

**UNITED STATES OF AMERICA
OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT**

Notice Number 2006-1

In The Matter Of:)

FRANKLIN D. RAINES)

J. TIMOTHY HOWARD)

LEANNE G. SPENCER)

**OFHEO’S MOTION TO STRIKE OR LIMIT DISCOVERY REQUESTS FROM
RESPONDENT FRANKLIN D. RAINES**

Pursuant to Title 12, Code of Federal Regulations, Sections 1780.25 and 1780.27(d), the Office of Federal Housing Enterprise Oversight (“OFHEO”) respectfully moves to strike or limit the document requests propounded in Respondent Franklin D. Raines’s First Set of Document Requests to the Office of Federal Housing Enterprise Oversight, dated January 8, 2007. As discussed in greater detail herein, OFHEO has been or will be producing all relevant, non-privileged material sought by Respondent Raines herein as part of duplicative discovery sought by Mr. Raines in *In re Fannie Mae Securities Litigation*, Civ. No. 1:04-cv-01639 (D.D.C.) (“MDL”). OFHEO moves to strike or limit Respondent Raines’s requests to the extent that such requests “call[] for irrelevant material, that is unreasonable, oppressive, excessive in scope, unduly burdensome, or repetitive of previous requests, or that seek[] to obtain privileged documents.” 12 C.F.R. § 1780.26(b).

BACKGROUND

OFHEO's primary mission is to ensure the capital adequacy and safety and soundness of the two government sponsored enterprises it regulates—one of which is the Federal National Mortgage Association ("Fannie Mae"). To assess the safety and soundness of the regulated enterprises, OFHEO conducts annual examinations of each enterprise, which involves the review of confidential documents that include trade secrets and proprietary financial information. Such confidential information, to the extent that OFHEO maintains possession of the information, may be disclosed only in limited circumstances. *See, e.g.*, 12 C.F.R. § 1703.8 and 1703.18.

OFHEO is also authorized to conduct special examinations that may be necessary to determine the condition of the Enterprise for the purpose of ensuring its safety and soundness. 12 U.S.C. § 4517(b). In 2003, OFHEO initiated a Special Examination of Fannie Mae.

In the course of the Special Examination, OFHEO determined, *inter alia*, that sufficient evidence existed to support the issuance of a Notice of Charges ("NOC") against Mr. Raines. The NOC alleges that Mr. Raines engaged in conduct that violated the Federal Housing Enterprise Financial Safety and Soundness Act of 1992. Consequently, OFHEO filed the NOC against Mr. Raines on December 18, 2006, seeking an order to cease and desist, civil monetary penalties, equitable relief and other relief.

GENERAL OBJECTIONS

OFHEO objects to, and moves to strike or limit, each of Mr. Raines' requests to the extent that they are unreasonable, oppressive, excessive in scope, vague, and/or unduly burdensome, or call for material that is confidential by statute, regulation or law, protected by the attorney-client privilege, protected by the investigative files privilege, protected by the deliberative process privilege, protected by the bank supervisory privilege (sometimes referred to as the bank examination privilege), protected by the trade secrets privilege, protected by the

financial information privilege, protected by the privacy privileges, protected by the work product doctrine and/or not materially relevant to the merits of the pending action. Accordingly, in addition to the specific objections identified for each request below, OFHEO asserts the foregoing objection and reserves the right to assert any other applicable objections for each request propounded, as deemed appropriate upon further review of the potentially responsive documents.

The subject's requests seek production of millions of pages of materials protected by the bank examination privilege,¹ the investigative files privilege,² the deliberative process privilege,³ the attorney-client privilege, and the work-product doctrine. Such materials are "not discoverable" in this proceeding. *See* 12 C.F.R. § 1780.26(d) (identifying specifically materials subject to the "attorney-client privilege, work-product privilege, any government's or government agency's deliberative process privilege and any other privileges provided by the Constitution, any applicable act of Congress, or the principles of common law" as "not discoverable"). Specifically, production of OFHEO examination workpapers, other examination documents, documents containing confidential and trade secrets, communications with counsel, documents prepared by and at the direction of counsel, communications with other federal law enforcement agencies, and notes, memoranda, and other materials prepared in connection with

¹ *See In re Subpoena Served Upon the Comptroller of the Currency and the Sec'y of the Bd. of Governors of the Fed. Reserve Sys.*, 967 F.2d 630, 633 (D.C. Cir. 1992) (holding that "courts have long recognized that the report of a bank examiner is protected by a qualified privilege.").

² *See Black v. Sheraton Corp. of Am.*, 564 F.2d 531, 542 (D.C. Cir. 1977) (confirming that the law enforcement/investigatory files privilege is rooted in "common sense as well as common law").

³ *See In re Sealed Case*, 121 F.3d 729, 737 (D.C. Cir. 1997) (stating that the deliberate process privilege is a common law privilege).

ongoing examination activities and investigatory functions of the agency are not subject to disclosure.

Due to the highly sensitive nature of financial regulatory activity, the information contained within OFHEO's files in connection with its daily oversight of Fannie Mae (including documents relating to its annual and special examinations) is protected by a number of privileges that are routinely asserted by financial regulators and that are recognized uniformly by the courts. *See United States ex rel. FTC v. Larkin, Hoffman, Daly & Lindgren*, Civ. No. 3-92-789, 1994 WL 627569, *2 (D. Minn. Apr. 12, 1994) (discussing the dependence of “[e]ffective bank regulation and supervision” on “full and frank disclosure of sensitive and confidential information to bank examiners and the banks’ full cooperation with the examiners.”); *Denny v. Carey*, 78 F.R.D. 370, 375 n.4 (E.D. Pa. 1978) (discussing the Court’s “sensitivity] to the importance of secrecy in bank-examiner communications to the smooth and effective functioning of the bank regulatory system.”). These privileges include the deliberative process privilege, the bank examination privilege,⁴ and the investigative files privilege.

