information technology security measures designed to ensure the (i) availability, (ii) access controls, and (iii) integrity of any systems, databases, or data stores containing or processing nonpublic information.

B. The availability measures shall be designed to ensure such systems, databases, or data stores are available for operation and use to support the services required under this FAA. The access control measures shall be designed to ensure such systems, databases, or data stores are protected against unauthorized access and use. The integrity measures shall be designed to ensure that systems processes and storage and retrieval of nonpublic information in databases or data stores, are complete, accurate, and protected against unauthorized modification.

C. Within 90 days of the Effective Date of this FAA, and on June 1 of each year thereafter that this FAA is in effect, the Financial Agent shall submit to the Treasury for review and approval

the specific information technology security measures described above. In addition, the internal control program, required by Section 16, must include review of the information technology control objectives and control techniques, and testing of operational effectiveness of information technology security measures.

D. For any database created by the Financial Agent under this FAA that may contain loan level data on credit characteristics, modifications, and performance, the Financial Agent shall ensure that access is limited to the need to know pursuant to the FAA, that any access granted shall be at the minimum levels required in each instance, and that appropriate controls are in place designed to ensure that no one will access or use the data in such database, or any derivatives thereof, for any purpose other than performing services under the FAA, with such impermissible purposes including without limitation for conducting market research, credit risk analysis, securities performance analysis, or underwriting for the Financial Agent's activities outside this FAA.

## **10. Personnel security**

A. The Treasury will rely on the Financial Agent's personnel security screening standards. The Financial Agent shall ensure that all of its employees and contractor personnel who have access to nonpublic information have appropriate personnel security background checks.

B. The Financial Agent shall provide the Treasury with a listing of all such background investigative requirements (e.g., FBI fingerprint check, police check, credit check, verification of lawful permanent resident status, etc.). The Treasury may request additional personnel security checks.

C. Consistent with Section 3B, all Financial Agent employees and contractor personnel who have access to nonpublic information must be U.S. citizens or lawful permanent residents performing their work in the continental United States.

## **11. Conflicts of interest mitigation and information barriers**

A. Consistent with Exhibit F, the Financial Agent and its contractors shall adequately segregate personnel or employ suitably robust internal controls designed to ensure that the Financial Agent's personnel and those of its contractors assigned to provide services under this FAA do not divulge information regarding the Program to other personnel involved with the Financial Agent's or its contractor's other activities that may conflict with duties owed to the Treasury. No nonpublic information related to the management of the Program shall be revealed to such other personnel, except as required by law, or as required for internal senior management or legal purposes consistent with the Financial Agent's duties owed to the Treasury.

B. As part of its obligation to comply with the conflict of interest requirements of this FAA, the Financial Agent shall implement the conflict of interest mitigation and information barrier measures set forth in Exhibit F throughout the term of this FAA.

## **12. Employee codes of conduct and ethics**

The Financial Agent must establish policies and procedures reasonably designed to assist all individuals performing services under this FAA to comply with applicable laws and regulations, and to comply with requirements for the disclosure and the avoidance, mitigation, or neutralization of any actual or potential personal conflicts of interest, consistent with the provisions of Exhibit F. The Financial Agent must have in place policies and procedures establishing a Code of Conduct and a Code of Ethics.

## **13. Representations and warranties**

The Financial Agent represents and warrants to the Treasury the following, the truth and accuracy of which are a continuing condition of the Financial Agent's responsibilities to the Treasury:

- A. The Financial Agent is an institution established and regulated under the laws of the United States or any State, territory, or possession of the United States and having significant operations in the United States.
- B. The Financial Agent has full corporate power and authority to enter into, execute, and deliver this FAA and to perform its obligations hereunder.
- C. The Financial Agent has obtained or made all governmental approvals or registrations required under law to authorize the performance of its obligations under this FAA, it being understood that the Treasury hereby consents to the Financial Agent entering into this FAA in accordance with the requirements of the Senior Preferred Stock Purchase Agreement dated September 26, 2008, between the Treasury and the Financial Agent. The Financial Agent is not aware of any legal or financial impediments to performing its obligations under this FAA that it has not disclosed in writing to the Treasury.
- D. The Financial Agent is not delinquent on any Federal tax obligation or any other debt owed to the United States or collected by the United States for the benefit of others.
- E. The Financial Agent is not on any Federal excluded parties, debarments, or suspension lists.
- F. The Financial Agent has or shall promptly obtain all required licenses, bonding, facilities, equipment and trained personnel to perform its obligations under this FAA.
- G. The Financial Agent owns or is licensed to use, or shall promptly obtain such ownership or license to use, software programs and data processing hardware that are necessary for it to perform its obligations under this FAA, and to the best of its knowledge such software programs and data processing hardware do not infringe upon or constitute an



infringement on or misappropriation of any valid United States patent, copyright, trademark, trade secret or other proprietary rights of any third party.

- H. The Financial Agent agrees to comply with regulations on conflicts of interest and other matters at 31 CFR Part 31, as may be amended from time to time, as well as more stringent provisions that may be imposed by this FAA. In addition, the Financial Agent covenants to disclose all actual or potential organizational conflicts of interest, including prompt disclosure of any conflicts with the interests of any contractors as soon as they come to the Financial Agent's attention, and to avoid, mitigate, or neutralize to the extent feasible and to the Treasury's satisfaction any personal or organizational conflicts of interest that may be identified by the Treasury or the Financial Agent, consistent with the conflict mitigation measures set forth in Exhibit F.
- I. If doing other business with the Treasury or another Federal agency, the Financial Agent is not in any kind of probationary status, and is addressing and resolving any identified deficiencies in performance.
- J. The Financial Agent covenants to disclose to the Special Inspector General created under the Act, or the Treasury Office of the Inspector General, any credible evidence, in connection with the designation, services, or closeout of this FAA, that a management official, employee, or contractor of the Financial Agent has committed (a) a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code, or (b) a violation of the civil False Claims Act (31 U.S.C. §§ 3729-3733).
- K. The Financial Agent covenants to disclose any other facts or information that the Treasury should reasonably expect to know about the Financial Agent and its contractors to help protect the reputational interests of the Treasury and the Financial Agent in managing the Program.

The Financial Agent shall sign an annual certification, and deliver it to the Treasury on June 1 of each year this FAA is in effect, in the form set forth in Exhibit D.

#### **14. Use of contractors**

A. Except as provided in Section 15, the Financial Agent shall use only its own employees to perform services under this FAA, unless the Financial Agent obtains the prior written consent of the Treasury to use contractors to perform such services. The Treasury may approve or reject any contractor in its sole discretion. The Treasury shall have the right to impose requirements for any such contractor including, without limitation, requirements relating to the location of the contractor's offices, the citizenship of the contractor's employees, and the contractor's physical and data security systems.

