October 31, 2008

OTS 08-052 - Agencies Announce Decision on Impact of Tax Change on Indirect Investments in Fannie Mae and Freddie Mac Preferred Stock

Joint Release

Board of Governors of the Federal Reserve System
Federal Deposit Insurance Corporation
Office of the Comptroller of the Currency
Office of Thrift Supervision

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Contact: William Ruberry
(202) 906-6677

WASHINGTON — The federal banking and thrift regulatory agencies announced today they are extending the applicability of their October 24, 2008 Interagency Statement on direct investments to certain indirect investments in Fannie Mae and Freddie Mac preferred stock.

The change, made in response to a newly issued federal tax revenue procedure, means that banks, bank holding companies, and thrifts (banking organizations) are permitted to adjust their September 30, 2008 regulatory capital calculations for the tax effects from losses on direct and indirect investments in Fannie Mae (Federal National Mortgage Association) and Freddie Mac (Federal Home Loan Mortgage Corporation) preferred stock. In other words, banking organizations may proceed as if Section 301 of the Emergency Economic Stabilization Act of 2008 (EESA) had been enacted and Revenue Procedure 2008-64 (Rev. Proc. 2008-64) had been issued in the quarter ending September 30, 2008.

The Treasury Department and the Internal Revenue Service issued Rev. Proc. 2008-64 on October 29, 2008, to provide banking organizations the tax benefit of treating gains and losses on certain indirect investments in Fannie Mae and Freddie Mac preferred stock as ordinary rather than capital. Indirect investments in Fannie Mae and Freddie Mac preferred stock include certain adjustable rate preferred stock programs (such as auction pass-through certificates) and stock held by certain subsidiaries of financial institutions.

Banking organizations should follow the guidance in the appendix of the October 24, 2008 Interagency Statement for reporting the effect of the tax treatment change in the regulatory capital schedule of their September 30, 2008 regulatory reports. Banking organizations that have already filed their regulatory reports for September 30, 2008 may submit amended reports.

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Media Contacts:

Federal Reserve Deborah Lagomarsino (202) 452-2955

FDIC	David Barr	(202) 898-6992
OCC	Kevin M. Mukri	(202) 874-5770
OTS	William Ruberry	(202) 906-6677