A. The Bank Examination Privilege

The bank examination privilege protects OFHEO's opinions, thought-processes, and recommendations from disclosure. *See Schreiber v. Society for Sav. Bancorp, Inc.*, 11 F.3d 217, 220 (D.C. Cir. 1993); *see also* 12 U.S.C. § 4517(d) (“The Director and each examiner shall have

⁴ Some courts have ruled that the bank examination privilege is a subset of the deliberative process privilege as they are similarly analyzed, *See, e.g., In re Subpoena Duces Tecum Served on the Office of the Comptroller of the Currency*, 145 F.3d 1422,1423 (D.C. Cir. 1998) (“the bank examination privilege [is] a close cousin of the deliberative process privilege”); *In re Midlantic Corp. S’holder Litig.*, Misc. No. 92-99, 1994 WL 750664, *2 (D.D.C. Oct. 24, 1994) (“The bank examination privilege falls within the penumbra of the deliberative process privilege.”); *Principe v. Crossland Sav., FSB*, 149 F.R.D. 444, 447 (E.D.N.Y. 1993) (same).

the same authority and each examiner shall be subject to the same disclosures, prohibitions, obligations, and penalties as are applicable to examiners employed by the Federal Reserve banks.”). The preservation of this privilege is critical in maintaining the integrity of the bank regulatory process:

Bank safety and soundness supervision is an iterative process of comment by the regulators and response by the bank. The success of the supervision therefore depends vitally upon the quality of communication between the regulated banking firm and the bank regulatory agency...:

...

Because bank supervision is relatively informal and more or less continuous, so too must be the flow of communication between the bank and the regulatory agency. Bank management must be open and forthcoming in response to the inquiries of bank examiners, and the examiners must in turn be frank in expressing their concerns about the bank. These conditions simply could not be met as well if communications between the bank and its regulators were not privileged.

In re Subpoena upon the Comptroller of the Currency, 967 F.2d at 633 (citation omitted). The OFHEO workpapers, documents reflecting communications with the enterprise, documents concerning information provided by the enterprise to OFHEO in connection with the exercise of OFHEO’s regulatory authority, documents concerning presentations made by OFHEO to the enterprise (or vice versa), and documents concerning other confidential enterprise information (including information related to enterprise personnel) sought all reflect the “iterative process” and the “flow of information” that the bank examination privilege is designed to protect.

B. Deliberative Process Privilege

The deliberative process privilege protects “predecisional” and “deliberative” materials “that would reveal advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.” *Cobell v. Norton*, 213

F.R.D. 1, 4 (D.D.C. 2003) (quoting *In re Sealed Case*, 121 F.3d 729, 737 (D.C. Cir. 1997)); accord *United States v. Philip Morris USA, Inc.*, 218 F.R.D. 312, 315 (D.D.C. 2003). The purpose of this privilege is threefold:

(1) protecting candid discussions within an agency, (2) preventing public confusion from premature disclosure of agency opinions before the agency established its final policy, and (3) protecting the integrity of an agency's decision, in that the public should not judge officials based on information they considered prior to issuing their final decisions.

Cobell, 213 F.R.D. at 4 (quoting *Alexander v. FBI*, 192 F.R.D. 50, 55 (D.D.C. 2000) (internal alterations omitted)). Proper application of this privilege is imperative to “assure[] that subordinates within an agency will not be chilled from giving their uninhibited opinions and recommendations out of fear that they will later be subject to public criticism or ridicule.” *Philip Morris*, 218 F.R.D. at 315 (citing *Coastal States Gas Corp. v. Department of Energy*, 617 F.2d 854,866 (D.C. Cir. 1980)).

While the bank examination privilege protects communications between the Enterprise and OFHEO, the deliberative process privilege applies similar protection to internal materials generated at OFHEO in connection with its regulatory authority over the Enterprise. Thus, disclosure of documents that contain OFHEO's opinions, analyses, recommendations and deliberations, *i.e.*, OFHEO's internal “memoranda, notes, or other documents,” including workpapers, concerning OFHEO's regular, annual and/or special examinations of Fannie Mae, undermine the protections of the deliberative process privilege. As with the bank examination materials, production of these documents would chill agency personnel from openly providing opinions or other guidance with respect to regulated entities out of fear that such comments or recommendations would subject them to scrutiny with respect to their deliberative processes in reaching their conclusions.

C. Investigative Files Privilege

The investigative files (or law enforcement) privilege protects materials associated with civil or criminal enforcement investigations by any department or agency of the executive branch. *See generally Judicial Watch, Inc. v. Rossotti*, 285 F. Supp. 2d 17, 23-24 (D.D.C. 2003) (citing *Tax Analysts v. IRS*, 294 F.3d 71, 77 (D.C. Cir. 2002)). Courts have repeatedly upheld the government's assertion of this privilege based on the "public interest in safeguarding the integrity of on-going civil and criminal investigations...." *In re Sealed Case*, 856 F.2d 268, 271 (D.C. Cir. 1988); *see also Black*, 564 F.2d at 542 ("The argument here that law enforcement operations cannot be effective if conducted in full public view is analogous to that made on behalf of intra-agency deliberations.").