B. The Financial Agent must execute any agreement with a contractor in its own name and not on behalf of the United States or the Treasury, and any such contractor does not become a subcontractor, agent, or subagent of the Treasury. The Treasury shall not be deemed a party to

any arrangement or agreement the Financial Agent may enter into with another entity to perform any services under this FAA. The Treasury will not be liable for any payment to any entity other than the Financial Agent.

C. The Financial Agent is responsible for the supervision and management of any contractor that assists in the performance of services under this FAA. The Financial Agent shall remove and replace any contractor that fails to perform. The Financial Agent shall ensure that all of its contractors comply with the terms and provisions of this FAA. The Financial Agent shall be responsible for the acts or omissions of its contractors as if the acts or omissions were by the Financial Agent.

#### **15. Small Business Contractors, Including Minority- or Women-Owned Contractors**

The Financial Agent agrees to engage one or more small businesses as contractors, including minority- or women-owned businesses, to provide a portion of the services described in Exhibits A and C. Such contractors shall serve as the direct providers of required services, and not as ancillary or secondary support providers to another entity directly responsible for the services. The Treasury reserves the right to approve or reject the contractors in its sole discretion.

#### **16. Internal control program**

The Financial Agent shall develop, enforce, and at least annually review for effectiveness, an internal control program designed to ensure effective delivery of services under this FAA and compliance with Program Guidelines. The internal control program must include documentation of the control objectives for major Program activities, the associated control techniques, and mechanisms for testing and validating the controls.

#### **17. Reviews and audits**

The Treasury, the Treasury Inspector General, the Special Inspector General created under the Act, the Government Accountability Office, and other entities as authorized by the Treasury shall have the right during normal business hours to conduct announced and unannounced onsite and offsite physical, personnel and information technology testing, security reviews, and audits of the Financial Agent, and to examine all books and records, related to the services provided and compensation received under this FAA. The Financial Agent shall be responsible for implementing corrective actions associated with such testing, reviews, or audits as directed by the Treasury.

The Financial Agent shall provide the Treasury with access to all internal control reviews that relate to services under this FAA performed by the Federal Housing Finance Agency (FHFA) and the Financial Agent's independent auditing firm.

#### **18. Intellectual property rights**

A. For purposes of this Section, the following definitions apply:

“Business Methods” means any ideas, concepts, designs, practices, and business methods created by the Financial Agent or its contractors, jointly or independently, expressly for the purpose of providing the services under this FAA.

“Data” means any recorded information, regardless of form or the media on which it may be recorded, regarding any of the services described in this FAA.

“Federal Government” means any Federal Government department, agency, bureau, corporation or instrumentality, or any Federal Reserve Bank.

“Unlimited Rights” means non-exclusive perpetual rights to, without limitation, use, copy, maintain, modify, enhance, disclose, reproduce, prepare derivative works, and distribute, in any manner and for any purpose and to permit others to do so.

B. The Treasury shall have Unlimited Rights to Business Methods and may use them for any purpose within the Treasury’s authority.

C. Except as otherwise provided herein or prohibited by law, the Treasury shall have Unlimited Rights to all data produced or developed, or obtained without restriction, by the Financial Agent or a contractor of the Financial Agent for the purpose of providing services under this FAA. If requested, such data shall be made available to the Treasury in industry standard useable format.

D. In accordance with 28 U.S.C. § 1498, the Treasury hereby authorizes and consents to all use, manufacture, and production of any invention, product or work described in and covered by a United States patent or copyright by the Financial Agent or a contractor of the Financial Agent in the performance of this FAA.

## **19. Liability of Financial Agent**

A. If any act or omission by the Financial Agent or a contractor of the Financial Agent results in a delay in processing or transferring funds to the Treasury, or in delivering transaction information that prevents the Treasury from making use of funds, the Financial Agent is liable and shall reimburse the Treasury for the time value amount of such loss. The Treasury may reconsider any liability claim against the Financial Agent if the Treasury, in its sole discretion, determines that any delay arose out of causes beyond the control and without the fault or negligence of the Financial Agent.

B. Except as otherwise provided in this Section, the Financial Agent will not be liable to the Treasury for (i) any loss incurred by reason of any Program decision or action taken or omitted in what the Financial Agent believes in good faith to be the proper performance of its duties; (ii) any exercise of, or failure to exercise, any discretionary authority duly granted to the Financial Agent under this FAA; (iii) errors by the Treasury or its duly designated financial agents in data or instructions provided to the Financial Agent; (iv) fraud by, acts or omissions of, or good faith reliance on information from, independent third-parties not under contract with the Financial

Agent to provide required services under this FAA, such as lenders, servicers, or borrowers; (v) occasional clerical, administrative, or document keying errors which may occur as a result of intensive manual processes, provided that, in the Treasury's sole determination, such errors are not due to lack of an appropriate internal control system; (vi) any action taken or omitted by its reliance on the receipt of electronic transmissions with the proper security codes or passwords that the Financial Agent reasonably believes to be from the Treasury or its duly designated financial agents; and (vii) events beyond the control of the Financial Agent and which can not be avoided or mitigated by the exercise of expected diligence, care, and contingency planning.

C. The Financial Agent is liable and shall reimburse the Treasury for any monetary loss or costs which result from the fraud, theft, embezzlement, willful misconduct, bad faith, or negligence of, or breach of fiduciary duty by, the Financial Agent or a contractor of the Financial Agent. The Treasury will reconsider any liability claim against the Financial Agent resulting from negligence if the Treasury, in its reasonable judgment, determines the failure to exercise reasonable care was not caused by lack of an appropriate internal control system.

D. The Financial Agent may be liable for costs, expenses, or damages associated with a breach of nonpublic information, as set forth in Section 7.

E. If the Treasury reasonably believes that the Financial Agent is in breach of this FAA, an investigation of the Financial Agent's actions by the Treasury or another entity may be required. If ultimately found to be in breach, the Financial Agent shall be liable for the reasonable costs and expenses of any such investigation to the extent that such costs and expenses are reasonably documented.

## **20. Notice to the Treasury**

The Financial Agent shall promptly notify the Treasury if (i) the Financial Agent becomes aware of any loss, damage, investigation, action, proceeding or claim related to its performance under this FAA that may have a material adverse effect on the Treasury or the United States or that may damage the public's trust in the operations of the Treasury, (ii) the Financial Agent breaches any material obligation or condition of this FAA, or (iii) any representation or warranty made by the Financial Agent herein ceases to be true.

## **21. Defaults**

The following, as solely determined by the Treasury, constitute events of default by the Financial Agent under this FAA:

- A. The Financial Agent fails to perform or comply with any of its material obligations under this FAA.
- B. The Financial Agent, its contractors, or any employee of the Financial Agent or any contractor personnel commits a negligent, willful, or reckless act in connection with services or activities under this FAA.

