

UNITED STATES OF AMERICA
OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT

_____)	
In the Matter of:)	
)	Notice No. 2006-1
FRANKLIN D. RAINES)	
)	Judge William B. Moran
J. TIMOTHY HOWARD)	
)	
LEANNE G. SPENCER)	
_____)	

**LEANNE G. SPENCER'S MEMORANDUM
REGARDING THE PROPOSED SCHEDULING ORDER**

In response to the Court's request, Respondent Leanne G. Spencer ("Spencer") respectfully submits this memorandum regarding the scheduling order proposed by OFHEO. Spencer joins and adopts the submission of Respondent Franklin D. Raines, which explains that 12 U.S.C. § 4633(a)(2) requires the hearing on the merits of OFHEO's claims to commence within 60 days of the filing of the Notice of Charges.¹

We write separately to address a point raised during the January 31, 2007 telephone conference. The Court asked whether 12 C.F.R. § 1780.12 gives it the authority to alter the 60-day time limit imposed by § 4633(a)(2). The regulation provides in relevant part as follows:

Except as otherwise provided by law, the presiding officer may, for good cause shown, extend the time limits prescribed above or prescribed by any notice or order issued in the proceedings.

¹ 12 U.S.C. § 4633(a) provides in relevant part as follows:

- (1) Venue and record. Any hearing under section 4631 or 4636(c) of this title shall be held on the record and in the District of Columbia.
- (2) Timing. Any such hearing shall be fixed for a date not earlier than 30 days nor later than 60 days after service of the notice of charges under section 4631 of this title or determination to impose a penalty under section 4636 of this title, unless an earlier or a later date is set by the hearing officer at the request of the party served.
- (3) Procedure. Any such hearing shall be conducted in accordance with chapter 5 of title 5.

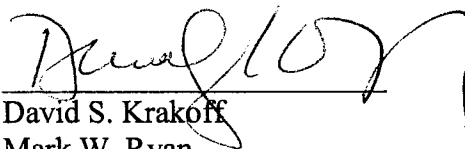
12 C.F.R. § 1780.12.

By its plain terms, this regulation simply does not apply in this situation. First, it does not apply to time limits “otherwise provided by law,” such as the 60-day hearing requirement provided for in 12 U.S.C. § 4633(a)(2). Second, it applies only to time limits “prescribed above or prescribed by any notice or order issued in the proceedings,” not those prescribed elsewhere, such as the 60-day limit prescribed by statute. Accordingly, 12 C.F.R. § 1780.12 provides this Court no authority to depart from the requirement that it conduct a hearing in this matter within 60 days of the filing of the Notice of Charges.

We also point out that Spencer has filed a petition for a writ of mandamus from the United States Court of Appeals for the District of Columbia Circuit seeking to have the Director of OFHEO disqualified from adjudicating this matter. *See In re Spencer*, No. 07-1024. Spencer has also filed a request for expedited consideration of her petition. On today’s date, the Court of Appeals directed OFHEO to respond to the petition by February 9, 2007, and for Spencer to submit a reply by February 14, 2007.² While the matter is pending before the Court of Appeals, we submit that this Court should refrain from adopting the schedule proposed by OFHEO. We reserve our right to have the hearing on this matter commence no later than February 16, 2007.

² The fact that the Court of Appeals has requested a response is significant. *See* D.C. Cir. R. 21(a) (“No responsive pleading to a petition for an extraordinary writ to the district court or an administrative agency, including a petition seeking relief from unreasonable agency delay, is permitted unless requested by the court. No such petition will be granted in the absence of such a request.”).

Respectfully submitted,



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Dated: February 2, 2007

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of February, 2007, I caused to be served by hand delivery a copy of the foregoing Leanne G. Spencer's Memorandum Regarding


The Proposed Scheduling Order upon:

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