The investigative files privilege protects the multitude of documents involving the Special Examination of Fannie Mae. OFHEO's Notice falls within the ambit of protection that the investigative files privilege affords to on-going investigations by the Executive Branch. Production of these documents will expose the investigative techniques and confidential sources employed by OFHEO.

D. Attorney-Client Privilege and Work-Product Doctrine

The attorney-client privilege protects client communications with the attorney where legal advice is sought. *See Coastal States Gas*, 617 F.2d at 862. "Uninhibited confidence in the inviolability of the relationship is viewed as essential to the protection of a client's legal rights, and to the proper functioning of the adversary process." *Id.* The work-product doctrine further protects the thoughts, strategies, and written work product of attorneys. *Id.* at 864. The doctrine "provides a working attorney with a 'zone of privacy' within which to think, plan, weigh facts and evidence,... candidly evaluate a client's case, and prepare legal theories." *Id.* These

protections extend to communications with experts or consultants, including accountants retained by counsel, for the purpose of assisting in the provision of legal advice. *See, e.g., Cavallaro v. United States*, 284 F.3d 236, 247-249 (1st Cir. 2002); *In re Lindsey*, 158 F.3d 1263, 1280-82 (D.C. Cir. 1998); *see also United States v. Nobles*, 422 U.S. 225, 238-39 (1975) (“[i]t is therefore necessary that the doctrine protect material prepared by agents for the attorney as well as those prepared by the attorney himself.”).

II. Requests That are Excessive in Scope and Unduly Burdensome

Several requests are excessive in scope and unduly burdensome, and are objectionable on those grounds. Requests to produce documents that call for material that is not materially relevant, that is excessive in scope, unduly burdensome or oppressive to produce, repetitive of previous requests, or otherwise unreasonable, must be “denied or modified.” 12 C.F.R. § 1780.26(b).⁵ Requests are deemed unduly burdensome where “compliance threaten[s] to unduly disrupt or seriously hinder normal operations [of a business,]” or in this case, a small government agency. *United States v. Legal Svcs. for New York City*, 249 F.3d 1077, 1084 (D.C. Cir. 2001). Here, where the requests encompass virtually every document relating to one of the two enterprises regulated by OFHEO, these requests are, on their face, excessive in scope, unduly burdensome and oppressive and must be denied or modified.

While burden and relevance are separate issues,⁶ concerns over burden are heightened where the requests are not narrowly “tailor[ed] to the purpose for which the information is

⁵ Pursuant to the applicable regulations, Respondent is to “describe each item and category [sought] with reasonable particularity.” 12 C.F.R. § 1780.27(a).

⁶ Requests can be relevant, but still unduly burdensome. *See, e.g., Legal Svcs. for New York City*, 249 F.3d at 1084.

requested - that is, its relevance.” *Legal Svcs. for New York City*, 249 F.3d at 1084. Here, again, many of the requests are not narrowly tailored to exclude material not relevant to this proceeding.

Respondent is required to describe each item and category [of requested documents] with reasonable particularity.” 12 C.F.R. § 1780.27(a); *see FDIC v. Eagle Properties*, 105 F.R.D. 12, 14-15 (D.D.C. 1984) (denying subpoena served on the Office of the Comptroller of the Currency “for all of its records regarding [its] supervision of [Federal National Bank of Midland] over the past three years” on the grounds that it would be “over-burdensome to expect the agency to go through such a large file in an effort to determine which documents are privileged and which may be released,” particularly where “most of the file has no relevance to the case at hand.”) *Edwards v. Gordon & Co.*, 94 F.R.D. 584, 586 (D.D.C. 1982) (“[d]iscovery thus should be confined to developing facts underlying the plaintiffs claim or claims and not used as a ‘fishing expedition’”). The subject requests should be tailored to appropriately frame the scope of the sought discovery.

Finally, and with respect to documents pertaining to OFHEO’s examinations of Fannie Mae, it should be remembered that OFHEO owes no duty to Enterprise officers and directors, including Mr. Raines, when carrying out OFHEO examinations, and as such, OFHEO’s examinations of Fannie Mae are not at issue in this action. *See Resolution Trust Corp. v. Moskowitz*, Civ. A. No. 93-2080, 1994 WL 229812, *14-16 (D.N.J. May 24, 1999) (finding that because the FDIC had no duty to bank officers, the officers were not allowed to raise contributory/comparability defenses in tort action in an attempt to shift their culpability to the regulator); *see Salt Lick Bancorp v. FDIC*, 187 Fed. Appx. 428, 437-438 (6th Cir. 2006); *First*

State Bank of Hudson County v. United States, 599 F.2d 558 (3d Cir. 1979), *cert. denied*, 444 U.S. 1013 (1980).

Public policy dictates that Mr. Raines, and not OFHEO, should be held accountable for his own actions, and failures to act, while at Fannie Mae because OFHEO “[owes] no duty to the officers and directors.” *Resolution Trust Corp. v. Heiserman*, Civ. A. No. 93-B-944, 1994 WL 907409, *1 (D. Colo. Aug. 31, 1994) (“[C]ompelling public policy reasons support the conclusion that defendant directors and officers should not be allowed to avoid liability for their own negligent management by challenging the actions of government regulators, examiners and receivers.”).