- C. The Financial Agent breaches a fiduciary duty to the United States with respect to its responsibilities under this FAA.
- D. Any representation or warranty made herein by the Financial Agent is or becomes materially false, incorrect, or incomplete.
- E. The Financial Agent is or becomes delinquent on any Federal tax obligation or any other debt owed to the United States Government or collected by the United States for the benefit of others.
- F. A receiver, liquidator, trustee, or other custodian is appointed for the Financial Agent, provided that the existence or continuation of FHFA's conservatorship of the Financial Agent shall not constitute an event of default.
- G. The Financial Agent is in default under any other agreement between the Financial Agent and the Treasury or any bureau of the Treasury.

## **22. Remedies for default**

The Treasury may take any, all, or none of the following actions in the event of a default by the Financial Agent under this FAA:

- A. The Treasury may terminate this FAA and cease its performance hereunder. If this FAA is terminated, the designation and authorization of the Financial Agent for purposes of providing the services under this FAA are revoked.
- B. The Treasury may reduce the scope of services under this FAA and cease a portion of its performance hereunder. If the scope of this FAA is reduced, the authorization of the Financial Agent for purposes of providing the discontinued services under this FAA is revoked.
- C. The Treasury may revoke the Financial Agent's designation as a financial agent for the United States, encompassing this FAA and any other financial agency agreement with the Treasury, which shall be deemed terminated as of the effective date of such revocation.
- D. The Treasury may declare any other agreement between the Financial Agent and the Treasury to be in default.
- E. The Treasury in its sole discretion may put a Financial Agent on probation for failing to perform satisfactorily a service (or services) delineated in this FAA. Probation means that the Treasury will withhold some or all of the Financial Agent's compensation until in the Treasury's determination the Financial Agent has cured the non-performance issues. The Treasury reserves the right to consider other measures in addition to withholding the compensation if the Financial Agent is put on probation, including but not limited to, preclusion from additional work under the existing agreement and ineligibility to be

designated for other work under a new agreement. The payment of compensation may also be adjusted consistent with Section 19 (Liability of Financial Agent.)

F. The Treasury may consider information or history regarding any default hereunder when making any decisions regarding future use of the Financial Agent for performance of financial agent services.

G. The Treasury may take any other action available at law or in equity.

### **23. Termination in the interest of the United States**

Notwithstanding any other provision of this FAA, when the Treasury in its sole discretion determines that such actions are necessary to protect the interests of the United States Government, the Treasury may reduce the authorized scope of work under this FAA, terminate this FAA, or revoke the Financial Agent's status as a financial agent of the United States even in the absence of an event of default by the Financial Agent under this FAA.

### **24. Disputes**

The Treasury and the Financial Agent agree that it is in their mutual interest to resolve disputes by agreement. If a dispute arises under this FAA, the parties will make all reasonable efforts to resolve the dispute by mutual agreement. If a dispute cannot be resolved informally by mutual agreement at the lowest possible level, the dispute shall be referred up the respective chain of command of each party in an attempt to resolve the matter. This will be done in an expeditious manner. The Financial Agent shall continue diligent performance of the services required by this FAA pending resolution of any dispute. The Treasury and the Financial Agent reserve the right to pursue other legal or equitable rights they may have concerning any dispute. However, the parties agree to take all reasonable steps to resolve disputes internally before commencing legal proceedings.

### **25. Data and records retention**

In addition to its fiduciary duties and any other obligation to retain financial and accounting records that may be imposed by Federal or state law, the Financial Agent shall retain all data, books, reports, documents, audit logs and records, including electronic records, related to the performance of services required by this FAA. In addition, the Financial Agent shall maintain a copy of all computer systems and application software necessary to review and analyze these electronic records. Unless otherwise directed by the Treasury, the Financial Agent shall retain these records for at least 7 years from the date the data or record was created. The Treasury may also notify the Financial Agent from time to time of any additional records retention requirements resulting from litigation in which the Treasury may have an interest, and the Financial Agent agrees to comply with these litigation requirements.

## **26. Transfer or assignment**

A. The Financial Agent may not transfer or assign its rights under this FAA without the prior written consent of the Treasury, which may be granted or withheld in the sole discretion of the Treasury. Any purported transfer or assignment without the prior written consent of the Treasury shall be void.

B. The Financial Agent shall notify the Treasury as soon as legally possible of any proposed merger, acquisition, or other action involving the Financial Agent or a contractor of the Financial Agent that will affect the Financial Agent's ability to carry out its responsibilities under this FAA.

C. In the event that the Financial Agent is involved in a merger or acquisition, the Treasury may, in its sole discretion, elect to continue this FAA and to treat the Financial Agent's successor in interest to be a successor financial agent. If the Treasury elects not to continue this FAA, the Treasury shall notify the Financial Agent of the termination date of the FAA.

## **27. Notices**

All notices required to be given herein shall be in writing and shall be given to the following contacts unless expressly stated otherwise herein:

To the Treasury:

Gary Grippo  
Deputy Assistant Secretary  
Fiscal Operations and Policy  
U.S. Department of the Treasury  
1500 Pennsylvania Ave, NW, Room 2112  
Washington, DC 20220

To the Financial Agent:

Michael J. Williams  
Executive Vice President and Chief Operating Officer  
Fannie Mae  
3900 Wisconsin Ave, NW  
Washington, DC 20016

The party giving the notice should send an e-mail to the party receiving the notice advising that them that the notice by mail has been given.

## **28. Publicity and Disclosure**

A. The Financial Agent shall not make use of any Treasury name, symbol, emblem, program name, or product name, in any advertising, signage, promotional material, press release, Web page, publication, or media interview, without the prior written consent of the Treasury.

B. The Financial Agent, its contractors, any employee of the Financial Agent, or any contractor personnel shall not make statements to the media or issue press releases regarding their services under this FAA without the prior written consent of the Treasury.

C. The Financial Agent acknowledges that this FAA is confidential and, consistent with applicable law, shall not disclose this FAA to third parties.

## **29. Modifications**

Modifications to this FAA shall be in writing and signed by the parties. Notwithstanding the foregoing, the Treasury reserves the right to unilaterally modify the terms and provisions of this FAA, through written notice to the Financial Agent, to comply with changes in legislation or regulations, court orders, or audit findings.

## **30. Miscellaneous**

A. This FAA shall be governed by, and interpreted in accordance with, Federal law not the law of any state or locality. To the extent that a court looks to the laws of any state to determine or define the Federal law, it is the intention of the parties to this FAA that such court shall look only to the laws of the State of New York without regard to the rules of conflicts of laws.

B. This FAA is not a Federal procurement contract and is therefore not subject to the provisions of the Federal Property and Administrative Services Act (41 U.S.C. §§ 251-260), the Federal Acquisition Regulations (48 CFR Chapter 1), or any other Federal procurement law.

C. Any provision of this FAA that is determined to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this FAA, and no such prohibition or unenforceability in any jurisdiction shall invalidate such provision in any other jurisdiction.

