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Frequently Asked Questions: Treasury Senior Preferred Stock Purchase Agreement

United States: Department of the Treasury

U.S. DEPARTMENT OF THE TREASURY

Press Center

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Can the U.S. Congress or the Executive Branch change the terms of the preferred stock purchase agreement?
This preferred stock purchase agreement is a binding legal obligation between two parties. The agreement is designed to prohibit any amendment that would decrease the amount of Treasury's funding commitment or add funding conditions that would adversely affect debt or mortgage-backed securities holders.

Some may speculate that a future Congress could pass a law that would abrogate the agreement. But any such law would be inconsistent with the U.S. government's longstanding history of honoring its obligations. Such action would also give rise to government liability to parties suing to enforce their rights under the agreement.

The U.S. Government stands behind the preferred stock purchase agreements and will honor its commitments. Contracts are respected in this country as a fundamental part of rule of law.

Can the U.S. Congress or the Executive Branch change the covenants in the agreement, such as the covenant requiring the reduction of the companies' portfolios?
As with any contract, the parties to the agreement may modify the covenants by mutual agreement only.

Does the senior preferred stock purchase agreement protect debt and mortgage backed securities issued or maturing after 2009?
Yes. The holders of senior debt, subordinated debt, and mortgage backed securities issued or guaranteed by these GSEs are protected by the agreement without regard to when those securities were issued or guaranteed. Debt and mortgage backed securities issued or guaranteed both before and after December 31, 2009 are protected by the agreement.

If the preferred stock purchase agreement protects senior and subordinated debt securities issued at any time in the future, how can the agreement ever be terminated?
Treasury's funding commitment in the agreement would terminate under three events:

1. The funding commitment terminates if the commitment is fully funded by Treasury.
2. If a GSE liquidates its assets, its net worth deficiency is computed at that time and the GSE can call upon the Treasury to fund under its preferred stock purchase agreement. After that final funding, the funding commitment in the agreement would terminate.
3. When a GSE satisfies all of its liabilities, whether at maturity or by making some other provision for payment in full of its obligations, the funding commitment will also terminate.

Why is the preferred stock purchase agreement limited to $100 billion? Is that enough to protect against even the worst downside scenario? What happens if losses exceed $100 billion?
Treasury deliberately chose a large number to give confidence to the markets.

If Treasury has already received $1 billion in senior preferred stock, how can you say that no investment has been made yet?
The companies each issued $1 billion in senior preferred stock to Treasury in connection with Treasury's commitment to maintain a positive net worth in the GSE. No taxpayer money was spent to receive this stock.

How is it legal for this preferred stock purchase agreement to be valid beyond the December 31, 2009 expiration of Treasury's authority?
Treasury received the preferred stock and received warrants for common stock as of Sunday September 7, 2008

and will not need to purchase any additional shares relative to this agreement. No payments by the Treasury will be made under this agreement until and unless necessary to prevent a negative net worth position for either GSE.

If the Treasury makes payments under its funding commitment, the liquidation preference of the Treasury shares will increase accordingly

What happens to the declared dividends for investors of existing GSE preferred stock?
Dividends actually declared by a GSE before the date of the senior preferred stock purchase agreement will be paid on schedule.

Can the government exercise its warrants whenever it wants, even if it is disadvantageous to the companies?
Yes. Treasury can exercise its warrant for up to 79.9% of the common stock of each GSE on a fully diluted basis at any time during the 20-year life of the warrant.

What do the rating agencies think of this agreement?
All of the rating agencies have reaffirmed the United States' current rating status.

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