OFHEO’s examinations are not conducted for the purpose of protecting the Enterprise’s management, but to protect the public and the nation’s financial system. As such, OFHEO did not have a duty “to bring to the attention of...[the company’s] officers and directors any wrongdoing during its regulatory activities.” *Fed. Sav. And Loan Ins. Corp. v. Shelton*, 789 F. Supp. 1367, 1369 (M.D. La. 1992) (footnote omitted). Rather, the Director’s duty is “to ensure the enterprises are adequately capitalized and operating safely,” 12 U.S.C. § 4513(a), and “to reduce the risk of failure of the enterprises,” 12 U.S.C. § 4501(2), because of their importance to “the health of the Nation’s economy.” *Id.* Because OFHEO owed no duty to Mr. Raines in the conduct of OFHEO’s safety and soundness examinations, Mr. Raines may not now attack Fannie Mae’s regulator in order to avoid his own culpability. “The conduct of a regulatory body will not shield defendants from their own culpability.” *Stamp v. Brown*, No. 81C1475, 1991 WL 169377, *2 (N.D. Ill. Aug. 28, 1991) (*citing Schacht v. Brown*, 711 F.2d 1343, 1359 (7th Cir. 1983), *cert. denied*, 464 U.S. 1002, 104 S. Ct. 509 (1983)). Rather, Mr. Raines should be judged on the basis of his own conduct and omissions, and not pursuant to OFHEO’s examinations of

Fannie Mae. *See FDIC v. White*, 828 F. Supp. 304, 310-311 (D.N.J. 1993) (disallowing the affirmative defense to be raised against the FDIC in a receivership action, that the FDIC, in its regulatory capacity, had approved certain actions); *Schacht v. Brown*, 711 F.2d at 1359 (“[T]he fraudulent operations of [the insurance company] was surely the alleged progenitor of [the insurance company’s] damage, regardless of whether the state regulatory authority was a necessary instrument in the accomplishment of that end.”).

In short, Mr. Raines’ requests are objectionable on the various grounds set forth above. Therefore, as set forth more fully herein, OFHEO respectfully requests that this Court strike those requests that are overbroad, excessive in scope, unduly burdensome, and do not describe the items or categories of documents sought “with reasonable particularity,” and limit those requests seeking privileged or otherwise non-discoverable information to documents that are properly within the scope of appropriate discovery.

OFHEO objects to, and moves to strike or limit, Mr. Raines’ definition of “document” to the extent it exceeds the definition required by law.

OFHEO objects to, and moves to strike or limit, Mr. Raines’ instruction regarding the creation of a privilege log to the extent that it requires OFHEO to disclose information in excess of what is required by law.

OFHEO objects to, and moves to strike or limit each request and instruction to the extent it seeks to impose burdens and obligations exceeding those imposed by law.

Without waiving any objections or privileges, OFHEO will produce responsive, non-privileged documents subject to an appropriately fashioned protective order.

RESPONSES TO DOCUMENTS AND THINGS TO BE PRODUCED

1. All documents reflecting any communications between you and any individual you intend to call as a witness in the adjudicatory hearing *In The Matter of Franklin D. Raines, et al.*

RESPONSE:

Subject to the general objections and except to the extent that responsive documents have been or will be provided by OFHEO in the MDL, OFHEO objects to and moves to strike or limit this request as the request is not reasonably calculated to seek any materially relevant information pertaining to the pending administrative action. This request is not limited in time or scope.

2. All documents reflecting any offer of settlement provided to or received from any individual you intend to call as a witness in the adjudicatory hearing *In The Matter of Franklin D. Rains, et al.*

RESPONSE:

To the extent that there are any offers of settlement provided to a witness to be called by OFHEO at the hearing, those responsive, non-privileged materials will be provided.

3. All documents that you intend to introduce into evidence in the adjudicatory hearing *In the Matter of Franklin D. Raines, et al.*

RESPONSE:

Those documents will be provided.

4. All documents reflecting any discussions of the matters charged in the Notice of Charges provided to you by any individual.

RESPONSE:

Subject to the general objections and except to the extent that responsive documents have been or will be provided by OFHEO in the MDL, OFHEO objects to and moves to strike or limit this request as the request is not reasonably calculated to seek any materially relevant information pertaining to the pending administrative action. In addition, the request is vague and overbroad and subject to the privileges noted above.

5. All documents relied on by any expert witness in reaching any opinion to be offered in the adjudicatory hearing *In the Matter of Franklin D. Raines, et al.*

RESPONSE:

These documents will be provided to the extent they are available.

6. All communications between you and any individual you intend to call as an expert witness in the adjudicatory hearing *In The Matter of Franklin D. Raines, et al.*

RESPONSE:

Responsive, non-privileged documents will be provided to the extent such an exchange is required.

7. All demonstrative exhibits you intend to use in the adjudicatory hearing *In The Matter of Franklin D. Raines, et al.*

RESPONSE:

These documents will be provided.

8. All documents provided to you by KPMG in connection with OFHEO's Special Examination of Fannie Mae.

RESPONSE:

Subject to the general objections and except to the extent that responsive documents have been or will be provided by OFHEO in the MDL, OFHEO objects to and moves to strike or limit this request as the request is not reasonably calculated to seek any materially relevant information pertaining to the pending administrative action.

9. All documents reflecting communications between you and Fannie Mae relating to potential legal claims by you or Fannie Mae against Mr. Raines.