D. Failure on the part of the Treasury to insist upon strict compliance with any of the terms hereof shall not be deemed a waiver, nor will any waiver hereunder at any time be deemed a waiver at any other time. No waiver will be valid unless in writing and signed by an authorized officer of the Treasury. No failure by the Treasury to exercise any right, remedy, or power hereunder will operate as a waiver thereof. The rights, remedies, and powers provided herein are cumulative and not exhaustive of any rights, remedies, and powers provided by law.



E. This FAA shall inure to the benefit of and be binding upon the parties to this FAA. No other person or entity will have any right or obligation hereunder, except for successor financial agents accepted by the Treasury.

F. This FAA may be executed in two or more counterparts (and by different parties on separate counterparts), each of which shall be an original, but all of which together shall constitute one and the same instrument.

G. This FAA and the attached Exhibits constitute the entire agreement between the parties.

**31. Incorporation by reference**

Exhibits A-F attached to this FAA are incorporated herein by reference and given the same force and effect as though fully set forth herein.

**In witness whereof**, the Treasury and the Financial Agent by their duly authorized officials hereby execute and deliver this Financial Agent Agreement as of the Effective Date.

**Department of the Treasury**

\_\_\_\_\_  
Kenneth E. Carfine  
Fiscal Assistant Secretary

\_\_\_\_\_  
Date

**Financial Agent**

\_\_\_\_\_  
Michael J. Williams  
Executive Vice President and  
Chief Operating Officer

\_\_\_\_\_  
Date

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**Department of the Treasury**

  
\_\_\_\_\_  
Kenneth E. Carfine  
Fiscal Assistant Secretary

02/18/09  
\_\_\_\_\_  
Date

**Financial Agent**

\_\_\_\_\_  
Michael J. Williams  
Executive Vice President and  
Chief Operating Officer

\_\_\_\_\_  
Date

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**Department of the Treasury**

\_\_\_\_\_  
Kenneth E. Carfine  
Fiscal Assistant Secretary

\_\_\_\_\_  
Date

**Financial Agent**

  
\_\_\_\_\_  
Michael J. Williams  
Executive Vice President and  
Chief Operating Officer

2-18-09  
\_\_\_\_\_  
Date

## **EXHIBITS**

- Exhibit A Services and Other Terms
- Exhibit B Budget, Funding, and Compensation
- Exhibit C Program Guidelines
- Exhibit D Annual Certification Format
- Exhibit E Non-Disclosure Agreement
- Exhibit F Conflicts of Interests Mitigation

## EXHIBIT A

### SERVICES AND OTHER TERMS

The Financial Agent will provide services to implement the Treasury's Homeownership Preservation Program under the Emergency Economic Stabilization Act of 2008, including but not limited to the development, implementation, and administration of services related to foreclosure prevention, private label mortgage-backed securities (PLS), Housing Finance Agency (HFA) activities, customer service call centers and other miscellaneous services.

The Financial Agent shall provide all services in accordance with the Program Guidelines, contained in Exhibit C, as issued and updated from time to time by the Treasury.

#### 1. Foreclosure prevention

A. To assist the Treasury with foreclosure prevention, the Financial Agent shall help design and execute a program that implements standardized, streamlined mortgage modifications for all types of servicers, regardless of the risk holder (e.g., bank, PLS, GSE MBS, etc.), and that lowers monthly payments for qualified borrowers.

B. The Financial Agent shall fulfill the roles of program administration and pipeline reporting, as well as program record-keeper and paying agent. Another financial agent designated by the Treasury will fulfill the role of program compliance agent. The Financial Agent agrees to work in good faith and fully cooperate with the financial agent designated for compliance.

C. Acting as the program administrator and pipeline reporter, consistent with the Program Guidelines, the Financial Agent shall prepare the requisite forms, tools, and training to facilitate efficient execution of loan modifications by servicers, and shall provide the following services:

1. Develop and implement an overall marketing plan for the program that will target borrowers at risk of foreclosure in 2009.
2. Develop and implement a customer service call center to respond to borrower and other inquiries regarding the program.
3. Develop standard agreements and processes to initiate servicer participation in the program.
4. Develop and distribute standardized documentation that allows for both a one- and two-step process for consummating the modification; create and maintain modification documents, borrower hardship letters, and the like; and standardize document retention practices, for rollout to servicers, to facilitate quality control and compliance efforts.
5. Develop and implement an exception management process for modifications that fall outside of established program parameters.

6. Develop and implement procedures for reporting the initiation and terms of the modification.
7. Prepare and roll out on the program; prepare and distribute program announcement materials; and communicate the terms of the program to servicers and secure agreements with servicers for program participation.
8. Upon request, review servicer tapes of pools of loans to determine whether, and the extent to which, a given pool is appropriate for the program.
9. Provide policy management support, including authorship of program documentation, including FAQs that provide sufficient detail to allow servicers to execute modifications; respond to servicer inquiries on program execution or documentation and provide routing updates to program documentation, as appropriate; and conduct servicer outreach throughout the life of the program.
10. Perform exception management; receive and review modification requests that are outside of established parameters and, if permitted, evaluate acceptability of modifications for exception processing; and approve or deny such exceptions and servicer/borrower appeals, as appropriate and delegated by the Treasury.
11. Create a process for servicers to report data needed to monitor and report on modification activity.
12. Prepare and distribute program reporting, including (1) collection of pipeline information from the servicers, compilation of such data, and communication to constituents to facilitate cash flow and operational preparedness, and (2) reporting on modification performance, cumulative cash outlays, and program costs.
13. Develop and implement practices to monitor and detect loan modification fraud.

D. Acting as the program record-keeper and paying agent, consistent with the Program Guidelines, the Financial Agent shall maintain records of all modified loans, perform preliminary tests of compliance, calculate subsidies and servicer/borrower compensation, pay subsidies to the master servicer or designated party for modified loans, and pay compensation to servicers/borrowers upon modification origination and upon reaching stated goals for re-performance. The Financial Agent shall provide the following services:

1. Collect executed contracts from servicers and review for completeness; scan and maintain the respective agreements to evidence program participation and setup banking instructions, as required, to facilitate payment of subsidies and servicer/borrower compensation; and notify both the servicer and impacted master servicers of program participation.
2. Accept, collect, and record details of executed modifications including, original terms of the modified loan, modified terms of the loan, data supporting the decision criteria for the modification, the PLS name and CUSIP, the master servicer, and the servicer; review such details to ensure the servicer is a program participant and to check compliance with

guidelines; and refer modifications that potentially violate such guidelines to the compliance agent for validation and resolution.

3. Collect monthly data from servicers to maintain modified loan records, including updates to payoff information and the LPI (last payment) date to facilitate tracking of loan performance; and compare payment information reported by the servicers to the expected payment and resolve differences.
4. On a monthly basis, calculate subsidies on eligible loans and deliver such payments to respective master servicers, or designated party.
5. Calculate and remit compensation to servicers/borrowers in accordance with guidelines.
6. Provide detailed loan level reporting, as required, to the Treasury and the compliance agent.

