Banking and Finance Law Daily Wrap Up,GOVERNMENT SPONSORED ENTERPRISES—9th Cir.: Fannie Mae's charter provides access to federal courts,(Oct. 3, 2014)

By Andrew A. Turner, J.D.

A federal district court had subject matter jurisdiction over a state-law claim brought by a homeowner against the Federal National Mortgage Association (Fannie Mae) following foreclosure proceedings. In the majority view of a Ninth Circuit panel, the sue-and-be-sued clause in Fannie Mae's federal charter confers federal question jurisdiction over suits in which Fannie Mae is a party because the clause specifically mentions the federal courts (*Lightfoot v. Cendant Mortgage Corp.*, Oct. 2, 2014, Fletcher, Circuit Judge).

A dissenting opinion contended that Fannie Mae's charter confers only corporate capacity to sue and be sued, and that subject matter jurisdiction must come from some other provision of law.

Fannie Mae's charter. The court applied the general rule that a sue-and-be-sued clause for a federally chartered corporation confers federal question jurisdiction if it specifically mentions federal courts. In 1954, as one of many changes to Fannie Mae's charter, Congress amended the clause by replacing the phrase "in any court of law or equity, State or Federal" with the phrase "in any court of competent jurisdiction, State or Federal."

Eliminating the charter's grant of federal question jurisdiction with the 1954 amendments would have imposed a significant restraint on Fannie Mae's ability to litigate in federal court. Federal jurisdiction would have been conferred in a relatively small number of cases because Fannie Mae is often sued under state-law causes of action, typically involving state-law mortgage transactions which would lack diversity jurisdiction. In the majority view, the 1954 change simply represented a modernization of the Fannie Mae charter without any indication that Congress intended to eliminate federal court jurisdiction.

Dissent. District Judge Stein, sitting by designation, disagreed in a dissenting opinion arguing that Congress' amendment to Fannie Mae's charter in 1954 should be viewed as part of an overall legislative effort to take the federal government out of the secondary mortgage market.

Principal office. The majority and minority also disagreed over the impact of a 1974 amendment to the Housing Act that did not touch on the sue-and-be-sued clause. The majority saw it as allowing Fannie Mae to move its principal place of business out of the District of Columbia, while making clear that Fannie Mae would be subject to personal jurisdiction only in the District even if it moved its principal place of business into the Virginia or Maryland suburbs. The

dissent viewed the 1974 amendment as an effort by Congress to give Fannie Mae access to the federal courts by diversity jurisdiction that was not provided by its status as a federally chartered corporation.