RESPONSE:

Subject to the general objections and except to the extent that responsive documents have been or will be provided by OFHEO in the MDL, OFHEO objects to and moves to strike or limit this request as the request is not reasonably calculated to seek any materially relevant information pertaining to the pending administrative action.

10. All documents reflecting communications between you and Fannie Mae relating to potential legal claims by you or Fannie Mae against KPMG.

RESPONSE:

Subject to the general objections and except to the extent that responsive documents have been or will be provided by OFHEO in the MDL, OFHEO objects to and moves to strike or limit this request as the request is not reasonably calculated to seek any materially relevant information pertaining to the pending administrative action.

11. All documents reflecting communications between you and Fannie Mae relating to potential legal claims by you or Fannie Mae against Timothy Howard.

RESPONSE:

Subject to the general objections and except to the extent that responsive documents have been or will be provided by OFHEO in the MDL, OFHEO objects to and moves to strike or limit this request as the request is not reasonably calculated to seek any materially relevant information pertaining to the pending administrative action.

12. All documents reflecting communications between you and Fannie Mae relating to potential legal claims by you or Fannie Mae against Leanne Spencer.

RESPONSE:

Subject to the general objections and except to the extent that responsive documents have been or will be provided by OFHEO in the MDL, OFHEO objects to and moves to strike or limit this request as the request is not reasonably calculated to seek any materially relevant information pertaining to the pending administrative action.

13. All documents reflecting communications between you and Fannie Mae relating to potential legal claims by you or Fannie Mae against any other current or former Fannie Mae employee relating to conduct alleged in the Notice of Charges in this action.

RESPONSE:

Subject to the general objections and except to the extent that responsive documents have been or will be provided by OFHEO in the MDL, OFHEO objects to and moves to strike or limit this request as the request is not reasonably calculated to seek any materially relevant information pertaining to the pending administrative action.

14. Copies of all Fannie Mae minimum capital reports submitted to OFHEO and all documents relating to them.

RESPONSE:

The minimum capital report submitted to OFHEO will be provided. Subject to the general objections and except to the extent that responsive documents have been or will be provided by OFHEO in the MDL, OFHEO objects to and moves to strike or limit the remaining portion of the request as the request is not reasonably calculated to seek any materially relevant information pertaining to the pending administrative action and is not limited to the period covered by the Notice of Charges.

15. Copies of all Fannie Mae annual reports and all documents relating to them.

RESPONSE:

The Fannie Mae annual reports submitted to OFHEO will be provided. Subject to the general objections and except to the extent that responsive documents have been or will be provided by OFHEO in the MDL, OFHEO objects to and moves to strike or limit the remaining portion of the request as the request is not reasonably calculated to seek any materially relevant information pertaining to the pending administrative action and is not limited to the period covered by the Notice of Charges.

16. All documents concerning Fannie Mae's compensation for executive officers from January 1, 1998 through January 1, 2005.

RESPONSE:

Subject to the general objections and except to the extent that this request has been or is in the process of being wholly satisfied by documents produced by OFHEO in the MDL or that the documents sought are privileged, OFHEO will provide responsive, non-privileged documents.

17. All documents concerning Roger Barnes.

RESPONSE:

Subject to the general objections and except to the extent identified in Response to No. 18 below or by documents produced or to be produced by OFHEO in the MDL, OFHEO objects and moves to strike or limit this request as the request is vague and not reasonably calculated to seek any materially relevant information pertaining to the pending administrative action in its present form.

18. All documents provided to you by Roger Barnes.

RESPONSE:

Except to the extent that responsive documents have been or will be provided by OFHEO in the MDL or such documents are privileged, OFHEO will provide responsive-non-privileged documents.

19. All documents concerning OFHEO's retention of Deloitte & Touche USA LLP in connection with the Special Examination of Fannie Mae.

RESPONSE:

OFHEO objects and moves to strike or limit this request as the request is not reasonably calculated to seek any materially relevant information pertaining to the pending administrative action.

20. All documents concerning Fannie Mae's retention of Deloitte & Touche USA LLP.

RESPONSE:

OFHEO objects to and moves to strike or limit this request as the request is not reasonably calculated to seek any materially relevant information pertaining to the pending administrative action.

21. All documents concerning communications between you and any other U.S. government agency (including but not limited to, the Securities and Exchange Commission, the Public Company Accounting Oversight Board, and the Executive Office of the President), or employee or former employee thereof, concerning the Special Examination of Fannie Mae or the Notice of Charges in this matter.

RESPONSE:

Subject to the general objections and except to the extent that responsive documents have been or will be provided by OFHEO in the MDL, responsive non-privileged documents will be provided once the governmental entities agree to release of same. Moreover, OFHEO requests this Court allows such other governmental entities to submit their objections, if any, to the Court, if those entities do not agree to release of same.

22. All documents concerning communications between you and any other private party, not employed by you, concerning the Special Examination of Fannie Mae.

RESPONSE:

Subject to the general objections and except to the extent that responsive documents have been or will be provided by OFHEO in the MDL, OFHEO objects to and moves to strike or limit this request as the request is not reasonably calculated to seek any materially relevant information pertaining to the pending administrative action.

23. Copies of all transcripts of testimony taken by OFHEO, the Securities & Exchange Commission, the Public Company Accounting Oversight Board, or any other government agency, concerning any of the conduct alleged in the Notice of Charges in this action.