## **2. Housing Finance Agencies**

Services To Be Determined

### **3. Whole loan purchases out of PLS trusts**

Services To Be Determined

### **4. Miscellaneous services**

A. The Financial Agent shall provide various miscellaneous services upon the Treasury's request, including but not limited to the following services:

1. Provide consultative advice on other activities in the Treasury's Homeownership Preservation Program.
2. Provide advice to the Treasury on managing the property disposition for real estate acquired through foreclosure.
3. Assist in the selection of special technical advisors for any of the activities referred to herein.
4. Provide analysis and modeling for any of the activities referred to herein.

## **EXHIBIT B**

### **BUDGET, FUNDING, AND COMPENSATION**

#### **1. Pass-through funding**

A. The Financial Agent shall receive monthly payments to fund loan modifications and pay fees to servicers or investors, as set forth in the Program Guidelines, in accordance with the following categories:

- Interest rate reduction payments
- Principal reduction payments
- Principal reduction for borrowers remaining current on modified loans
- Compensation to servicers, for modifications made prior to 60-day delinquency on loans
- Up-front modification fees to servicers
- Success fees to servicers, for borrowers remaining current on modified loans

B. Such funding will be paid monthly for loan modification payments and servicer or investor fees due that month. The Financial Agent must submit a certified funding schedule, detailing the number of loans and calculations for each funding line item, prior to receiving such funds.

#### **2. Budget and compensation**

A. The Treasury, in consultation with the Financial Agent, shall establish and from time to time update a budget for the services to be provided under the Financial Agency Agreement (FAA), based on factors including level of resources required to perform services, standards of care to be met, compliance policies required to administer the program, and other FAA requirements, consistent with the Program Guidelines. The following major cost categories will be used for the budget:

- Personnel compensation and related costs
- Travel
- Information technology
- Equipment and materials
- Contractors and other third party providers
- Other specific, direct costs
- Indirect costs

B. The Financial Agent shall be reimbursed for the costs of administering the program, consistent with the budget. Such reimbursement will be paid monthly based on services rendered the prior month. The Financial Agent must submit an invoice, with breakdowns under each major cost category, prior to receiving such reimbursement.



### **3. Incentive payments**

A. The Financial Agent may receive performance incentive payments, up to a maximum level of 20 percent of compensation to the Financial Agent, based on number of participating servicers, the number of completed modifications, the re-default rate on modifications, and similar program success and performance metrics determined by the Treasury, consistent with the Program Guidelines.

B. Such performance payments will be paid quarterly based on results from the prior quarter. The Financial Agent must submit, and the Treasury must review and approve, a service level report prior to receiving such incentive payment.

**EXHIBIT C**  
**PROGRAM GUIDELINES**

**To Be Issued by the Treasury**

## EXHIBIT D

### ANNUAL CERTIFICATION FORMAT

This certificate is delivered as provided in Section 13 of the Financial Agency Agreement (FAA) effective February 18, 2009, between the U.S. Department of the Treasury (the Treasury) and [Financial Institution name].

I, [Name of Authorized Official], a duly authorized official of [Financial Institution name], certify that:

1. [Financial Institution name] is an institution established and regulated under the laws of the United States or any State, territory, or possession of the United States and having significant operations in the United States;
2. [Financial Institution name] is taking all reasonable steps to ensure that nonpublic information obtained from or on behalf of the Treasury are properly safeguarded, in accordance with the FAA and 31 CFR Part 31, as may be amended from time to time;
3. all charges and expenses charged to the Treasury are accurate and attributable to services provided to the Treasury;
4. [Financial Institution name] is not on any Federal excluded parties, debarments, or suspension lists;
5. [Financial Institution name] is not delinquent on any federal tax obligation or on any other debt owed to the United States and that [Financial Institution name] agrees to execute IRS Form 8821, and any other necessary Federal forms, to allow the Treasury to verify such information;
6. [Financial Institution name] has all governmental approvals or registrations required under law to authorize the performance of its obligations under the FAA, and is not aware of any legal or financial impediments to performing its obligations to the Treasury;
7. all employees of [Financial Institution name] and contractor personnel who have access to nonpublic information are U.S. citizens or lawful permanent residents performing their work in the continental United States, unless specifically authorized by the Treasury in writing;
8. [Financial Institution name] covenants to disclose all actual or potential organizational conflicts of interest, including conflicts with the interests of any contractors performing services under the FAA, and to avoid, mitigate, or neutralize to the extent feasible and to the Treasury's satisfaction any personal or organizational conflicts of interest that may be identified by the Treasury or [Financial Institution name], in accordance with the FAA and 31 CFR Part 31, as may be amended from time to time;
9. in accordance with the FAA and 31 CFR Part 31, as may be amended from time to time, [Financial Institution name] covenants to disclose to the Treasury Inspector General or the Special Inspector General created under the Act any credible evidence, in connection with the designation, services, or closeout of this FAA, that a management official, employee, or contractor of the [Financial Institution name] has committed (a) a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code, or (b) a violation of the civil False Claims Act (31 U.S.C. §§ 3729-3733).

10. [Financial Institution name] covenants to disclose any other facts or information that the Treasury should reasonably expect to know about the [Financial Institution name] and its contractors to help protect the reputational interests of the Treasury and [Financial Institution name] in managing the Program.
11. any other representations and warranties embodied by or contained in the FAA, and any amendments thereto, either remain true and correct or have been otherwise disclosed.

In the event that any of the representations made herein cease to be true and correct, [Financial Institution name] agrees to notify the Treasury immediately.

\_\_\_\_\_  
[Name of Authorized Official]  
[Title of Authorized Official]

\_\_\_\_\_  
Date

## EXHIBIT E

### NON-DISCLOSURE AGREEMENT

#### Conditional Access to Nonpublic Information

I, \_\_\_\_\_, employee of \_\_\_\_\_ (Organization) hereby consent to the terms in this Agreement in consideration of my being granted conditional access to certain United States Government nonpublic information.

I understand and agree to the following terms and conditions:

1. By being granted conditional access to nonpublic information, the \_\_\_\_\_ (Organization) and the U.S. Department of the Treasury (Treasury) have placed special confidence and trust in me, and I am obligated to protect this information from unauthorized disclosure, according to the terms of this Agreement.
2. Nonpublic information refers to any information, provided to me by the Treasury or \_\_\_\_\_ (Organization) in connection with my authorized services to the Treasury, or that I obtain or develop in providing authorized services to the Treasury, other than information designated as publicly available by the Treasury in writing or that becomes publicly available from a source other than the Financial Agent. Nonpublic information includes but is not limited to information about the Treasury's business, economic, and policy plans, financial information, trade secrets, information subject to the Privacy Act, personally identifiable information (PII), and sensitive but unclassified (SBU) information.
3. PII includes, but is not limited to, information pertaining to an individual's education, bank accounts, financial transactions, medical history and other information which can be used to distinguish or trace an individual's identity, including but not limited to social security numbers.
4. SBU information is any information where the loss, misuse, or unauthorized access to, or modification of which could adversely affect the national interest or the conduct of Federal programs, or the privacy of individuals that they are entitled to under the Privacy Act and other Federal statutes.
5. I am being granted conditional access to nonpublic information, contingent upon my execution of this Agreement, to provide authorized services to the Treasury.
6. Except as set forth in paragraph 14 below, I shall never divulge any nonpublic information provided to me pursuant to this Agreement to any third party, unless I have been advised in writing by the \_\_\_\_\_ (Organization) and/or the Treasury that such party is authorized to receive it.

