**U.S. OFFICE OF SPECIAL COUNSEL**
**1730 M Street, N.W., Suite 218**
**Washington, D.C. 20036-4505**
**202-254-3600**

March 12, 2009

Mx Xxxx Xxxxx
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Xxxxxxxx xxx xxxxx

Re: OSC File No. AD-09-xxxx

Dear Mx Xxxxx:

This letter is in response to your request for an advisory opinion concerning the Hatch Act. The Office of Special Counsel ("OSC") is authorized pursuant to 5 U.S.C. § 1212(f) to issue opinions under the Act. Specifically, you ask whether employees of the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac") are covered by provisions of the Hatch Act. We reviewed this matter, and as explained below, we have concluded that employees of Freddie Mae and Fannie Mac are not covered by provisions of the Hatch Act.

For purposes of the Hatch Act, 5 U.S.C. §§ 7321-7326, an "employee" is defined as:

> any individual, other than the President and the Vice President, employed or holding office in—
> (A) an Executive agency other than the Government Accountability Office;
> (B) a position within the competitive service which is not in an Executive agency; or
> (C) the government of the District of Columbia, other than the Mayor or a member of the City Council or the Recorder of Deeds;
> but does not include a member of the uniformed services[.]

5 U.S.C. § 7322(1). For an individual to be covered by the provisions of the Hatch Act,[1] he must be an "employee" as defined above.

In enacting the Housing and Economic Recovery Act of 2008 ("HERA"), Pub. L. No. 110-289, 122 Stat. 2654 (to be codified in scattered sections of the U.S. Code), Congress permitted the Federal Housing Finance Board ("FHFA") to place Fannie Mae and Freddy Mac into conservatorship, making them limited-life regulated entities. See HERA, Pub. L. No 110-289, § 1145(a), 122 Stat. 2654, 2734. In § 1145(a) of HERA, it notes that "[a] limited-life regulated entity is not an agency, establishment, or

[1] Certain state and local government employees also are covered by provisions of the Hatch Act, 5 U.S.C. §§ 1501-1508. These provisions are not relevant here.

instrumentality of the United States." Pub. L. No 110-289, § 1145(a), 122 Stat. 2654, 2734. Additionally it states that ". . . employees, or agents of a limited-life regulated entity are not . . . officers or employees of the United States." Id.

As HERA explicitly states that a limited-life regulated entity is not an agency of the United States and employees of such an entity are not employees of the United States, an employee of a limited-life regulated entity does not meet the definition of "employee" for purposes of the Hatch Act. Therefore, employees of Fannie Mae and Freddie Mac are not covered by provisions of the Hatch Act.

Please contact me (202) 254-3673 if you have any additional questions regarding this matter.

Sincerely,

/s/

Erica S. Hamrick
Deputy Chief
Hatch Act Unit