RESPONSE:

Subject to the general objections and except to the extent that responsive documents have been or will be provided by OFHEO in the MDL, responsive non-privileged documents will be provided once the governmental entities agree to release of same. Moreover, OFHEO requests this Court allows such other governmental entities to submit their objections, if any, to the Court, if those entities do not agree to release of same.

24. Copies of all notes of interviews conducted by OFHEO, the Securities and Exchange Commission, the Public Company Accounting Oversight Board, or any other

government agency concerning any of the conduct alleged in the Notice of Charges in this matter.

RESPONSE:

Subject to the general objections and except to the extent that responsive documents have been or will be provided by OFHEO in the MDL, responsive non-privileged documents will be provided once the governmental entities agree to release of same. Moreover, OFHEO requests this Court allows such other governmental entities to submit their objections, if any, to the Court, if those entities do not agree to release of same.

25. All documents concerning FM Watch or FM Policy Focus.

RESPONSE:

Subject to the general objections and except to the extent that responsive documents have been or will be provided by OFHEO in the MDL, OFHEO objects to and moves to strike or limit this request as the request is not reasonably calculated to seek any materially relevant information pertaining to the pending administrative action.

26. All documents produced by any party (whether voluntarily, in response to request, or in response to subpoena) other than Fannie Mae to OFHEO in connection with OFHEO's Special Examination of Fannie Mae.

RESPONSE:

Subject to the general objections and except to the extent that responsive documents have been or will be provided by OFHEO in the MDL, OFHEO objects to and moves to strike or limit this request as the request is not reasonably calculated to seek any materially relevant information pertaining to the pending administrative action.

27. All drafts of the Special Examination Reports, including, but not limited to, all drafts discussing communications between Fannie Mae and the White House.

RESPONSE:

OFHEO objects and moves to strike or limit this request as the request is not reasonably calculated to seek any materially relevant information pertaining to the pending administrative action and are subject to the privileges referenced above including deliberative process, examination privilege, work product and attorney-client privileges, and investigative file privilege.

28. All documents showing drafts of reports resulting from the Special Examination of Fannie Mae.

RESPONSE:

OFHEO objects and moves to strike or limit this request as the request is not reasonably calculated to seek any materially relevant information pertaining to the pending administrative action and are privileged.

29. All documents concerning Wayne Abernethy and Fannie Mae.

RESPONSE:

OFHEO objects and moves to strike or limit this request as the request is not reasonably calculated to seek any materially relevant information pertaining to the pending administrative action.

30. All communications between you and any employee, agent, or representative of Paul, Weiss, Rifkind, Wharton & Garrison LLP (“Paul Weiss”) or Huron Consulting Group Inc. (“Huron”) in connection with OFHEO’s Special Examination of Fannie Mae or the Report to the Special Review Committee of the Board of Directors of Fannie Mae prepared by Paul Weiss and Huron.

RESPONSE:

Subject to the general objections and except to the extent that responsive documents have been or will be provided by OFHEO in the MDL, OFHEO objects to and moves to strike or limit this request as the request is not reasonably calculated to seek any materially relevant information pertaining to the pending administrative action.

31. All documents provided to you by Paul, Weiss, Rifkind, Wharton & Garrison LLP or Huron Consulting Group Inc. in connection with OFHEO’s Special Examination of Fannie Mae.

RESPONSE:

Subject to the general objections and except to the extent that responsive documents have been or will be provided by OFHEO in the MDL, OFHEO objects to and moves to strike or limit this request as the request is not reasonably calculated to seek any materially relevant information pertaining to the pending administrative action.

32. All documents concerning the responsibilities of Ms. Spencer, Mr. Howard, and Mr. Raines at Fannie Mae from January 1, 1998 until they either retired, resigned, or terminated their employment, including but not limited to their responsibilities for Fannie Mae’s internal controls.

RESPONSE:

Except to the extent OFHEO has produced relevant documents in the MDL or the documents are otherwise privileged, responsive, non-privileged documents will be provided.

33. Documents sufficient to identify any individuals who are unavailable for the hearing but who have information relevant to the Notice of Charges and who can be deposed pursuant to 12 C.F.R. § 1780.29.

RESPONSE:

Subject to the general objections and except to the extent that responsive documents have been or will be provided by OFHEO in the MDL, OFHEO objects to and moves to strike or limit this request as the request is not reasonably calculated to seek any materially relevant information pertaining to the pending administrative action.

34. All documents that support or refute the allegation in Paragraph 25 of the Notice of Charges that Mr. Raines “agreed to the deferral” of \$200 million of estimated amortization expense from 1998.

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

35. All documents that support or refute the allegation in Paragraph 32 of the Notice of Charges that Mr. Raines was “briefed on improper earnings management actions.”

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

36. All documents that support or refute the allegation in Paragraph 42 of the Notice of Charges that Mr. Raines “improperly used stock repurchases as a method of reaching AIP/EPS targets.”

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

37. All documents that support or refute the allegation in Paragraph 43 of the Notice of Charges that Mr. Raines “was apprised of the FAS 91 PDA policy during the process the Enterprise employed to close its financial records for its fiscal year . . . in or around 2000.”

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

38. All documents that support or refute the allegation in Paragraph 45 of the Notice of Charges that Mr. Raines was “responsible for transactions in December 2001 and March 2002 that created a \$20 billion REMIC and \$10 billion REMIC, which they used to shift \$107 million of earnings into future years.”