7. I will submit to the Treasury for security review, prior to any submission for publication, any book, article, column or other written work for general publication that is based upon any knowledge I obtain during the course of my work in connection with the Treasury. I hereby assign to the Federal Government all rights, royalties, remunerations and emoluments that have resulted or will result or may result from any disclosure, publication, or revelation of nonpublic information not consistent with the terms of this Agreement.
8. If I violate the terms and conditions of this Agreement, I understand that the unauthorized disclosure of nonpublic information could compromise the security of individuals, the \_\_\_\_\_ (Organization) and the Treasury.
9. If I violate the terms and conditions of this Agreement, such violation may result in the cancellation of my conditional access to nonpublic information. Further, violation of the terms and conditions of this Agreement may result in the \_\_\_\_\_ (Organization) and/or the United States taking administrative, civil or any other appropriate relief.
10. I understand that the willful disclosure of information to which I have agreed herein not to divulge may also constitute a criminal offense.
11. Unless I am provided a written release by the Treasury from this Agreement, or any portions of it, all conditions and obligations contained in this Agreement apply both during my period of conditional access, and at which time my affiliation and/or employment with the \_\_\_\_\_ (Organization) ends.
12. Each provision of this Agreement is severable. If a court should find any provision of this Agreement to be unenforceable, all other provisions shall remain in full force and effect.
13. I understand that the Treasury may seek any remedy available to it to enforce this Agreement, including, but not limited to, application for a court order prohibiting disclosure of information in breach of this Agreement.
14. I understand that if I am under U.S. Congressional or judicial subpoena, I may be required by law to release information.

I make this Agreement in good faith, without mental reservation or purpose of evasion.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## EXHIBIT F

### CONFLICTS OF INTEREST MITIGATION

The following explains and memorializes certain of the minimum conflicts of interest mitigation controls the Financial Agent shall implement and monitor throughout the term of the Financial Agency Agreement between the United States Department of the Treasury (the “Treasury”) and the Financial Agent (the “FAA”). The conflicts of interest mitigation controls are based on the Financial Agent’s role under the FAA. As more fully described in Exhibit A and C, the Financial Agent shall act provide certain services in connection with Treasury’s Homeownership Preservation Program (the “Program”) pursuant to the Emergency Economic Stabilization Act of 2008 (the “Act”). In that role, the Financial Agent will be responsible for, among other things, working with servicers of pools of mortgage loans to prevent foreclosures on those loans.

#### **Conflicts of Interest**

The following have been identified as actual or potential conflicts of interest associated with the Financial Agent providing services under the FAA:

1. The Financial Agent owns a proprietary portfolio of securities and loans, and guarantees that principal and interest payments will be passed through to other investors that own mortgage backed securities. A potential conflict exists between the Financial Agent's interest in maximizing the performance and minimizing the costs of its retained and guaranteed portfolios and the Financial Agent's responsibility to the Treasury to administer the Program uniformly for all borrowers and investors across the country.

Examples of this potential conflict include the following: (a) mortgage asset traders working on the Financial Agent's mortgage trading desk could make use of Program information on investors, servicers, and borrowers, (b) personnel with knowledge of the Financial Agent's portfolio may be more lenient in subsidizing the portfolio’s servicers and borrowers, and (c) personnel providing the Treasury with technical input on the design and modeling for the Program could provide self-serving advice to advantage the Financial Agent's portfolio.

2. The Financial Agent maintains business relationships with servicers from which it purchases mortgages and upon which it is reliant to fulfill its core business and statutory mission. Therefore, a potential conflict exists between the Financial Agent's need to maintain beneficial relationships with servicers supplying product and the Financial Agent's duty to the Treasury to administer the Program uniformly and to enforce servicer compliance with Program Guidelines.
3. As the owner of whole loan mortgages purchased out of mortgage backed securities it guarantees and as an investor in mortgage backed securities, the Financial Agent may be an ultimate beneficiary of the interest rate or principal reduction payments and loan modifications carried out under the Program. A

potential conflict exists between the Financial Agent's interest in benefiting from the interest rate or principal reduction payments and mitigating foreclosures of mortgages in its own portfolio and its duty to the Treasury to administer the Program uniformly for all investors and to enforce compliance by all borrowers under the Program.

4. Individuals employed by or associated with the Financial Agent may have a financial interest in banks or investment funds that could receive or benefit from the interest rate or principal reduction payments under the Program. Because these individuals may have material, non-public information and may make decisions about the execution of the Program, their duties could have a direct effect on their financial interests. A potential conflict exists between their desire to represent their own financial interests versus the interests of the Treasury.

### **Mitigation Plans**

As a fiduciary to the Treasury, the Financial Agent owes a duty to look solely to the best interests of the Treasury without considering the interests of other clients or its own proprietary interests. Given actual or potential conflicts of interest with respect to providing services under the FAA, the Financial Agent agrees to implement the following mitigation plans and conflict of interest mitigation controls.

### **Conflict of Interest #1: Financial Agent Portfolio and Mortgages Guaranteed**

The possibility that the Financial Agent may provide self-serving advice on the Program to the advantage of the Financial Agent's portfolio is mitigated by the following facts.

1. Treasury is receiving advice from at least one other Government Sponsored Enterprise ("GSE") as well as from other third-party advisers.
2. Treasury is solely responsible for developing the Program Guidelines and both GSEs must follow the Program Guidelines.

In addition to the above and the other measures set forth in the FAA and herein, the Financial Agent shall mitigate this conflict by implementing two strategies.

1. Management of the Financial Agent's Portfolio. The Financial Agent's Information Barrier Policy should prevent misuse of material non-public information to benefit the Financial Agent's portfolio. The Policy is designed to prevent the risk of "insider trading", i.e., securities trading on the basis of material, non-public information. The Policy prohibits the sharing of inside information (including loan level information) with the Financial Agent's mortgage asset traders (a.k.a. Fannie Mae employees authorized to trade mortgage-related securities on behalf of Fannie Mae).

The Financial Agent will add the following specific provisions to the Policy to further ensure its effectiveness.



