

Calabria is Out at FHFA

By: Jann Swanson | Wed, Jun 23 2021, 2:49 PM

On Wednesday morning the Supreme Court ruled that the statutory restrictions on the president's ability to remove the chairman of the Federal Housing Finance Agency (FHFA) **violates the Constitution's separation of powers**. Within hours the White House announced it would be replacing Mark Calabria who currently holds that position.

The decision, in a case now known as *Collins v Yellen*, was similar to *Seila Law v The Consumer Financial Protection Bureau (CFPB)* which was decided last year in favor of the plaintiffs. Both FHFA and CFPB were created during the housing crisis and had similar independent structures, each headed by a single chairperson for a five-year term. **Neither** chairperson could be removed from office except for cause.

The *Collins* case, however, had an additional component. The suit was brought by shareholders of GSE stock who contended that the 2012 revisions to a 2008 agreement between the GSEs (Fannie Mae and Freddie Mac) and the U.S. Treasury were invalid due to the unconstitutional structure of the agency.

The original Preferred Senior Stock Purchase Agreements (**PSPA**) set terms for a massive infusion of capital from Treasury at the time the GSEs were put into conservatorship with FHFA as conservator. That agreement required the GSEs to pay a percentage dividend to Treasury each quarter based on indebtedness and regardless of their financial condition. The 2012 amendments changed that dividend to a net sweep of any quarterly profits. Shareholders also maintained that these amendments were made just as the GSEs were approaching profitability and were intended to bar them from building capital. The stockholders said the amendments have led to a \$124 billion windfall for Treasury.

In an opinion written by Justice Samuel Alito the court, in a **7-2 ruling**, found the president did have the power to remove the director because "the president's removal power serves important purposes regardless of whether the agency in question affects ordinary Americans by directly regulating them or by taking actions that have a profound but indirect effect on their lives." However, it did not grant relief to the plaintiffs, saying that in agreeing to the amendments, FHFA did not exceed its authority under the Housing and Economic Recovery Act (HERA) of 2008 as a conservator of the GSEs.

It isn't known what effect the removal of Calabria will have on another set of PSPA amendments signed this January. Among the more controversial, a **ceiling** on the number of **investor** and **second home** mortgages the GSEs can acquire as well as a limit on **risk layering**. Earlier this year, the [Urban Institute argued](#) that investor mortgages were a useful and profitable part of the agencies' portfolio. In addition to the most basic argument that more credit availability for investors means better affordability for renters, UI also pointed out that the profitability of investor loans allows the agencies' to cross subsidize other affordable housing programs.

One Washington source said Sandra Thompson, current *FHFA* Deputy Director, Division of Housing Mission and Goals (DHMG) is likely to be named acting director until a permanent director is confirmed.

Bob Broeksmit, president and CEO of the Mortgage Bankers Association (MBA) issued the following statement without mentioning Calabria by name.

"MBA recognizes and appreciates the impact of the Supreme Court's decision in *Collins v. Yellen* as FHFA plays a critical role regulating entities that ensure liquid markets for single-family and multifamily mortgages. We expect President Biden will move quickly to appoint a successor, and we look forward to working collaboratively with the administration, FHFA, and other stakeholders to ensure those markets function well for lenders and the American consumers they serve."

Calabria has [already released a statement](#). Here's a highlight that captures the spirit of the statement: "When the housing markets experience a significant downturn, Fannie Mae and Freddie Mac will fail at their current capital levels. I wish my successor all the best in fixing the remaining flaws."

Notably, the original draft date on FHFA's website was yesterday, June 22nd.

[FHFA Director Mark Calabria's Statement on the U.S. Supreme Court's Collins v. Yellen Decision](#) Statement

Published: Tuesday, June 22, 2021

I respect the Supreme Court's decision and the authority of the President to remove the Federal Housing Finance Agency Director. It has been the honor of a lifetime to serve as Director of t...

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