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

39. All documents that support or refute the allegation in Paragraph 46 of the Notice of Charges that Mr. Raines was “responsible for the inappropriate manner in which the Enterprise accounted for the results of the Security Master Project.”

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

40. All documents that support or refute the allegation in Paragraph 47 of the Notice of Charges that Mr. Raines was “responsible for the inappropriate manner in which the Enterprise accounted for dollar roll transactions.”

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

41. All documents that support or refute the allegation in Paragraph 48 of the Notice of Charges that Mr. Raines was “responsible for the Enterprise’s implementation of non-GAAP treatment of derivatives, which violated FAS 133 and reduced earnings volatility.”

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

42. All documents that support or refute the allegation in Paragraph 50 of the Notice of Charges that Mr. Raines had knowledge and approved of efforts to “participate [] in earnings management related to debt buybacks.”

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

43. All documents that support or refute the allegation in Paragraph 50 of the Notice of Charges that Mr. Raines “failed to document any economic or other justification for the debt buybacks.”

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

44. All documents that support or refute the allegation in Paragraph 51 of the Notice of Charges that Mr. Raines had knowledge and approved of Mr. Howard’s maintaining “the Enterprise’s allowance for loan loss at a level not commensurate with the risk of Fannie Mae’s credit portfolio.”

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

45. All documents that support or refute the allegation in Paragraph 51 of the Notice of Charges that Mr. Raines maintained allowance for loan loss at a “level inappropriately high in order to create a hidden cushion that could be used to reduce volatility so that they could manage earnings to hit AIPS/EPS targets.”

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

46. All documents that support or refute the allegation in Paragraph 52 of the Notice of Charges that Mr. Raines knew that “[i]n 2002, Howard and Spencer . . . inappropriately accounted for Low Income Housing Tax Credits for the purpose of creating a cushion for volatility in order to manage earnings to AIP/EPS targets.”

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

47. All documents that support or refute the allegation in Paragraph 53 of the Notice of Charges that Mr. Raines “approved two small finite insurance policies that the Enterprise entered into for which it inappropriately applied insurance accounting.”

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

48. All documents that support or refute the allegation in Paragraph 54 of the Notice of Charges that Mr. Raines knew or approved of alleged efforts by Ms. Spencer to “obscure[] the accounting effect of decreasing interest rates on IOs by avoiding recording impairments on the IOs.”

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

49. All documents that support or refute the allegation in Paragraph 54 of the Notice of Charges that Mr. Raines knew or approved of alleged efforts by Ms. Spencer to obscure the accounting effect of decreasing interest rates on Fannie Mae’s net buy-up portfolio.

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

50. All documents that support or refute the allegation that Mr. Raines knew that Fannie Mae’s accounting was not GAAP compliant.

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

51. All documents that support or refute the allegation that Mr. Raines knew or should have known that the information contained in minimum capital reports submitted to OFHEO was inaccurate or misleading.

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

52. All documents that support or refute the allegation that Mr. Raines approved any accounting decision in order to increase his own compensation.

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

53. All documents that support or refute the allegation in Paragraph 74 of the Notice of Charges that Mr. Raines “failed to ensure that written policies regarding the formulation of accounting policy were established.”

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

54. All documents that support or refute the allegation in Paragraph 77 of the Notice of Charges that Mr. Raines “failed to ensure that the Enterprise maintained appropriate skill sets or staffing levels to conduct appropriate reviews and audits of accounting policy.”

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

55. All documents that support or refute the allegation in Paragraph 78 of the Notice of Charges that Mr. Raines was “responsible for communicating accounting policy throughout the Enterprise.”

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

56. All documents that support or refute the allegation in Paragraph 80 of the Notice of Charges that Mr. Raines has been “advised that Enterprise research had found that no other companies had one person serving as both CRO and CFO.”

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

57. All documents that support or refute the allegation in Paragraph 82 of the Notice of Charges that Mr. Raines “inappropriately decreased the independence and effectiveness of the internal audit function.”

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

58. All documents that support or refute the allegation in Paragraph 111 of the Notice of Charges that Mr. Raines was aware of “inappropriate audit priorities . . . inadequate staffing and deficient skills sets” and the other alleged problems in Internal Audit.

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

59. All documents that support or refute the allegation in Paragraph 114 that Mr. Raines “knew or should have known about the audit results” referenced in that paragraph.

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

60. All documents that support or refute the allegation in Paragraph 115 that Mr. Raines “knew or should have known about the audit results” referenced in that paragraph.

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

61. All documents that support or refute the allegation in Paragraph 116 that Mr. Raines “knew or should have known about the audit results” referenced in that paragraph.

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

62. All documents that support or refute the allegation in Paragraph 122 of the Notice of Charges that Mr. Raines “established high materiality thresholds, extended the life of the Enterprise’s legacy accounting systems, and avoided the expense of developing new systems that could handle the increasingly complex accounting required by Fannie Mae’s business.”

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

63. All documents that support or refute the allegation in Paragraph 132 of the Notice of Charges that Mr. Raines knew or should have known that Mr. Rajappa “did not test for GAAP and should not have relied upon or accepted any certification from Mr. Rajappa indicating GAAP compliance in any financial disclosure.”

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

64. All documents that support or refute the allegation in Paragraph 133 of the Notice of Charges that Mr. Raines was “aware of the errors involving accounting policy, practices, and systems.”

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

65. All documents that support or refute the allegation in Paragraph 142 of the Notice of Charges that Mr. Raines “established the AIMS.”