- a. Specifically prohibit employees who perform work on the Program (“Program Employees”) from sharing inside information (including loan information) obtained in connection with the Program with the Financial Agent’s mortgage assets traders.
  - b. Prohibit mortgage assets traders from working on the Program or having any access to “non-public information”, as that term is defined in 31 CFR §31.217.
  - c. Physically separate mortgage assets traders from Program Employees.
  - d. In situations where the Policy permits a mortgage asset trader to go “over the Information Barrier” to obtain information regarding the Program, such mortgage asset trader will only do so with the Chief Executive Officer’s and the General Counsel’s prior approval.
  - e. Require Program Employees to sign confidentiality agreements.
  - f. Require that data and technology used in connection with the Program will be kept confidential and inaccessible to employees and contractors (including contractor employees) who are not working on the Program.
  - g. Require Program Employees to have delegated authority directly from the CEO (separate from any business line).
  - h. Require Program Employees to have training regarding the Policy.
2. Modifications of Mortgages Backing Mortgage Backed Securities in the Financial Agent’s Portfolio. The Financial Agent will:
- a. Create a firewall between, on the one hand, Program Employees and, on the other hand, Financial Agent employees who have and systems and databases which have information regarding mortgage backed securities in the Financial Agent’s portfolio. The firewalls should keep Program Employees from knowing whether the Financing Agent has an interest in a mortgage backed security affected by a modification and, therefore, should prevent such an interest from influencing a Program Employees work.
  - b. Prohibit Program Employees from inquiring (internally or externally) about or having access to the Financial Agent’s portfolio holdings of mortgage backed securities.

**Conflict of Interest #2: Business Relationships with Servicers**

This potential conflict is mitigated by the incentives contemplated by Exhibit B and the way the Program is structured. More specifically, Exhibit B provides that the Financial Agent will receive incentive payments but only if the Financial Agent achieves specific

performance metrics agreed upon by the Financial Agent and Treasury. This structure gives the Financial Agent an incentive to administer the Program uniformly and to enforce servicer compliance with Program Guidelines. In addition, a different GSE will be responsible for auditing servicer performance under the Program. Finally, Treasury has the right under this FAA to oversee and audit the Financial Agent's performance of its obligations under the FAA.

### **Conflict of Interest #3: Interest Rate or Principal Reduction Payments**

To mitigate this concern, the Financial Agent will take two steps.

1. Create the firewall and implement the prohibition described in part 2 of the response to Conflict of Interest #1. As noted above, the firewall and prohibition should keep Program Employees from knowing whether the Financing Agent has an interest in a mortgage backed security affected by a modification and, therefore, should prevent such an interest from influencing a Program Employee's work.
2. Other than in the Financial Agent's capacity as an investor in a mortgage backed security, the Financial Agent shall not receive under the Program any of the payments to fund loan modifications and fees to servicers and investors set forth in the first paragraph of Exhibit B.

### **Conflict of Interest #4: Personal Conflicts of Interest**

To address this concern, the Financial Agent agrees that all management officials and key individuals, as defined in 31 C.F.R. §31.201, shall be subject to a code of ethics and associated insider trading policy. In particular, these individuals shall disclose on a quarterly basis information equivalent to that required by the United States Office of Government Ethics Form 278 ("Form 278") to the Financial Agent's Compliance Department for review. In addition, unless an investment is exempt from prior notification, investments by such individuals must be pre-cleared by the Financial Agent's Compliance Department and be subject to appropriate trading restrictions, including being prohibited if a security is on the Financial Agent's restricted list. For purposes of this exhibit, all references to management officials and key individuals shall have the same meaning as such terms have in 31 C.F.R. § 31.201.

### **Conflicts of Interest Mitigation Controls**

As a requirement of this FAA, the Financial Agent shall maintain and enforce the following corporate-wide policies and procedures addressing potential conflicts of interests arising in connection with providing services under the FAA. For purposes of this exhibit, the specific policies and procedures developed and implemented to address potential conflicts of interest regarding its work under this FAA are collectively referred

to as the “Conflicts of Interest Mitigation Controls.” The Conflicts of Interest Mitigation Controls shall apply to the Financial Agent and its employees, contractors, and its contractors’ employees (together, collectively, or individually as the “Financial Agent Group”) that provide the services under the FAA.

1. Restrictions Regarding Material Non-Public Information. While providing the services under the FAA, some individuals within the Financial Agent Group may have access to material non-public information related to the Program. Information is “material” if there is a substantial likelihood that a reasonable person would consider the information important in making an investment decision (*e.g.*, if the disclosure of the information would positively or negatively affect the market price of a security or obligation). Individuals in possession of non-public information obtained or developed pursuant to the FAA shall not act, or cause others to act, on such information, except in performance of this FAA. For purposes of this exhibit the phrase “non-public information” shall have the same meaning as such term has in 31 CFR §31.217.
2. Information Barrier Policies. Program-related non-public information shall be shared only on a need-to-know basis. The Financial Agent Group shall maintain information barrier policies that are designed to restrict the dissemination, availability and sharing of non-public information, including but not limited to material non-public information.
3. Controls over IT and Paper Files Related to Non-Public Information. The Financial Agent Group’s management, performance, and accounting systems will restrict non-public information access only to those individuals who have a need to know such information. Paper files that include non-public information will also be appropriately segregated so as to avoid inappropriate access by unauthorized individuals. Any information technology systems or other record systems (*e.g.*, microfiche or data sticks) utilized by the Financial Agent Group in the performance of services under this FAA that may contain non-public information shall have appropriate administrative, technological and/or physical security controls to help ensure that access to such information is limited to those individuals who have a need to know such information.
4. Codes of Conduct. The Financial Agent Group providing the services under the FAA shall maintain a code of conduct and related policies (collectively, the “Code of Conduct”) that sets out basic principles designed to guide employees in the course of their business activities. The Code of Conduct should require all employees and contractors to hold as strictly confidential client information, to include all non-public information obtained or developed pursuant to the FAA, and to know and comply with all company policies, procedures, laws and regulations that are applicable to their job duties. The Code of Conduct should require disclosure on a quarterly basis by management officials and key individuals of information equivalent to a Form 278 and also place restrictions on contractors’, employees’ and Related Person’s trading on behalf of personal accounts where conflicts may arise in connection with the performance of the

services under the FAA. In particular, unless an investment is exempt from prior notification, investments by management officials and key individuals must be pre-cleared and be subject to certain blackout and short-term trading restrictions. All employees and contractors performing the services under the FAA shall be required to annually acknowledge that they are familiar with and abide by the Code of Conduct. The Code of Conduct of Financial Agent Group members providing the services under the FAA under the FAA shall be substantially similar to the Financial Agent's Code of Conduct. For purposes of this exhibit, "Related Person" shall mean spouses or domestic partners of Financial Agent's employees, their minor children, anyone else living in employee's household, partnerships in which employee is a general partner or corporations in which employee is a controlling shareholder, trusts of which the employee is a trustee, and estates of which employee is an executor.

5. Training. All management officials and key individuals associated with the Financial Agent Group performing the services under the FAA shall be required to participate in compliance training prior to, and annually thereafter, providing the services under the FAA. The training program shall inform and advise each individual of their obligations and requirements under this FAA (including its exhibits).
  