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

66. All documents that support or refute the allegation in Paragraph 145 of the Notice of Charges that Mr. Raines used the “materiality threshold for the Security Master project results” for the purpose of “managing earnings.”

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

67. All documents that support or refute the allegation in Paragraph 153 of the Notice of Charges that Mr. Raines “use[d] Account 1622-00 as a ‘cookie jar’ to meet the EPS/ABP bonus for the 1998 fiscal year.”

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

68. All documents that support or refute the allegation in Paragraph 153 of the Notice of Charges that Mr. Raines “avoided the creation of an audit trail, which might be used to ensure that such entries were accurate and appropriately executed.”

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

69. All documents that support or refute the allegation in Paragraph 158 of the Notice of Charges that Mr. Raines “discussed the implications of the financial numbers in relation to EPS during the closing process.”

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

70. All documents that support or refute the allegation in Paragraph 160 of the Notice of Charges that Mr. Raines “manipulate[ed] Fannie Mae’s accounting for amortization expenses, Low Income Housing Tax Credits, and account number 1622-00 for the purpose of attaining financial targets linked to [his] own compensation.”

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

71. All documents that support or refute the allegation in Paragraph 173 of the Notice of Charges that Mr. Raines “manipulat[ed] Fannie Mae’s insurance accounting for two Finite Insurance transactions.”

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

72. All documents that support or refute the allegation in Paragraph 183 of the Notice of Charges that Mr. Raines caused Fannie Mae to enter into REMIC transactions for improper purposes.

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

73. All documents that support or refute the allegation in the Notice of Charges that Mr. Raines knowingly cause Fannie Mae to make “false and misleading disclosures regarding the Company’s GAAP compliance” in any disclosure by Fannie Mae to OFHEO, the SEC, or the public.

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

74. All documents that support or refute the allegation in the Notice of Charges that Mr. Raines knowingly caused Fannie Mae to submit false Minimum Capital Reports to OFHEO.

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

75. All documents that support or refute the allegation in Paragraph 380 of the Notice of Charges that Mr. Raines failed “to establish appropriate internal controls over the company’s amortization process.”

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

76. All documents that support or refute the allegation in Paragraph 405 of the Notice of Charges that Mr. Raines “task[ed]” Mr. Howard “to assume a role in the creation of accounting policy for which [Mr. Howard] was not competent.”

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

77. All documents that support or refute the allegation in Paragraph 446 of the Notice of Charges that Mr. Raines knowingly “fail[ed] to correct the Enterprise’s accounting policies, practices and systems in regard to dollar roll accounting for the purpose of causing earnings volatility to be inappropriately low.”

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

78. All documents that support or refute the allegation in Paragraph 462 of the Notice of Charges that Mr. Raines knowingly “failed[ed] to correct inaccurate, inappropriate and non-GAAP accounting policies and practices.”

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

79. All documents that support or refute the allegation in Paragraph 472 of the Notice of Charges that Mr. Raines “establish[ed], implement[ed], and over[saw] financial objectives and incentives that promoted and resulted in earnings management; set[] a tone at the top that led to unsafe and unsound practices; sacrific[ed] appropriate risk management by ignoring operational risk challenges; pursu[ed] transactions and strategies with minimal or no business or economic purpose; and rel[ied] on inappropriate materiality standards in financial statements and reporting.”

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

80. All documents that support or refute the allegation in Paragraph 478 of the Notice of Charges that Mr. Raines “engage[d] in a pattern of conduct and/or in unsafe and unsound conduct and violations.”

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

81. All documents that support or refute the allegation in Paragraph 487 of the Notice of Charges that Mr. Raines “engage[d] in malfeasance, misfeasance and nonfeasance that caused and would be likely to cause a significant loss to the Enterprise.”

RESPONSE:

To the extent any non-privileged documents tend to support or refute the allegations, they have been or will be provided in the MDL.

82. All documents provided in response to any requests from Ms. Spencer.

RESPONSE:

To the extent such documents have been provided to Ms. Spencer pursuant to her First Document Request, and have not already been provided to you, they will be provided.

83. All documents provided in response to any requests from Mr. Howard.

RESPONSE:

To the extent such documents have been provided to Mr. Howard pursuant to his First Document Request, and have not already been provided to you, they will be provided.

Respectfully submitted,

/s/

David A. Felt
Office of Federal Housing Enterprise Oversight
1700 G Street, N.W.
Washington, D.C. 20552
(202) 414-3750

Joseph J. Aronica
Christopher Mahoney
Robert H. Dietrick
Laurice Y. Chen
DUANE MORRIS, LLP
1667 K Street, N.W., Suite 700
Washington, D.C. 20006
(202) 776-7800

Dated: January 23, 2007

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of January 2007, I caused a true copy of the foregoing Motion to Strike or Limit Discovery Requests of Franklin D. Raines, via U.S. Mail, on the following persons:

Steven M. Salky
Zuckerman Spaeder LLP
1800 M Street, N.W.
Washington, D.C. 20005
Counsel for Respondent J. Timothy Howard

David S. Krakoff
Mayer, Brown, Rowe & Maw LLP
1909 K Street, N.W.
Washington, D.C. 20006-1101
Counsel for Respondent Leanne G. Spencer

Kevin M. Downey
Williams & Connolly LLP
725 Twelfth Street, N.W.
Washington, D.C. 20005
Counsel for Franklin D. Raines

 /s/_____
Joseph J. Aronica