6. Monitoring / Compliance. The Financial Agent Group shall maintain a staff of compliance professionals to test and monitor the group's compliance policies and procedures and their effectiveness. In addition, the Financial Agent Group shall appoint a Program Compliance Officer to oversee compliance with this Exhibit F by all entities and people performing work under this FAA, and to periodically monitor for, identify, and mitigate, conflicts of interest that may arise during the term of the FAA. The Financial Agent's Group Program Compliance Officer shall be independent from the investment and operations personnel and report directly to the Chief Operating Officer. The Program Compliance Officer shall inquire as to, and keep records of, each member of the Board of Directors' current business relationship with any servicer modifying loans under the Program (a "Program Servicer"), or any business relationship within the preceding 12 month period, which is other than: possessing a bank account at a Program Servicer where the amount of funds deposited in any one Program Servicer is less than the Federal Deposit Insurance Corporation coverage limit; having a mortgage from a Program Servicer on terms available to the general public, or holding investments in a mutual fund or sector-specific fund containing Program Servicer securities, and shall deliver such records to Treasury periodically as Treasury directs. The Program Compliance Officer may have other responsibilities within the Financial Agent Group, provided such responsibilities do not include portfolio management responsibilities related to the Financial Agency's proprietary portfolio of securities and loans or the mortgage backed securities in the Financial Agent's portfolio. Furthermore, the Financial Agent Group shall document such internal oversight and provide the Treasury with quarterly reports sufficient to evaluate the effectiveness of the Financial Agent Group's mitigation controls in ensuring compliance with all requirements of this FAA.

7. Incident Reporting. Anyone performing services under the FAA under the FAA shall be required to promptly report any breaches or violations of the Conflicts of Interest Mitigation Controls or other requirements of the FAA to the Financial Agent Group Program Compliance Officer. A description of the incident shall be documented in an incident report and promptly provided to the Office of Financial Stability Chief Compliance Officer (“OFS CCO”).
  
8. Limitations on Communications with Employees of the Treasury. During the course of the FAA with the Financial Agent Group, the Financial Agent Group shall not directly or indirectly make any offer or promise of future employment or business opportunity to, or engage directly or indirectly in any discussion of future employment or business opportunity with, any Treasury employee with personal or direct responsibility for that selection. The Financial Agent Group shall not offer, give, or promise to offer or give, directly or indirectly, any money, gratuity, or other thing of value to any employee of the Treasury, except as permitted by Government-Wide Ethics Rules, 5 C.F.R. part 2635. The Financial Agent Group shall not solicit or obtain from any Treasury employee, directly or indirectly, any information that is not public and was prepared for use by the Treasury for the purpose of evaluating a bid, proposal, or offer to enter into an agreement, except to the extent it does so to perform its obligations under this FAA.

## 9. Certifications

- a. Organizational Conflicts of Interest Certification. In accordance with 31 CFR §31.211, the Financial Agent on behalf of the Financial Agent Group shall quarterly certify in writing to the Treasury that it has no organizational conflicts of interest, or explain in detail the extent to which it cannot so certify, and (except to the extent already described in this Exhibit F) describe the actions it has taken and plans to take to mitigate these conflicts.
  
- b. Personal Conflicts of Interest Certification. In accordance with 31 CFR §31.212, the Financial Agent on behalf of the Financial Agent Group shall certify no later than ten business days after the effective date of the FAA, and then quarterly thereafter, to the Treasury that all management officials and key individuals performing services under the FAA have no personal conflicts of interest, or are subject to a mitigation or waiver plan approved by the Treasury.
  
- c. Communications with Treasury Employees Certification. Before the Financial Agent enters into the FAA, or accepts a modification to the FAA, it must certify to the following:
  1. The Financial Agent is aware of the prohibitions of paragraph (a) of 31 CFR §31.216 and, to the best of its knowledge after making a

reasonable inquiry, it has no information concerning a violation or possible violation of paragraph (a) of 31 CFR §31.216; and

2. Each officer, employee, and representative of the retained entity who participated personally and substantially in preparing or submitting a bid offer, proposal, or request for a modification of the FAA has certified that he/she

- a. Is familiar with and will comply with the requirements of paragraph (a) of 31 CFR §31.216; and
- b. Has no information of any violations or possible violations of paragraph (a) of 31 CFR 31.216 and will report immediately to the Financial Agent any subsequently gained information concerning a violation or possible violation of paragraph (a) of 31 CFR 31.216.

c. Confidentiality Certification. All management officials and key individuals providing the services under the FAA shall certify quarterly to the Financial Agent Group's Program Compliance Officer that he or she will comply with the requirements of this FAA and 31 C.F.R. § 31.217 to not share non-public information (as that term is defined in Section 6 of the FAA) with any unauthorized person or entity.

8. Subsequent Notification. The Financial Agent Group has a continuing obligation to search for and to report any potential organizational or personal conflicts of interest, as those terms are defined in 31 CFR §31.201. The Financial Agent on behalf of the Financial Agent Group shall notify the Treasury in writing as soon as practicable, and in no instance later than two (2) business days of learning of any new or expanded conflicts of interest that arise during the term of the FAA. The disclosure shall describe the steps the Financial Agent has taken or proposes to take to mitigate the potential conflict or request a waiver from Treasury.
9. Reviews. The Treasury, on its own behalf or through an entity contracted by the Treasury, may conduct an annual or ad hoc review of the compliance of the Financial Agent Group performing the services under the FAA with all conflicts of interest and confidentiality obligations and responsibilities set forth in the FAA. The Treasury plans to exercise this review authority over the Financial Agent Group within the first six (6) months of the signing of this FAA. Additional reviews may be conducted by oversight bodies with explicit authority over the Program including the Office of the Special Inspector General for the Troubled Asset Relief Program ("SIGTARP") and the U.S. Government Accountability Office ("GAO"). The Financial Agent Group performing the services under the FAA shall cooperate fully with the Treasury or its designated representative and provide it with any and all such information (in whatever form) requested by it in order to perform such a review.

10. Point of Contact. The OFS CCO shall be the contact official at the Treasury responsible for monitoring compliance with this Exhibit.
  
11. Changes to Conflicts of Interest Mitigation Controls. The Financial Agent on behalf of the Financial Agent Group and the Treasury agree that the Program's objectives, operations and policies, as well as the Financial Agent's business, are likely to evolve over the term of the Program. The Financial Agent on behalf of the Financial Agent Group shall inform the Treasury and negotiate in good faith all proposed material changes to the Conflicts of Interest Mitigation Controls prior to their adoption and Treasury retains the option of disapproving any proposed material change, in which case the Financial Agent agrees not to change such control. The Financial Agent and the Treasury agree to negotiate and resolve any such proposed changes in good faith and as quickly as reasonably possible. In addition, the Financial Agent shall promptly notify the Treasury of any changes to the Code of Conduct of the Financial Agent Group providing the services under the FAA under the FAA.